

**RESTRICTIVE COVENANT**

(Grantee leases land from Govt. Entity.)

THIS RESTRICTIVE COVENANT is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **City of Palm Coast**, hereinafter referred to as the "Owner"; **Palm Coast Arts Foundation, Inc.**, hereinafter referred to as the "Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

1580 Central Ave., Palm Coast FL, 32164

WHEREAS, the Owner is the fee simple title holder the underlying land located at ~~Town Center, Palm Coast, FL 32135, Flagler County~~. A legal description of the subject property is attached as Exhibit A and made a part of this covenant.

WHEREAS, the Grantee leases the underlying land from the Owner from **November 12, 2014 to November 11, 2034**. "Facility" is used herein to refer to the building(s) and the associated land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$150,000**, 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 the 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

**Project Title: Phase I – Cultural, Educational and Arts Pavilion (17.9.300.577)**

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

4.) The Division has the right to inspect the 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 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 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 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 **Flagler** 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 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:**

**PARTIES:**

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

Shirlyn A Perkovich

\_\_\_\_\_  
GRANTEE SIGNATURE

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

Shirlyn A. Perkovich

\_\_\_\_\_  
GRANTEE NAME (print)

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

210

\_\_\_\_\_  
GRANTEE ADDRESS

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

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

The State of Florida County of Flagler

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

Shirlyn A. Perkovich  
(Name)

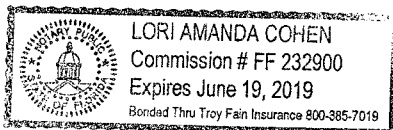
personally

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 Flagler County, Florida on 9/8/16

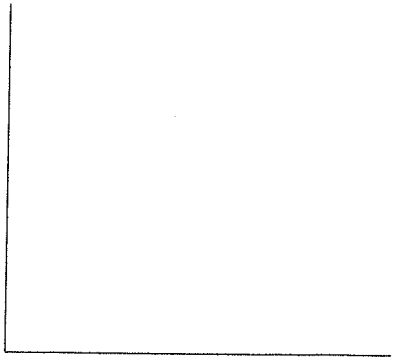


Notary Public in and for

The State of Florida

My commission expires: June 19, 2019

[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]

For the Division of Cultural Affairs:

R.A. Gray Building  
500 S. Bronough 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 the Florida Department of State, Division of  
(Position)

Cultural Affairs 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]