**RESOLUTION NO. 2012-63**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING THE INTERLOCAL AGREEMENT RELATING TO THE GREEN CORRIDOR - PACE DISTRICT; TO UPDATE THE INTERLOCAL TO REFLECT THE MODIFICATION OF STATE LAW UNDER HOUSE BILL 7117, TO ENSURE THAT THE DISTRICT CAN EXECUTE FINANCING AGREEMENTS AND LEVY THE NON AD VALOREM SPECIAL ASSESSMENTS; TO REQUIRE A SUPERMAJORITY VOTE TO EXPAND THE BOARD AND TO PROVIDE FOR RESIDENT PARTICIPANTS ON THE BOARD; PROVIDING FOR THE NOMINATION OF A PACE DISTRICT MEMBER BY THE VILLAGE OF PALMETTO BAY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** during the approval process for the initial Interlocal Agreement in October 2011, which established the District, several municipalities raised concerns that municipalities within the District would be required to: (1) execute financing agreements; and (2) levy the non ad valorem special assessments. When discussing this concern with the municipalities involved, the Town of Cutler Bay ("Town") staff committed to proposing a legislative amendment to Section 163.08, Florida Statutes, which would eliminate this concern; and,

**WHEREAS,** following through with this commitment, the Town's lobbyist filed an amendment to House Bill 7117 (the "HB 7117"), which would allow for the District, instead of the municipalities within the District, to execute the financing agreements and levy the non ad valorem special assessments; and,

**WHEREAS,** the Florida Legislature passed HB 7117 on the last day of the legislative session and the Governor allowed for the bill to become law on April 14, 2012; and,

**WHEREAS,** as a result of the change in state law, the Interlocal Agreement was amended to reflect that the District will sign the financing agreements and levy the special assessments instead of the municipalities involved. Also, other changes were made throughout the Interlocal Agreement to make the Agreement consistent with these changes; and,

**WHEREAS,** the Interlocal Agreement was also amended to reflect that individuals eligible to serve on the District Board has been expanded to include any property owner or elected official; and, it was clarified that the District Board can be expanded beyond seven people upon a two-third vote of the Board. Furthermore, a two-third vote of the District Board is necessary to add an additional municipality to the District; and,

**WHEREAS,** to provide flexibility, the at large member may be appointed by the Board at anytime instead of at the first meeting; and,

**WHEREAS,** the Interlocal Agreement was updated to clarify that the Town of Cutler Bay had selected Ygrene as the Third Party Administrator through a public procurement process; and,

**WHEREAS,** the Interlocal Agreement was clarified that if the District decides not to utilize the Town Manager and Town Attorney after the initial two (2) years, the Town would not pay for the costs and expenses of the new staff and attorney; and,

**WHEREAS,** the Interlocal Agreement was further clarified that the municipalities would not be responsible for the liabilities of the District. In addition, it was elucidated that municipalities entering into this Interlocal Agreement did not waive sovereign immunity; and,

**WHEREAS,** although clearly stated in the Third Party Administrator agreement, the Interlocal Agreement was amended to acknowledge that the Third Party Administrator's indemnification of the District also extended to the member municipalities; and, it was also expressly provided that the Third Party Administrator, regardless of who it is, shall always indemnify the District and the municipalities within; and,

**WHEREAS,** finally, the Interlocal Agreement reflects that there are no third party beneficiaries to the Interlocal Agreement and that the Agreement will be effective upon recordation; and,

**WHEREAS,** the Village enacted Chapter 17 of the Village's Code of Ordinances, entitled "Green Corridor - PACE District", which provides for the Village's participation in the PACE program, and provides that the underlying Interlocal Agreement may be modified from time to time by the signatory local governments via an authorized resolution consistent with state law; and,

**WHEREAS,** the Mayor and Village Council desire to adopt the amended interlocal agreement and to appoint a representative to the PACE District.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above whereas clauses are incorporated by reference

**Section 2.** The attached interlocal agreement is adopted by reference herein and approved by the Mayor and Village Council.

**Section. 3.** The Mayor and Council appoint Mayor Shelley Stanczyk as the Village's representative on the PACE District Board, consistent with the requirements of the underlying Amended Interlocal Agreement. The appointee shall serve at the will of the Council and may be rescinded at any time.

**Section 4.** This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 23rd day of July, 2012

Attest:

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

| | |
|---|---|
| Council Member Patrick Fiore | YES |
| Council Member Howard Tendrich | YES |
| Council Member Joan Lindsay | YES |
| Vice-Mayor Brian W. Pariser | YES |
| Mayor Shelley Stanczyk | YES |

**AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CUTLER BAY, VILLAGE OF PALMETTO BAY, VILLAGE OF PINECREST, CITY OF SOUTH MIAMI, MIAMI SHORES VILLAGE, CITY OF CORAL GABLES & CITY OF MIAMI**

This Amended and Restated Interlocal Agreement (the "Interlocal Agreement") is entered into between the Town of Cutler Bay, Florida, a Florida municipal corporation; Village of Palmetto Bay, Florida, a Florida municipal corporation; Village of Pinecrest, a Florida municipal corporation; City of South Miami, a Florida municipal corporation; Miami Shores Village, a Florida municipal corporation; City of Coral Gables, a Florida municipal corporation; and, the City of Miami, a Florida municipal corporation (Collectively, the "Parties").

**RECITALS**

**WHEREAS,** Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

**WHEREAS,** Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of the governmental units; and

**WHEREAS,** the Parties desire to enter into an interlocal agreement creating a separate legal entity entitled the Green Corridor Property Assessment Clean Energy (PACE) District, hereinafter referred to as the "District;" and

**WHEREAS,** Section 166.021, Florida Statutes, authorizes the Parties to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS,** Section 163.08, Florida Statutes, provides that a "local government," defined as a county, municipality, a dependent special district as defined in Section 189.403, Florida Statutes, or a separate legal entity created pursuant to Section 163.01(7), Florida Statutes may finance energy related "qualifying improvements" through voluntary assessments; and

**WHEREAS**, Section 163.08, Florida Statutes, provides that improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

**WHEREAS,** Section 163.08(5), Florida Statutes, provides that local governments may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements; and

**WHEREAS,** the Parties to this Interlocal Agreement have expressed a desire to enter into this Interlocal Agreement in order to authorize the establishment of the District

as a means of implementing and financing a qualifying improvements program within the District; and

**WHEREAS,** the Parties have determined that it is necessary and appropriate to create the District and to clarify various obligations for future cooperation between the Parties related to the financing of qualifying improvements within the District; and

**WHEREAS**, the Parties agree and understand that each member of the District will have complete control over the administration, governance, and implementation of their own PACE program, which includes, but is not limited to, the ability to review and approve program documents, marketing strategies, and determining eligible property types and improvements; and

**WHEREAS,** the Parties have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage to provide for the financing of qualifying improvements within the District.

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

Section 1. Recitals Incorporated. The above recitals are true and correct and incorporated herein.

Section 2. Purpose. The purpose of this Interlocal Agreement is to consent to and authorize the creation of the District, pursuant to Section 163.08, Florida Statutes in order to facilitate the financing of qualifying improvements for property owners within the District. The District shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes.

Section 3. Qualifying Improvements. The District shall allow the financing of qualifying improvements as defined in Section 163.08, Florida Statutes.

Section 4. Enabling Ordinance or Resolution. The Parties to this Interlocal Agreement agree to approve and keep in effect such resolutions and ordinances as may be necessary to approve, create and maintain the District. Said ordinances and resolutions shall include all of the provisions as provided for in Sections 163.01 and 163.08, Florida Statutes, for the creation of a partnership between local governments as a separate legal entity. The District shall be created upon the execution of this Interlocal Agreement by the Parties hereto and the adoption of an ordinance or resolution of support by the Parties establishing the District. Additional local governments may join in and enter into this Interlocal Agreement by approval of two-thirds of the members of the Board (as defined in Section 6 below), execution of this Interlocal Agreement and adoption of an ordinance or resolution of support establishing the District.

Section 5. District Boundaries. The boundaries of the District shall be the legal boundaries of the local governments that are Parties to this Interlocal Agreement.

As contemplated in this Interlocal Agreement, the District will levy voluntary assessments on the benefitted properties within the boundaries of the District to help finance the costs of qualifying improvements for those individual properties. Upon petition by the landowners of individual properties desiring to be benefited, those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with the applicable law. Notwithstanding a Parties termination of participation within this Interlocal Agreement, those properties that have received financing for qualifying improvements shall continue to be a part of the District, until such time that all outstanding debt has been satisfied.

Section 6. Governing Board of the District. The District shall be governed by a governing board (the "Board,") which shall be comprised of property owners or elected officials within the jurisdictional boundaries of the Parties to this Interlocal Agreement and one at large property owner from within the District. The maximum number of members of the Board serving at any given time shall be no more than seven (7) and the minimum number of members shall be not less than three (3). Notwithstanding the foregoing, the maximum number of members on the Board may be increased by a two-third majority vote of the Board. The initial Board shall serve for an initial four (4) year term and shall consist of one (1) representative appointed by each Party from within their jurisdictional boundaries. The initial at large member of the Board shall be appointed by a majority vote of the Board. All subsequent renewal terms shall be for four (4) years. Following the initial Board appointments, the Parties to this Interlocal Agreement shall nominate appointees to be elected to the Board by current sitting Board members. In the event a Board member is no longer eligible to serve on the Board, that Party to this Interlocal Agreement shall appoint a replacement to fulfill the remaining term of that member. The Board's administrative duties shall include all duties necessary for the conduct of the Board's business and the exercise of the powers of the District as provided in Section 11.

Section 7. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board. The Board may adopt rules of procedure. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.

Section 8. District Staff and Attorney. The Town Manager of Cutler Bay shall serve as the staff to the District. In addition, the Town Attorney for Cutler Bay shall serve as the counsel to the District. To the extent not paid by the Third Party Administrator of the District (the "TPA"), all of the District's staff and attorney expenses shall be borne by the Town of Cutler Bay. After the District has been operating for two years, the Board may choose to hire different District staff and/or Attorney. If the Board chooses to hire different District staff and/or Attorney, the Town of Cutler Bay will no longer pay for the staff and/or attorney expenses to the extent they are not paid by the TPA.

Section 9. Financing Agreement. The Parties agree that the District shall enter into a financing agreement, pursuant to Section 163.08(8), Florida Statutes, with property owner(s) who obtain financing through the District.

Section 10. Procurement. The Parties agree and understand that the initial procurement for the TPA for the District was performed by the Town of Cutler Bay in accordance with its adopted competitive procurement procedures (Request for Proposal 10-05). The Parties further agree and understand that the Town of Cutler Bay has selected Ygrene Energy Fund, Florida, LLC (the "Ygrene") as the initial TPA. The Town of Cutler Bay, on the behalf of the District, has entered into an Agreement between the Town of Cutler Bay and Ygrene, dated August 16, 2011, which was assigned to the District.

Section 11. Powers of the District. The District shall exercise any or all of the powers granted under Sections 163.01 and 163.08, Florida Statutes, as may be amended from time to time, which include, without limitation, the following:

a. To finance qualifying improvements within the District boundaries;

b. In its own name to make and enter into contracts;

c. To employ agencies, employees, or consultants;

d. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;

e. To acquire, hold, or dispose of property;

f. To incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the Parties to this Interlocal Agreement;

g. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the District, the conduct of the business of the District, and the maintenance of records and documents of the District;

h. To maintain an office at such place or places as it may designate within the District or within the boundaries of a Party to this Interlocal Agreement;

i. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by Section 163.08, Florida Statutes, and to accept funding from local and state agencies;

j. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 163.08, Florida Statutes; and

k. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

Section 12. Quarterly Reports. A quarterly report of the District shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports and other related records produced and maintained by the District, its employees and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Interlocal Agreement upon reasonable notice.

Section 13. Term. This Interlocal Agreement shall remain in full force and effect from the date of its execution; provided, however, that any Party may terminate its involvement in the District and its participation in this Interlocal Agreement upon ten (10) days' written notice to the other Parties. Should a Party terminate its participation in this Interlocal Agreement, be dissolved, abolished, or otherwise cease to exist, the District and this Interlocal Agreement shall continue until such time as all remaining Parties agree to terminate.

Section 14. Consent. This Interlocal Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of the District as required by Sections 163.01 and 163.08, Florida Statutes.

Section 15. Liability. The Parties hereto shall each be individually and separately liable and responsible for the actions of its own officers, agents and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Interlocal Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Interlocal Agreement any and all applicable insurance coverage required by Florida law for governmental entities. Nothing in this Agreement shall be construed to affect in any way the Parties' rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.

Section 16. Indemnification. The Parties agree that the TPA for the District shall always indemnify and hold harmless the Parties and the District. The Parties understand and acknowledge that the indemnification provisions included in Section 11 "Indemnification" of the Agreement between the Town of Cutler Bay and Ygrene, dated August 16, 2011, which will be assigned to the District, extend to all of the members of the District.

Section 17. 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 it must be given 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 Cutler Bay:

Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Town of Cutler Bay, Florida 33189

With a Copy to:

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

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Section 18. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto and the District.

Section 19. Filing. It is agreed that this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

Section 20. Joint Effort. The preparation of this Interlocal 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 21. Merger. This Interlocal Agreement incorporates and includes all prior 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 Interlocal 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 It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Interlocal Agreement.

Section 22. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 23. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 24. Governing Law and Venue. This Interlocal Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Interlocal Agreement shall be proper exclusively in Miami-Dade County, Florida.

Section 25. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 26. Third Party Beneficiaries. This Interlocal Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Interlocal Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.

Section 27. Effective Date. This Interlocal Agreement shall become effective upon the execution by the Parties hereto and recordation in the public records of the applicable county.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Interlocal Agreement on this 24th day of July, 2012.

ATTEST:

BY: _____
Village Clerk

(Affix Village Seal)

VILLAGE OF PALMETTO BAY, a municipal corporation of the State of Florida

BY: _____
Village Manager

Approved by Village Attorney
as to form and legal sufficiency:

_____
Village Attorney