

# MEMORANDUM

Agenda Item No. 11(A)(19)

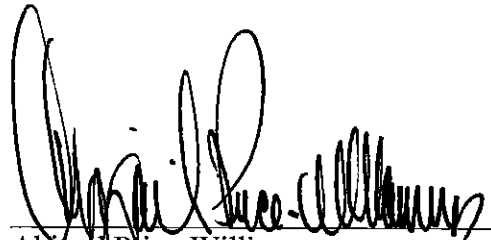
**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** June 5, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving, subject to satisfaction of condition precedent, restrictive covenants in favor of the State of Florida, Department of State, Division of Cultural Affairs limiting the use of county-owned land located at NW 207th Street and NW32nd Avenue in Miami Gardens, Florida and improvements built thereon to use as a cultural facility for 10 years; authorizing County Mayor to execute same

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



Abigail Price-Williams  
County Attorney

APW/cp

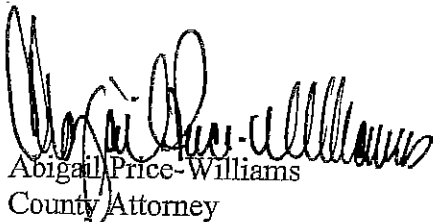


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** June 5, 2018

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(19)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(19)  
6-5-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING, SUBJECT TO SATISFACTION OF CONDITION PRECEDENT, RESTRICTIVE COVENANTS IN FAVOR OF THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS LIMITING THE USE OF COUNTY-OWNED LAND LOCATED AT NW 207TH STREET AND NW 32ND AVENUE IN MIAMI GARDENS, FLORIDA AND IMPROVEMENTS BUILT THEREON TO USE AS A CULTURAL FACILITY FOR 10 YEARS; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME

**WHEREAS**, on May 7, 2013, this Board adopted Resolution No. 369-13 approving, subject to a certain condition precedent, a lease agreement between Miami-Dade County and the Nigerian-American Foundation, Inc., a Florida not-for-profit corporation ("Tenant"), for the construction and operation of an African museum and cultural arts center, including activities such as a public arts museum, dance theater, and lecture hall (the "Museum") at the vacant County-owned property located at NW 207th Street and NW 32nd Avenue, Miami Gardens, Florida (the "Land"); and

**WHEREAS**, prior to executing the lease, the County Mayor or County Mayor's designee was required to file a Certificate with the Clerk confirming that there were no obstacles to leasing the Land, including any necessary re-platting and approval from the City of Miami Gardens; and

**WHEREAS**, such due diligence has been completed and the certificate has been filed; and

**WHEREAS**, accordingly, the lease agreement is in the process of being finalized and executed by the County and the Tenant; and

**WHEREAS**, in connection with the construction of the Museum, the Tenant and its related entity, the African Museum of Arts and Culture, Inc., a Florida not-for-profit corporation (the “Grantee”), have applied for, and received, two grants from the State of Florida, Department of State, Division of Cultural Affairs (the “State”) for fiscal years 2016-17 and 2017-18 in the amounts of \$110,000 and \$500,000, respectively, for the development of the Museum on the Land; and

**WHEREAS**, as a condition of the grant, the State requires that a restrictive covenant be executed by the Grantee, the Tenant, and the County requiring that the Land and all improvements built thereon be used as a cultural facility for 10 years after the execution of the grant agreement; and

**WHEREAS**, accordingly, provided that the lease agreement is first executed by the County and Tenant and is effective (“Condition Precedent”), the Board desires to execute and have recorded on the Land the restrictive covenants limiting the use of the Land and the improvements built thereon on to use as a cultural facility for 10 years thereafter,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

**Section 1.** The foregoing recitals are incorporated in this resolution and are approved.

**Section 2.** This Board approves, subject to the satisfaction of the Condition Precedent, the restrictive covenants in favor of the State limiting the use of the Land and improvements built thereon to use as a cultural facility for 10 years thereafter in substantially the form attached hereto as Exhibits A and B.

**Section 3.** Subject to the satisfaction of the Condition Precedent, this Board authorizes the County Mayor or the County Mayor's designee to execute the restrictive covenants and to exercise any and all other rights conferred therein.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

- |                                     |                      |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman      |                      |
| Audrey M. Edmonson, Vice Chairwoman |                      |
| Bruno A. Barreiro                   | Daniella Levine Cava |
| Jose "Pepe" Diaz                    | Sally A. Heyman      |
| Barbara J. Jordan                   | Joe A. Martinez      |
| Jean Monestime                      | Dennis C. Moss       |
| Rebeca Sosa                         | Sen. Javier D. Souto |
| Xavier L. Suarez                    |                      |

The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of June, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

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

Approved by County Attorney as  
to form and legal sufficiency.



Monica Rizo Perez

**EXHIBIT A**

**RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT is hereby entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Miami-Dade County** hereinafter referred to as the "Owner"; **Nigerian-American Foundation** hereinafter referred to as the "Lessee"; and **African Museum of Arts and Culture**, hereinafter referred to as the "Grantee"; and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Owner is the fee simple title holder of the underlying land located at **NW 207<sup>th</sup> Street and NW 32<sup>nd</sup> Avenue (Folio No. 34-1133-007-1801/34-1133-007-1800), Miami Gardens, FL 33056** (the "Land"). A legal description of the Land is attached as Exhibit A and made a part of this covenant.

WHEREAS, the Owner and Lessee have agreed, subject to the satisfaction of certain conditions, that the Owner shall lease the Land to the Lessee for a term of **50 years**. "Facility" is used herein to refer to the building(s) and the Land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant for Fiscal Year 2016-17 in the amount of **\$110,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility in accordance with Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the Facility will be used as "cultural facility," as defined herein, for at least (10) ten years following January 17, 2008, which is the date of execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties hereby agree to the following:

1.) This restrictive covenant shall run with the title to the Land and the cultural facility, encumber them, and be binding upon the Grantee, the Owner and their successors in interest for ten (10) years following the execution of the grant award agreement.

2.) The grant award shall only be expended for:

**African Museum of Arts and Culture: Building and Construction (18.c.ps.900.738)**

3.) The Parties agree that for the required duration of this covenant, all improvements to the cultural facility, funded in whole or part by grant funds, shall be owned by the Lessee.

4.) The Division has the right to inspect the cultural facility and the associated Land at all reasonable times to determine whether the conditions of the grant award agreement and this covenant are being complied with.

5.) The cultural facility shall be maintained as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums.

6.) This restrictive covenant will be violated if the Grantee, the Lessee, the Owner, or their successors in interest do not use or cease to use the Facility as a cultural facility, as defined herein, and as required by Section 265.701(4), F.S., within ten (10) years following the execution of the grant award agreement. If the Grantee violates this restrictive covenant, it shall repay the grant funds to Division pursuant to the amortization schedule set forth below:

a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;

c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) The amount due as a result of Grantee's violation of this restrictive covenant shall be due in full within 90 days of the date the Division notifies the Grantee of the violation, or some other period of time as agreed upon by the parties.

8.) If the entire amount due under the paragraph (6.) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the Facility is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. The Division shall have the right to enforce the stipulated judgment by resorting to any legal or equitable available remedy including an action for specific performance.

9.) As a condition to receipt of the grant funds, the Grantee shall:

a. Record this covenant in the public records with the Clerk of the Circuit Court of **Miami-Dade** County, Florida;

b. Pay all fees associated with its recording; and

c. Provide a certified copy of the recorded covenant to the Division and to the Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Lessee, the Grantee and the Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.



**WITNESSES:**

[Signature]  
First Witness Signature

Donatay Cooper  
First Witness Name (print)

[Signature]  
Second Witness Signature

LaShary T. Bostic  
Second Witness Name (print)

**PARTIES:**

[Signature]  
GRANTEE SIGNATURE

OLUYINKA TELLA, Ed. D  
GRANTEE NAME (print)

18493 NW 22ND STREET, PEMBROKE PINES, FL 33029  
GRANTEE ADDRESS

PEMBROKE PINES FL 33029  
City State Zip

The State of Florida County of MIAMI-DADE

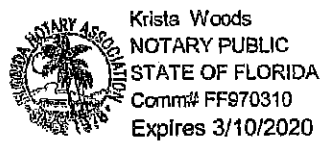
I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that OLUYINKA TELLA personally (Name)

appeared as BOARD MEMBER for AMAC BOARD (Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced FDL # T400-640-64-284-0

Executed and sealed by me at MIAMI GARDENS, Florida on 05/24/2018



Notary Public in and for  
The State of FLORIDA  
My commission expires: 03/10/2020

[SEAL]

\_\_\_\_\_  
First Witness Signature

\_\_\_\_\_  
OWNER SIGNATURE

\_\_\_\_\_  
First Witness Name (print)

\_\_\_\_\_  
OWNER NAME (print)

\_\_\_\_\_  
Second Witness Signature

\_\_\_\_\_  
OWNER ADDRESS

\_\_\_\_\_  
Witness Name (print)

\_\_\_\_\_  
City State Zip

The State of Florida County of \_\_\_\_\_

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

\_\_\_\_\_ personally  
(Name)

appeared as \_\_\_\_\_ for \_\_\_\_\_  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at \_\_\_\_\_, Florida on \_\_\_\_\_

Notary Public in and for

The State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[SEAL]

[Signature]  
First Witness Signature

Donatay Cooper  
First Witness Name (print)

[Signature]  
Second Witness Signature

Lashara T. Bostic  
Witness Name (print)

[Signature]  
LESSEE SIGNATURE

OLUYINKA TELLA, Ed.D.  
LESSEE NAME (print)

18493 NW 22ND STREET  
LESSEE ADDRESS

Pembroke Pines FL 33029  
City State Zip

The State of Florida County of MIAMI-DADE

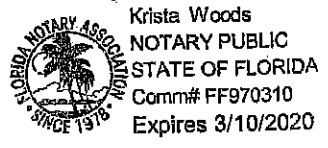
I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that OLUYINKA TELLA personally (Name)

appeared as PRESIDENT for NIGERIAN-AMERICAN FOUNDATION (Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced FDL #T400-640-66-284-0

Executed and sealed by me at MIAMI GARDENS, Florida on 05/24/2018



Notary Public in and for  
The State of FLORIDA  
My commission expires: 03/10/2020

[SEAL]

11

For the Division of Cultural Affairs:

R.A. Gray Building  
500 S. Bronaugh St.  
Tallahassee, Florida 32303

\_\_\_\_\_  
Sandy Shaughnessy, Director

\_\_\_\_\_  
First Witness Signature

\_\_\_\_\_  
First Witness Name (Print)

\_\_\_\_\_  
Second Witness Signature

\_\_\_\_\_  
Second Witness Name (Print)

The State of Florida County of \_\_\_\_\_

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

\_\_\_\_\_ personally  
(Name)

appeared as \_\_\_\_\_ for \_\_\_\_\_  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at \_\_\_\_\_, Florida on \_\_\_\_\_

Notary Public in and for

The State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[SEAL]

12

This document was prepared by the following individual:  
Teri R. Abstein  
R, A. Gray Building  
500 South Bronaugh Street  
Tallahassee, FL 32399-0250

EXHIBIT B

**RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Miami-Dade County** hereinafter referred to as the "Owner"; **Nigerian-American Foundation** hereinafter referred to as the "Lessee"; and **African Museum of Arts and Culture**, hereinafter referred to as the "Grantee"; and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Owner is the fee simple title holder of the underlying land located at **NW 207<sup>th</sup> Street and NW 32<sup>nd</sup> Avenue (Folio No. 34-1133-007-1801/34-1133-007-1800), Miami Gardens, FL 33056** (the "Land"). A legal description of the Land is attached as Exhibit A and made a part of this covenant.

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WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant for Fiscal Year 2017-18 in the amount of **\$500,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility in accordance with Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the Facility will be used as "cultural facility," as defined herein, for at least (10) ten years following \_\_\_\_\_, 2018, which is the date of execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties hereby agree to the following:

1.) This restrictive covenant shall run with the title to the Land and the cultural facility, encumber them, and be binding upon the Grantee, the Owner and their successors in interest for ten (10) years following the execution of the grant award agreement.

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**African Museum of Arts and Culture: Building and Construction (18.c.ps.900.738)**

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5.) The cultural facility shall be maintained as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums.

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c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

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8.) If the entire amount due under the paragraph (6.) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the Facility is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. The Division shall have the right to enforce the stipulated judgment by resorting to any legal or equitable available remedy including an action for specific performance.

9.) As a condition to receipt of the grant funds, the Grantee shall:

a. Record this covenant in the public records with the Clerk of the Circuit Court of **Miami-Dade** County, Florida;

b. Pay all fees associated with its recording; and

c. Provide a certified copy of the recorded covenant to the Division and to the Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Lessee, the Grantee and the Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.



**WITNESSES:**

[Signature]  
First Witness Signature

Dontay Cooper  
First Witness Name (print)

[Signature]  
Second Witness Signature

LaShara T. Bostic  
Second Witness Name (print)

**PARTIES:**

[Signature]  
GRANTEE SIGNATURE

OLU YINICA TELLA Ed. D  
GRANTEE NAME (print)

18493 NW 22ND STREET  
GRANTEE ADDRESS

Pembroke Pines FL 33029  
City State Zip

The State of Florida County of MIAMI-DADE

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

OLU YINICA TELLA personally  
(Name)

appeared as PRESIDENT for NIGERIAN AMERICAN FOUNDATION  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced T400-640-66-284-0

Executed and sealed by me at MIAMI GARDENS, Florida on 05/24/2018



Krista Woods  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF970310  
Expires 3/10/2020

Notary Public in and for

The State of FLORIDA

My commission expires: 03/10/2020

[SEAL]

17

\_\_\_\_\_  
First Witness Signature

\_\_\_\_\_  
OWNER SIGNATURE

\_\_\_\_\_  
First Witness Name (print)

\_\_\_\_\_  
OWNER NAME (print)

\_\_\_\_\_  
Second Witness Signature

\_\_\_\_\_  
OWNER ADDRESS

\_\_\_\_\_  
Witness Name (print)

\_\_\_\_\_  
City State Zip

The State of Florida County of \_\_\_\_\_

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that \_\_\_\_\_ personally

(Name)

appeared as \_\_\_\_\_ for \_\_\_\_\_  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at \_\_\_\_\_, Florida on \_\_\_\_\_

Notary Public in and for

The State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[SEAL]

[Signature]  
First Witness Signature

Dorothy Cooper  
First Witness Name (print)

[Signature]  
Second Witness Signature

Lashara T. Bostic  
Witness Name (print)

[Signature]  
LESSEE SIGNATURE

OLUYINKA TELLA E.D.  
LESSEE NAME (print)

18493 NW 22ND STREET  
LESSEE ADDRESS

Pembroke Pines FL 33029  
City State Zip

The State of Florida County of MIAMI-DADE

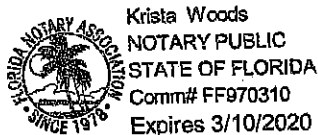
I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that OLUYINKA TELLA personally (Name)

appeared as PRESIDENT for NIGERIAN AMERICAN FOUNDATION (Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced FDL #T400-640-66-284-0

Executed and sealed by me at MIAMI GARDENS, Florida on 05/24/2018



Notary Public in and for

The State of FLORIDA

My commission expires: 03/10/2020

[SEAL]

For the Division of Cultural Affairs:

R.A. Gray Building  
500 S. Bronaugh St.  
Tallahassee, Florida 32303

\_\_\_\_\_  
Sandy Shaughnessy, Director

\_\_\_\_\_  
First Witness Signature

\_\_\_\_\_  
First Witness Name (Print)

\_\_\_\_\_  
Second Witness Signature

\_\_\_\_\_  
Second Witness Name (Print)

The State of Florida County of \_\_\_\_\_

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

\_\_\_\_\_ personally  
(Name)

appeared as \_\_\_\_\_ for \_\_\_\_\_  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at \_\_\_\_\_, Florida on \_\_\_\_\_

Notary Public in and for

The State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[SEAL]

---

This document was prepared by the following individual:  
Teri R. Abstein  
R, A. Gray Building  
500 South Bronaugh Street  
Tallahassee, FL 32399-0250