

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

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(SPACE reserved for Clerk of Court)

**LIMITED PURPOSE PARTY MEMBERSHIP AGREEMENT BETWEEN THE  
FLORIDA RESILIENCY AND ENERGY DISTRICT AND  
THE CITY OF ORLANDO, FLORIDA**

This Limited Purpose Party Membership Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 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 the **CITY OF ORLANDO, FLORIDA**, a political subdivision of the State of Florida (the "CITY") (collectively, the "Parties") for the purpose of providing a Property Assessed Clean Energy ("PACE") program within the legal boundaries of the CITY.

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

1. 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 (the "Qualifying Improvements"), and provide an efficient process for real property owners within the legal boundaries of the CITY to access the Florida Development Finance Corporation (FDFC) PACE Program (the "FDFC PACE Program") and permit FRED to levy assessments for the FDFC PACE Program within such legal boundaries.
2. Parties to the Interlocal Agreement. The Interlocal Agreement, approved on September 6, 2016 (the "Interlocal Agreement") 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, is hereby supplemented and amended on the date last signed below by this Agreement, which is hereby fully incorporated into the Interlocal Agreement, to include the CITY as a Party (by virtue of becoming a Subsequent Party), as those terms are defined in the Interlocal Agreement. In the event of any conflict between the Interlocal Agreement and this Agreement, this Agreement shall control the rights and obligations of the Parties.

3. Rights of Parties. FRED, together with its member Parties, and the CITY, with the intent to be bound thereto, hereby agree that the CITY 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 CITY, as more specifically described below, and in accordance with federal, state, and local laws, rules, regulations, ordinances, and all operational program standards of the CITY.
4. State Finding of Legislative Benefit and Levy of Special Assessments. The parties hereto hereby acknowledges that, pursuant to Section 168.03(1)(b), the legislature has determined that access to financing for Qualifying Improvements through voluntary assessment programs such as the FDFC PACE Program provides a special benefit to real property within its legal boundaries by alleviating the property's burden from energy consumption and/or reducing the property's burden from potential wind damage, and, in order to make such Qualifying Improvements more affordable and assist property owners who wish to undertake such improvements, the legislature has 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 imposition, levy, apportionment and collection of voluntary, non-ad valorem special assessments as provided in this Agreement. The non-ad valorem special assessments arising from a property owner's voluntary participation in the FDFC PACE Program shall be levied by FRED on properties within CITY and the receipt and distribution of any non-ad valorem special assessments imposed by FRED are purely ministerial acts.
5. Qualifying Improvements. FRED may provide access to financing for "Qualifying Improvements" to real property within the legal boundaries of the CITY, in accordance with Section 163.08, Florida Statutes, and subject to the terms of this Agreement, as well as applicable federal, state, and CITY law.
6. Financing Agreement. Before extending any financing or subjecting any participating real property within the legal boundaries of the CITY to the non-ad valorem special assessment authorized therein, FRED and FDFC, through their designees, pursuant to the Section 163.08, Florida Statutes and this Agreement, shall enter into a financing agreement (the "Financing Agreement") with property owner(s) within the legal boundaries of the CITY who qualify for financing through FRED.
7. Boundaries of the FDFC PACE Program. For the limited purposes of administering the FDFC 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 CITY, which legal boundaries may be limited, expanded, or more specifically designated from time to time by the CITY. Notice of such changes shall conform to procedures designated by the District.

8. Eligible Properties. Within the legal boundaries of the CITY, improved real property, including any residential, commercial, agricultural and industrial use may be eligible for participation in the FDFC PACE Program within the limits otherwise prescribed in Section 163.08, Florida Statutes.
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 CITY to help secure the financing of costs of Qualifying Improvements constructed or acquired on such properties described in paragraph 4 above. 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 CITY 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.
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 CITY ("Termination Date"), FRED shall not approve any new applications affecting property within the legal boundaries of the CITY 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 FDFC 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.
11. Consent. This Agreement, together with the resolution by the governing board of the CITY approving this Agreement, shall be considered the Parties' consent to authorize FRED to exercise its powers pursuant to Section 163.08, Florida States and to provide access for the FDFC PACE Program to operate within the legal boundaries of the CITY, as required by Section 163.08, Florida Statutes.
12. Approval of PACE Administrators. Within thirty (30) days of receiving notice of a new PACE Administrator pursuant to Section 10 (B) of the Interlocal Agreement, the member of the District shall notify the Executive Director of any objection or refusal to allow an approved PACE Administrator(s) to offer PACE financing within the jurisdictional boundaries of such member. The member and the Executive Director shall work diligently to resolve any issues with the approved PACE Provider within an additional thirty (30) days. After the additional 30 days, the member may choose, by resolution of the member's governmental body communicated to the District and FDFC, to object and refuse to allow a new Administrator(s) to offer PACE financing within the jurisdictional boundaries of such member. After the expiration of 60 days, if no action is taken, the new Administrator(s) shall be able to offer its PACE program within the boundaries of all the members. Notwithstanding any of the foregoing, the only authorized FDFC PACE

residential Program Administrator for the District shall be Renovate America until July 1, 2017. Notwithstanding the above, the member of the District may terminate the right of any PACE Administrator, at any time to offer financing within their jurisdictional boundaries following the same notice and objection procedures stated above.

13. CITY Coordinator. The Director of Sustainability of the CITY shall serve as the CITY's primary point of contact and coordinator. The CITY will advise FRED of any changes to the CITY's primary contact and coordinator within 30 days of such changes.
14. Limited Obligations. Neither FRED nor FDFC is authorized to issue bonds, or any other form of debt, on behalf of the CITY. To the extent that FRED or FDFC issues 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 CITY. The issuance of such bonds shall not directly or indirectly or contingently obligate the CITY 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 CITY. For any such bonds, the bond disclosure document, if any, shall include references to the fact that the CITY is not an obligated party, and also adequately disclose material attendant risks with the FDFC PACE Program.
15. 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 CITY, which shall provide for the collection of any non-ad valorem special assessments imposed by FRED within the legal boundaries of the CITY. If required by the tax collector and property appraiser, the CITY agrees to enter into those agreements as a third-party to facilitate the collection of the non-ad valorem special assessments imposed by FRED.
16. 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.
17. 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 CITY, state and federal laws.

18. 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, 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](mailto:jstanton@broadandcassel.com)

**If to CITY:**

Chris Castro, LEED GA, CPB  
Director of Sustainability  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32801  
407-246-3463  
[chris.castro@cityoforlando.net](mailto:chris.castro@cityoforlando.net)  
AND

Wesley Powell  
Assistant City Attorney  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32801  
407-246-3478  
[wesley.powell@cityoforlando.net](mailto:wesley.powell@cityoforlando.net)

19. 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 CITY and FRED or other delegated authority authorized to execute same on their behalf.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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 CITY and recorded in the public records of Orange County, Florida as an amendment to the Interlocal Agreement, in accordance with Section 163.01(11), Florida Statutes.
26. 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.
27. Effective Date. This Agreement shall become effective upon the execution by both Parties hereto.

28. 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 Ninth Judicial Circuit in and for Orange County, Florida, the United States District Court for the Middle District of Florida or United States Bankruptcy Court for the Middle District of Florida, as appropriate.
29. Sovereign Immunity. Nothing herein shall constitute a waiver of Section 768.28 of the Florida Statutes or shall be construed as impacting or modifying the protections set forth therein.

[SIGNATURE PAGE FOLLOWS]

[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.

CITY OF ORLANDO, FLORIDA

By: \_\_\_\_\_  
Mayor/Mayor Pro Tem

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the  
City of Orlando, Florida, only.

\_\_\_\_\_, 2016.

\_\_\_\_\_  
Assistant City Attorney  
Orlando, Florida

FLORIDA DEVELOPMENT FINANCE CORPO-  
RATION on behalf of FLORIDA RESILI-  
ENCY AND ENERGY DISTRICT

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