

20140020298 ELECTRONICALLY RECORDED IN THE PUBLIC RECORDS OF LEON COUNTY, FL
BK: 4642 PG: 1844 03/13/2014 at 03:03 PM BOB INZER, CLERK OF COURTS

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

LEON COUNTY ENERGY
IMPROVEMENT DISTRICT, a dependent
special district,

Plaintiff,

vs.

THE STATE OF FLORIDA, AND ALL OF
THE SEVERAL PROPERTY OWNERS,
TAXPAYERS AND CITIZENS OF LEON
COUNTY, 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,

Defendants.

CIVIL ACTION NO. 2013-CA-003396

VALIDATION OF NOT TO EXCEED
\$200,000,000 LEON COUNTY ENERGY
IMPROVEMENT DISTRICT REVENUE
BONDS, 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 Leon County Energy Improvement District against the State of Florida and the property owners, taxpayers and citizens of Leon County, 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 Plaintiff's issuance of not exceeding \$200,000,000 in aggregate principal amount at any one time outstanding of the Leon County Energy Improvement District Revenue Bonds, in various series (the "Bonds"), hereinafter described, or to be affected in any way thereby, and said cause having duly come on for final

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hearing, and the Court having considered the same and heard the evidence and being fully advised in the premises, finds as follows:

JURISDICTION AND VENUE

FIRST. The Plaintiff is authorized under Chapter 75, 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 of the revenues pledged, the proceedings relating to the issuance thereof and all matters connected therewith.¹ All actions and proceedings of the Plaintiff in this cause are in accordance with Chapter 75, Florida Statutes, as amended.

SECOND. The parties named as Defendants in this Complaint are the proper parties under the provisions of Section 75.02, Florida Statutes.

THIRD. Venue in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida is proper under the provisions of Section 75.02, Florida Statutes.

THE PLAINTIFF IS A PROPER PARTY TO BRING THIS ACTION

FOURTH. The Plaintiff is a valid and legally existing dependent special district within the State of Florida created pursuant to Ordinance No. 10-12 adopted by the Board of County Commissioners of Leon County, Florida (the "County") on April 13, 2010, now codified as Chapter 15 of the Leon County Code of Ordinances (the "Code"), pursuant to and in accordance with the Florida Constitution and Chapter 125, Florida Statutes, as amended. A copy of Chapter 15 of the Code was received into evidence as Plaintiff's Exhibit "1".

¹ The Court takes judicial notice that the Court recently validated two separate issues of bonds involving virtually identical factual circumstances and legal issues. See Final Judgment in Florida PACE Funding Agency v. State of Florida, Civil Action No. 2011-CA-1834, filed August 25, 2011, and Final Judgment in Green Corridor Property Assessment Clean Energy (PACE) District v. State of Florida, Civil Action No. 2012-CA-002897, filed October 23, 2012.

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FIFTH. Chapter 15 of the Code provides the authority of the Plaintiff (a) to act, provide its services, and conduct its affairs within the County; (b) to facilitate the voluntary acquisition, delivery, installation or financing of “qualifying improvements” as defined in Section 163.08, Florida Statutes (the “PACE Act”) and “energy efficiency improvements,” “renewable energy improvements” or “wind resistance improvements” as defined in Chapter 15 of the Code (“Qualifying Improvements”) to property owners desiring such improvements who are willing to enter into financing agreements (“Financing Agreements”) with the Plaintiff as provided for in the PACE Act and agree to impose non-ad valorem assessments which shall run with the land on their respective properties; (c) to levy, impose and collect non-ad valorem assessments pursuant to such Financing Agreements; (d) to issue bonds of the Plaintiff to fund and finance the Qualifying Improvements; and (e) to provide for the proceeds of such non-ad valorem assessments to be timely and faithfully paid to the Plaintiff.

SIXTH. No municipality within the County is prohibited from enacting, implementing and operating a non-ad valorem assessment program to finance Qualifying Improvements under the PACE Act by any provision of any agreement between the Plaintiff and a public or private power or energy provider or other utility provider, since (a) 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 PACE Act and (b) Chapter 15 of the Code provides that any municipality within the County may enact an ordinance setting forth the exclusion of property within its boundaries from the District.

THE PLAINTIFF HAS AUTHORITY TO ISSUE THE BONDS

SEVENTH. Authority is conferred upon the Plaintiff, under and by virtue of the laws of the State of Florida, particularly Chapter 125, Florida Statutes, as amended, the PACE Act, Chapter 189, Florida Statutes, as amended (the “Special District Act”), Chapter 15 of the Code

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and other applicable provisions of law (collectively, the "Act"), to issue its revenue bonds or other debt obligations and use the proceeds thereof for purposes of financing Qualifying Improvements within the County.

EIGHTH. The Bonds or other debt obligations will be issued by the Plaintiff pursuant to a Master Bond Resolution. A copy of the form of the Master Bond Resolution was received into evidence as Plaintiff's Exhibit "2".

**THE PLAINTIFF IS ACTING IN COMPLIANCE WITH
THE PACE ACT AND THE CODE**

NINTH. The Bonds, or other debt obligations issued by the Plaintiff, enable the Plaintiff to lawfully create and administer financing programs related to the provision of 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 Plaintiff, upon the voluntary agreement of the record owners of the affected property as authorized by the PACE Act. In order to pay the costs of Qualifying Improvements, the PACE 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.

TENTH. The PACE Act and Chapter 15 of the Code authorizes the Plaintiff (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 and (c) to administer, or allow for the administration of, a Qualifying Improvement program by a for-profit entity or a

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not-for-profit entity. A copy of the PACE Act was received into evidence as Plaintiff's Exhibit "3".

ELEVENTH. The PACE 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.

TWELFTH. The PACE 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

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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.

THE PLAINTIFF HAS AUTHORITY TO ENTER INTO THE FINANCING AGREEMENTS AND TO IMPOSE NON-AD VALOREM ASSESSMENTS

THIRTEENTH. The Legislature determined that the actions authorized under the PACE 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 voluntary 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. To that end, the District will enter into a Financing Agreement with each property owner that desires to obtain financing under the District's program. A copy of the form of the Financing Agreement was received into evidence as Plaintiff's Exhibit "4".

FOURTEENTH. The non-ad valorem assessments imposed pursuant to the PACE 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 PACE Act which comports with and evidences

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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 PACE Act. As such, the non-ad valorem assessments imposed pursuant to the PACE 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.

FIFTEENTH. 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 PACE 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.

SIXTEENTH. Non-ad valorem assessments imposed pursuant to the PACE 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.

SEVENTEENTH. 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

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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.

EIGHTEENTH. Non-ad valorem assessments imposed pursuant to the PACE 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.

NINETEENTH. The PACE Act expressly clarifies and distinguishes the relationship of prior contractual obligations or covenants of a property owner which allow for unilateral acceleration of payment of a mortgage, note or lien or other unilateral modification with the action of a property owner entering into a Financing Agreement pursuant to the PACE Act. The PACE Act lawfully recognizes the Financing Agreement required therein as the means to evidence a non-ad valorem assessment and renders unenforceable any provision in any agreement between a mortgagee or other lien holder 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 entering to Financing Agreement pursuant to the PACE Act which establishes a non-ad valorem assessment. This provision of the PACE Act does not result in a contractual impairment of the mortgage or similar lien, as the assessment established by a Financing Agreement is no different from any other lawful non-ad valorem assessment, and does not impair the value of the prior contract (e.g. mortgagee's interest).

TWENTIETH. Even if the Financing Agreement is deemed to result in an impairment of contract as a result of the PACE Act, such impairment is not substantial nor does it constitute an intolerable impairment, and as such does not warrant overturning the PACE Act as there is an overriding necessity for the PACE Act. The PACE Act requires that any mortgage lien holder on a participating property must be provided not less than 30 days prior notice of the property

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owner's 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 PACE 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 PACE Act additionally requires as a condition precedent to the effectiveness of a non-ad valorem assessment (i) a reasonable determination of timely payment of property taxes and assessments during the preceding three (3) years, (ii) the absence of any current involuntary liens on the property, (iii) the absence of any property-based debt delinquencies during the preceding three (3) years, (iv) verification that the property owner is current on all mortgage debt on the property, (v) 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 (vi) 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 PACE 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,

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tolerable in light of covenants contained in mortgage and other debt instruments which may otherwise allow for unilateral acceleration.

TWENTY-FIRST. 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 PACE 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.

TWENTY-SECOND. 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 from potential wind, storm or hurricane events or damage.

TWENTY-THIRD. The voluntary application for funding to finance a Qualifying Improvement and entry into a written Financing Agreement as required by and pursuant to the PACE Act provides direct, competent and substantial evidence that each affected property owner has determined and acknowledged that the cost of Qualifying Improvement 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-FOURTH. The unique and specific procedures required by the PACE 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.

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THE PLAINTIFF HAS AUTHORITY TO ISSUE THE BONDS THROUGH ADOPTION OF THE MASTER BOND RESOLUTION

TWENTY-FIFTH. The Master Bond Resolution authorizes Plaintiff's issuance of not exceeding \$200,000,000 in aggregate principal amount at any one time outstanding of Leon County Energy Improvement District Revenue Bonds, in various series, in order to provide funds with which to administer an energy and wind resistance improvement finance program to facilitate the provision, funding and financing of Qualifying Improvements.

TWENTY-SIXTH. 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 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").

THE PLAINTIFF HAS PROVIDED A MECHANISM TO SECURE THE BONDS

TWENTY-SEVENTH. 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 Plaintiff pursuant to Financing Agreements with affected property owners as provided for in the PACE Act, and the funds and accounts described in and as pledged and as limited under the Indentures (the "Pledged Revenues").

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

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TWENTY-NINTH. 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.

THIRTIETH. 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-FIRST. 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-SECOND. The Master Bond Resolution requires the use of Financing Agreements in establishing any non-ad valorem assessment in the manner provided for in the PACE Act.

THIRTY-THIRD. The Master Bond Resolution provides that the Bonds and the obligations and covenants of the Plaintiff under the Indentures, the Financing Agreements and other documents (collectively, the "Program Documents") shall not be or constitute a debt, liability, or general obligation of the Plaintiff, the County, the State of Florida, or any political subdivision or municipality thereof, nor a pledge of the full faith and credit or any taxing power of the Plaintiff, the County, the State or any political subdivision or municipality thereof, but shall constitute special obligations of the Plaintiff payable solely from the non-ad valorem assessments as evidenced by the Financing Agreements and secured under the Indentures, in the manner provided therein. The holders of the Bonds shall not have the right to require or compel

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any exercise of the taxing power of the Plaintiff, the County, 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 Program Documents. The issuance of the Bonds shall not directly, indirectly, or contingently obligate the Plaintiff, the County, the State of Florida or any political subdivision or municipality thereof (excluding the District with respect to the levy of the non-ad valorem assessments) to levy or to pledge any form of taxation or assessments whatsoever therefor.

THE PLAINTIFF'S LIABILITIES UNDER THE PACE ACT ARE LIMITED

THIRTY-FOURTH. Plaintiff is and shall be subject to Section 768.28, Florida Statutes, and any other provisions of Florida law governing sovereign immunity.

THE PLAINTIFF HAS COMPLIED WITH ALL CONSTITUTIONAL AND STATUTORY CONDITIONS PRECEDENT TO THE ISSUANCE OF THE BONDS

THIRTY-FIFTH. 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 Financing Agreements, Chapter 15 of the Code, the PACE 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 PACE 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

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Judgment validates and confirms the authority of the Plaintiff to issue the Bonds and the legality of all proceedings in connection therewith.

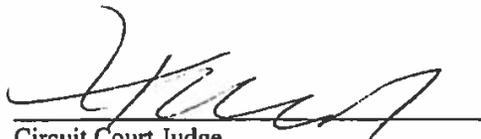
There shall be stamped or written on the back of each of the Bonds a statement in substantially the following form:

“This Bond was validated by judgment of the Circuit Court for Leon County, Florida rendered on _____, 2014.

[Officer, Leon County
Energy Improvement District]”

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 10th day of March, 2014.



Circuit Court Judge

Copies to: All Counsel of Record

