

RESOLUTION 13 – 2170

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA (TOWN), CREATING A PROPERTY ASSESSED CLEAN ENERGY PROGRAM AND JOINING THE TOWN OF BAY HARBOR ISLANDS AND THE VILLAGE OF BISCAYNE PARK IN CREATING THE CLEAN ENERGY COASTAL CORRIDOR PROGRAM IN ACCORDANCE WITH SECTION 163.08, FLORIDA STATUTES; ADOPTING AN INTERLOCAL AGREEMENT PURSUANT TO SECTION 163.01, FLORIDA STATUTES RELATING TO THE CORRIDOR; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in 2010, the Florida Legislature adopted HB 7179 (Section 163.08, F.S.) (the “Bill”), which allows local governments to create Property Assessed Clean Energy (PACE) programs in order to provide the upfront financing for energy conservation and efficiency (i.e. energy-efficient heating, cooling, or ventilation systems), renewable energy (i.e. solar panels), wind resistance (i.e. impact resistant windows) and other improvements that are not inconsistent with state law (the “Qualifying Improvements”); and

**WHEREAS**, PACE programs not only assist residents and business owners in reducing their carbon footprint and energy costs, but also stimulate the local economy by the creation of needed construction jobs; and

**WHEREAS**, the Bill authorizes local governments that create PACE programs to enter into a partnership in order to provide more affordable financing for the installation of the Qualifying Improvements; and

**WHEREAS**, given the wide spread energy and economic benefits of PACE programs, the Commission desires to join the Town of Bay Harbor Islands and The Village of Biscayne Park in creating the Clean Energy Coastal Corridor in order to provide the upfront financing to property owners for Qualifying Improvements and to enter into an Interlocal Agreement with other municipalities for the purpose of financing such improvements; and

**WHEREAS**, the Commission finds that this Resolution is in the best interest and welfare of the residents of the Town

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Creation of PACE Program.** The Town Commission hereby creates a PACE Program pursuant to Section 163.08, Florida Statute, for the purpose of providing upfront financing to property owners for Qualifying Improvements.

**Section 3. Adoption of Interlocal Agreement.** The Commission hereby approves an interlocal agreement pursuant to Section 163.01, Florida Statutes, the Town of Surfside, the Town of Bay Harbor Islands and The Village of Biscayne Park, in substantially the form attached hereto as Exhibit "A," relating to the Clean Energy Coastal Corridor (the "Interlocal Agreement").

**Section 4. Authorization.** The Town Manager or designee is hereby authorized to execute and implement the terms of the Interlocal Agreement.

**Section 5. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED on this 11<sup>th</sup> day of June, 2013

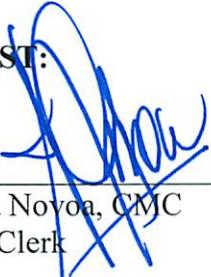
Motion by Commissioner Graubart, second by Commissioner Kligman.

**FINAL VOTE ON ADOPTION**

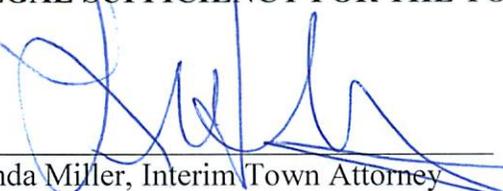
Commissioner Joseph Graubart	<u>YES</u>
Commissioner Michelle Kligman	<u>YES</u>
Commissioner Marta Olchyk	<u>YES</u>
Vice Mayor Michael Karukin	<u>YES</u>
Mayor Daniel Dietch	<u>YES</u>

  
\_\_\_\_\_  
Daniel Dietch, Mayor

ATTEST:

  
\_\_\_\_\_  
Sandra Novoa, CMC  
Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Linda Miller, Interim Town Attorney

**INTERLOCAL AGREEMENT  
BETWEEN  
THE TOWN OF BAY HARBOR ISLANDS, FLORIDA,  
THE VILLAGE OF BISCAYNE PARK, FLORIDA,  
AND THE TOWN OF SURFSIDE, FLORIDA**

This Interlocal Agreement is entered into between the Town of Bay Harbor Islands, Florida, a Florida municipal corporation, hereinafter referred to as "the Town;" and the Village of Biscayne Park, Florida, a Florida municipal corporation; and the Town of Surfside, Florida, 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 Clean Energy Coastal Corridor, hereinafter referred to as the "Authority;" 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

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

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

**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 Authority, pursuant to Section 163.08, Florida Statutes in order to facilitate the financing of qualifying improvements for property owners within the Authority. The Authority shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes.

Section 3. Qualifying Improvements. The Authority shall allow the financing of qualifying improvements as defined in Section 163.08, Florida Statutes in addition to any other improvements or services not inconsistent with state law.

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 Authority. 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 Authority 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 Authority. Additional local governments may join in and enter into this Interlocal Agreement by approval 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 Authority.

Section 5. Authority Boundaries. The boundaries of the Authority shall be the legal boundaries of the local governments that are Parties to this Interlocal Agreement. As contemplated in this Interlocal Agreement, the Authority will levy voluntary assessments on the benefitted properties within the boundaries of the Authority to help finance the costs of qualifying improvements for those individual properties. Upon petition by the landowners of individual properties desiring to be benefitted, 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 Authority, until such time that all outstanding debt has been satisfied.

Section 6. Governing Board of the Authority. The Authority shall be governed by a governing board (the "Board") which shall be comprised of property owners within the jurisdictional boundaries of the Parties to this Interlocal Agreement and one at large property owner from within the Authority. 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), except for the initial Board meeting, which may consist of two (2) members and shall be held for the sole purpose of initiating the bond validation proceeding and ratifying the assignment of the Third Party Administrator agreement. Notwithstanding the foregoing, the maximum number of members on the Board may be increased by a 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 of the Parties 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. 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 Authority 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. Authority Staff and Attorney. The Town of Bay Harbor Islands Manager shall serve as the staff to the Authority and the Town of Bay Harbor Islands Attorney shall serve as the counsel to the Authority, unless otherwise determined by the Board.

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

Section 10. Procurement. The Parties agree and understand that the Town has selected Ygrene Energy Fund, Florida, LLC as the initial Third Party Administrator for the Authority(the "TPA"). The Parties further agree and understand that the selection of the TPA is exempt from competitive solicitation as the TPA was competitively procured, awarded and contracted by the Town of Cutler Bay, Florida (Request for Proposal 10-05). The Town will enter into an agreement with the TPA, which will be assigned to the Authority and ratified by the Board.

Section 11. Powers of the Authority. The Authority 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 Authority 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 Authority, the conduct of the business of the Authority, and the maintenance of records and documents of the Authority;
- h. To maintain an office at such place or places as it may designate within the Authority 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. Upon the first financing agreement being funded by the Authority, a quarterly report of the Authority 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

Authority, 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 prior to commencement of legal proceedings to validate the Authority program, any Party may terminate its involvement in the Authority 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 Authority and this Interlocal Agreement shall continue until such time as all remaining Parties agree to terminate. Thereafter, the Authority and this Interlocal Agreement, shall continue for a period of seven years and shall automatically renew for successive seven (7) year terms. After the initial term, any Party may terminate its involvement in the Authority and its participation in this Interlocal Agreement upon 90 days notice.

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 Authority 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 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. For any action or proceeding brought against the Authority pursuant to this Interlocal Agreement, the Parties shall each contribute equally for all 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. 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 Town:

Ronald J. Wasson  
Town Manager  
9665 Bay Harbor Terrace  
Bay Harbor Islands, FL 33154

With a Copy to:

Craig B. Sherman, Esq.  
Sherman & Sherman, P.A.  
Town Attorney  
Bank of America Building  
2000 Glades Road, Suite 204  
Boca Raton, FL 33431

If to \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 17. 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 Authority.

Section 18. Filing. It is agreed that this Interlocal Agreement shall be recorded as required by Section 163.01(11), Florida Statutes.

Section 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. Effective Date. This Interlocal Agreement shall become effective upon the execution by the Parties hereto and the recordation of the Agreement within the applicable county.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Interlocal Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

Town of Bay Harbor Islands, a municipal corporation of the State of Florida

BY: \_\_\_\_\_  
Town Clerk

BY: \_\_\_\_\_  
Town Manager

(Affix Seal)

Approved by Town Attorney  
as to form and legal sufficiency

\_\_\_\_\_  
Town Attorney