

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2016, by and between the **Gainesville Community Redevelopment Agency**, a public body corporate and politic existing under the laws of the State of Florida (the "CRA"), whose mailing address is P.O. Box 490, Station 48, Gainesville, Florida 32602-0490; and **The Cotton Club Museum and Cultural Center, Inc.**, a Florida non-profit corporation (the "Grantee"), whose mailing address is P.O. Box 5534, Gainesville, Florida 32627-5534.

WHEREAS, the Grantee is a non-profit corporation dedicated to the restoration and operation of the historic Cotton Club Main Building Phase II, and historic accessory structures located at 837 SE 7th Avenue, Gainesville, Florida, the legal description of which is attached as **Exhibit A**, (the "Property") as a museum, cultural heritage center, and includes site work, infrastructure improvements and accessory buildings, open to the public (collectively referred to as the "Project"); and

WHEREAS, the Grantee has also received a Cultural Facilities Grant from the State of Florida, Department of State, Division of Cultural Affairs ("Division") for the Cotton Club Main Building Phase II, but not for the remainder of the Project; and

WHEREAS, the Division requires matching funds of \$146,650.00 for the Cotton Club Main Building Phase II restoration; and

WHEREAS, the Restoration of the Cotton Club Main Building Phase II and the entire Project meets Objective 7 of the Eastside Community Redevelopment Plan (the "Eastside Plan") adopted July 15, 2010 by the CRA Board; and

WHEREAS, consistent with the Eastside Plan, the CRA has budgeted \$233,141 for the entire Project in the CRA budgets for FY 2016 – FY 2017; and

WHEREAS, the parties desire to enter into this Agreement to set forth their understanding with respect to the expenditure of the CRA budgeted funds.

NOW, THEREFORE, in consideration of these mutual promises and covenants, the parties agree as follows:

1. Grant Purposes.

- a. Matching Grant. CRA grants \$146,650.00 to the Grantee to be used as matching funds for the Division's Cultural Facilities Grant. CRA's grant shall be used exclusively as matching funds for the "Cotton Club Main Building Phase II" project, as described in the Agreement between Grantee and the Division, which Agreement is attached as **Exhibit B**.

The Grantee shall perform the following Scope of Work: Phase II, the following will be completed:

- Installation of fire sprinkler
- Installation of fire alarm system
- Installation of power, electrical lighting, public address system
- Installation of HVAC systems
- Installation of building insulation
- Installation of drywall
- Complete interior painting
- Installation of flooring
- Complete interior finishes, non-painting
- Installation of interior doors, windows and hardware
- Installation of cabinetry and countertops
- Installation of stage
- Installation of handicapped ramp
- Installation of toilet accessories to complete bathroom building
- Purchase and installation of kitchen

All tasks associated with the renovation as outlined in the Project Description (See **Exhibit B**), will be performed by June 1, 2017. All project work will be completed under the supervision of a licensed architect or licensed contractor.

b. Project Grant. CRA grants \$86,491.00 to the Grantee to be used for the remainder of the Project, as more specifically described in **Exhibit C**.

2. Funding and Payment Procedures. The CRA agrees to provide funding pursuant to this Agreement.

The CRA will reimburse the Grantee for actual costs on a bi-weekly basis upon receipt of an invoice from the Grantee for each bi-weekly period.

Each bi-weekly invoice shall detail the work completed during the prior bi-weekly period, the actual cost incurred by the Grantee, including back-up documentation from the contractors, materialmen, laborers and other providers of goods or services, utilized by the Grantee, and shall reflect a reduction for the matching funds required to be provided by the Grantee, if any.

Any funds not invoiced for a given bi-weekly period may be invoiced in a subsequent bi-weekly period as long as the cumulative amount does not exceed the maximum amount authorized at that time by this Agreement or subsequent addenda.

The Grantee shall timely pay its contractors, materialmen, laborers and other providers of goods or services.

Within 30 days after payment of an invoice by the CRA, the Grantee shall provide the CRA Project Manager with a Waiver and Release of Lien from each Lien or reflected in the previous invoice, in accordance with Chapter 713, Florida Statutes, the "Florida Construction Lien Law."

3. **Grant Conditions.** Grantee agrees to comply with the following conditions:

- a. All remaining construction work on the Project shall be bid out in a manner found satisfactory by the CRA, the selected bidder (qualified licensed professional) will perform all work in a timely, safe and professional manner and in accordance with all applicable federal, state and local regulation;
- b. The Property and Project shall be operated by a not-for-profit organization under s. 501(c)(3) or (6) of the Internal Revenue Code of 1986;
- c. The Project shall be regularly open to the public as a museum, cultural heritage center and market. A fee may be charged to the public; however, it must be comparable with other such fees in the immediate geographic locale;
- d. The Property shall be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the Property and allow for public use of same;
- e. Prior to receipt of grant money, Grantee and Property Owner shall execute and record a Declaration of Restrictions for the Property, in the Public Records of Alachua County, Florida, in substantially the same form as **Exhibit D**.

4. **Representations and Warranties of Grantee.**

- a. The Grantee has obtained and recorded a 99-year lease conveying beneficial and equitable title to, the Property;
- b. The Grantee is a validly existing not-for-profit corporation under the laws of the State of Florida and under s. 501(c)(3) or (6) of the Internal Revenue Code of 1986, has all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, and has consented to service of process in the State of Florida.
- c. Each document which the Grantee is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by the Grantee, and neither the execution and delivery, nor compliance with the terms and provisions: (i) requires the approval of any other party, except as have been obtained or noted herein, (ii) contravenes any law, judgment, governmental rule, regulations or order binding on the Grantee, or (iii) results in any default under or creates any lien upon any property of the Grantee.
- d. Each document to which the Grantee is or will be a party constitutes a legal, valid, and binding obligation of the Grantee, enforceable against the Grantee, except as

such enforceability may be limited by applicable bankruptcy, insolvency or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.

- e. There are no pending or threatened actions before any court or administrative agency against the Grantee, or against any officer of the Grantee that question the validity of any document contemplated herein, or that are likely to materially adversely affect this Agreement or the financial condition of the Grantee.
- f. The Grantee has filed all tax returns required to be filed by the Grantee, and has paid all taxes shown to be due on such returns.

5. **Annual Project Reports.** The Grantee shall submit to the CRA Manager by January 31st of each year, commencing after this Agreement is executed, annual status reports evidencing and certifying compliance with the grant conditions contained in Section 3 above and summarizing the progress of the Project.

6. **Effective Date and Term.** Except for grant conditions c, d, e, and f in Section 3 above, each of which shall run with the Property commencing on the date of execution of this Agreement and ending upon the termination or expiration of the Historic Preservation Façade Easement and the Declaration of Restrictions, this Agreement shall remain in full force and effect for a period of 1 year from the date of execution by the parties. Upon good cause shown by the Grantee, the CRA Executive Director may extend this Agreement for two, successive one-year periods, as necessary for Grantee to complete the portions of the Project funded by the CRA.

7. **Termination by CRA.** The CRA may terminate this Agreement, in whole or part, without cause, by giving written notice to the Grantee at least ten (10) days prior to the effective date of the termination. CRA shall reimburse Grantee for all work performed through the date of the notice.

8. **Reimbursement of Grant Funds.** Grantee shall reimburse the CRA all grant funds paid:

- a. through the date of default, in the event Grantee fails to cure a default within 30 days of notice of the default from CRA; or
- b. through the date of termination, in the event Grantee notifies the CRA that Grantee desires to terminate the Agreement.

Grantee shall reimburse CRA within 30 days through the date of termination for default or Grantee termination, as follows:

- i. If the default occurs within five (5) years following the execution of the Agreement, 100% of the grant amount;
- ii. If the default occurs more than five (5) but less than six (6) years following execution of the Agreement, 80% of the grant amount;

- iii. If the default occurs more than six (6) but less than seven (7) years following execution of the Agreement, 65% of the grant amount;
- iv. If the default occurs more than seven (7) but less than eight (8) years following execution of the Agreement, 50% of the grant amount;
- v. If the default occurs more than eight (8) but less than nine (9) years following the execution of the Agreement, 35% of the grant amount;
- vi. If the default occurs more than nine (9) but less than ten (10) years following the execution of the Agreement, 20% of the grant amount.

If Grantee fails to reimburse the CRA within said timeframe, CRA shall have the right to place a lien on the Property for the reimbursement of grant funds paid. Upon reimbursement of the grant funds to the CRA, the parties shall execute a Termination and Release of this Agreement.

9. **Audit Requirement and Right to Audit.** The Grantee shall provide the CRA with a copy of an annual financial audit or certified financial statements, which includes the Project following the end of the Grantee's fiscal year. In addition, the Grantee shall maintain records sufficient to document its completion of the Scope of Work established by this Agreement. These records shall be subject at all reasonable times to review, inspect, copy and audit by persons duly authorized by the CRA. These records shall be kept for a minimum of three (3) years after completion of the Agreement.
10. **Insurance.** Upon execution of this Grant Agreement, Grantee shall provide a Certificate of Insurance naming the CRA and City as additional insured. The Certificate shall state that the insurer will provide CRA with thirty (30) days written notice prior to cancellation.
 - a. **Public Liability Insurance.** The Grantee shall procure and maintain broad form comprehensive general (public) liability insurance (other than automobile) with coverage in amounts not less than: \$500,000 combined single limit for bodily injury and property damage.
 - b. **Worker's Compensation Insurance.** The Grantee shall procure and maintain worker's compensation insurance to the extent required by law for all employees providing services under this Agreement.
11. **Compliance with Laws.** The Grantee shall comply with all applicable laws, orders and regulations of the Federal, State and local governments as they pertain to this Agreement.
12. **Non-discrimination.** In carrying out the Project, the Grantee shall not exclude any person from participation, deny the benefits of the program or activities described herein to any person, or subject any person to discrimination because of age, race, color, religion, sex, sexual orientation, disability, national origin, or familial status.

13. **Amendments.** Any changes to this Agreement shall be incorporated in written amendments or addenda, signed by both parties to this Agreement.
14. **Notice.** Except as otherwise provided herein, any notice, approval, acceptance, request, bill, demand, or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally to the parties place of business or deposited in the U.S. Mail in a postage-prepaid envelope, addressed to the other party. Either party may at any time change such address by delivering or mailing as aforesaid, to the other party a notice stating the changed address. The addresses and contact persons for the parties are as follows:

CRA

Stephanie Seawright, Project Manager
Gainesville Community Redevelopment Agency
P.O. Box 490, Mail Station 48
Gainesville, FL 32602-0490
Phone: 352-393-8200
Cell: 352-672-7089
Email: seawrights@cityofgainesville.org

Grantee

Vivian Filer
Cotton Club Museum and Cultural Center, Inc.
P.O. Box 5534
Gainesville, FL 32627-5534
Phone: 352-376-9956
Cell: 352-219-7047
Email: vivianfiler@att.net

15. **Independent Contractor.** It is recognized that the Grantee is not an agency or subsidiary of the CRA. The Grantee shall not hold itself out as an employee or agent of the CRA and shall have no authority to bind the CRA in any manner. The Grantee is solely responsible for carrying out the Project and activities stipulated under this Agreement.
16. **Indemnification.** Grantee shall indemnify the CRA, its officials, agents and employees, and hold it harmless from suits, actions, damages, liability, expenses, losses and costs, including, but not limited to reasonable attorney's fees in connection with loss of life, bodily or personal injury, or property damage arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Contractor and other persons employed or utilized by the Contractor.

Grantee shall indemnify and hold harmless the CRA, its employees, agents, and officers from all claims, suits, judgments, or damages arising from the performance by the Grantee of the Project and activities described in this Agreement

17. **Sovereign Immunity.** The Grantee and the CRA agree that nothing in this Agreement shall be interpreted as a waiver of the sovereign immunity of the CRA granted pursuant to Section 768.28, Florida Statutes.
18. **Funding Limitation and Termination for Governmental Non-Appropriations.** The obligations of the CRA as to any funding required pursuant to the Agreement shall be limited by an obligation in any given fiscal year to budget and appropriate from legally available sums in the Eastside Redevelopment Trust Fund, pursuant to the requirements of §163.387 Florida Statutes, the funding that is required during that fiscal year. Notwithstanding the foregoing, the CRA shall not be prohibited from pledging any legally available revenues in its Eastside Redevelopment Trust Fund for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the CRA pursuant to this Agreement. The CRA is a bona fide governmental entity of the state of Florida with its fiscal year ending on September 30 of each calendar year. If the CRA does not budget and appropriate sufficient funds to make the payment required under this Agreement for any of CRA fiscal years subsequent to the one in which this Agreement is executed and entered into, then this Agreement shall be terminated effective upon expiration of the fiscal year in which sufficient funds to continue satisfaction of CRA's obligation under this Agreement were last appropriated by CRA and CRA shall not be obligated to make any further payments due beyond said fiscal year.
19. **Public Records.** If Grantee is a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, Grantee shall:
 - a. Keep and maintain all public records, as defined in Section 119.011(12), Florida Statutes, that ordinarily and necessarily would be required by the CRA;
 - b. Provide the public with access to public records on the same terms and conditions that the CRA would provide the records and at a cost that does not exceed the cost provided by law;
 - c. Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
 - d. Meet all requirements for retaining public records and transfer to the CRA, at no cost, all public records in possession of Grantee upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CRA in a format that is compatible with the information technology systems of the CRA.

e. Promptly provide the CRA with a copy of any request to inspect or copy public records in possession of Grantee and promptly provide the CRA a copy of Grantee's response to each such request.

Failure by Grantee to comply with this section, including failure to provide a public record upon request, is a breach of this Contract and the CRA may immediately terminate this Contract and may pursue all remedies for breach of this Contract.

20. **Assignment of Interest.** Neither party will assign or transfer any interest in the Contract without prior written consent of the other party.

21. **Third Party Beneficiaries.** This Contract does not create any relationship with, or any rights in favor of, any third party.

22. **Severability.** If any term or provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. **Entire Agreement; Conflicts.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written are merged herein.

24. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

IN WITNESS WHEREOF, the CRA and Grantee have executed this Agreement as of the Effective Date.

GRANTEE:

COTTON CLUB MUSEUM AND CULTURAL CENTER, INC., a Florida non-profit corporation

Witness:

Patricia Jackson
Print Name: Patricia JACKSON

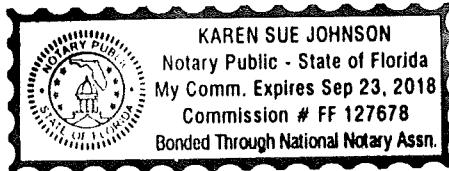
By: Vivian Filer
Name: VIVIAN FILER
Title: _____

Amelia W. Mingo
Print Name: Amelia W. Mingo

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 8th day of March, 2016, by Vulkan Fries, on behalf of COTTON CLUB MUSEUM AND CULTURAL CENTER, INC. and who has acknowledged that he/she has executed the same on behalf of the corporation, and that he/she was authorized to do so. He/She is personally known to me or has produced _____ as identification.

Karen Sue Johnson
Notary Public, State of Florida



CRA:

GAINESVILLE COMMUNITY
REDEVELOPMENT AGENCY, a public body
corporate and politic existing under the laws of the
State of Florida

Witness:

Print Name: _____

By: _____
Name: Anthony Lyons
Title: Interim Executive Director

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, on behalf of Gainesville Community Redevelopment Agency, a public body corporate and politic existing under the laws of the State of Florida and who has acknowledged that he has executed the same on behalf of the CRA, and that he was authorized to do so. He is personally known to me.

Notary Public, State of Florida

APPROVED AS TO FORM AND LEGALITY

By: _____

Lisa Bennett
Assistant City Attorney

RESTRICTIVE COVENANTS

THESE RESTRICTIVE COVENANTS (the "Covenants") are made on the _____ day of _____, 2016, by **MOUNT OLIVE AFRICAN METHODIST EPISCOPAL CHURCH OF GAINESVILLE, FLORIDA, INC.**, Gainesville, FL ("Mt. Olive"), and **THE COTTON CLUB MUSEUM AND CULTURAL CENTER, INC.**, a Florida not for profit corporation, ("Cotton Club"), whose address is: P.O. Box 5534, Gainesville, Florida 32627-5534.

WHEREAS, Cotton Club is the holder of beneficial and equitable title to certain real property and structures thereon located at 837 SE 7th Avenue, Gainesville, Florida, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property") by virtue of that certain 99-year lease agreement; and

WHEREAS, Mt. Olive is the owner of the property and the landlord of Cotton Club; and

WHEREAS, the Cotton Club and the Gainesville Community Redevelopment Agency ("CRA") have entered into a Grant Agreement dated _____ (the "Agreement") under the terms of which the CRA agreed to provide certain grant funds to the Cotton Club and the Cotton Club agreed to restore and operate the historic Cotton Club, and historic accessory structures as a public museum, and cultural heritage center (the "Project") on the Property and to record restrictive covenants limiting the use of the Project and the Property; and

WHEREAS, the parties acknowledge that as additional funding is made available to Cotton Club, other structures, including the Perryman's Grocery store will be added to the Project and operated as a market.

NOW, THEREFORE, in consideration for the Agreement, the Declarant hereby makes and declares the following Covenants with respect to the Property:

1. Restrictive Covenants.

A. The Project shall be regularly open for public use as a museum, cultural heritage center and market, or such use as is subsequently approved by the CRA. A fee may be charged to the public; however, it must be comparable with other such fees in the immediate geographic locale.

B. The Property and Project shall be operated by a not-for-profit organization under s. 501(c)(3) or (6) of the Internal Revenue Code of 1986.

C. Cotton Club agrees that once each structure on the Property has been renovated and is open to the public, Cotton Club shall maintain that structure in a good and sound state of repair and that in the event of damage resulting from casualty or loss to an extent rendering repair or reconstruction of the structure impractical in the opinion of the Cotton Club, any new structure (which must be consented to be CRA) shall be released from this Restrictive Covenant.

D. Cotton Club agrees to maintain the Property in good repair and condition to the extent necessary to preserve the historic value and significance of the Property and allow for public use of same.

2. Term. The Covenants shall run with the title to the Property and be binding on Mt. Olive, Cotton Club and their successors and/or assigns in title, for a period of ten (10) years from the date of recordation by the Clerk of the Circuit Court of Alachua County, Florida (the "Term").

3. Termination by Agency. CRA may terminate these Covenants, in whole or part, with or without cause, by giving written notice to Mt. Olive and Cotton Club at least ten (10) days before the effective date of the termination, setting forth the reason(s), if any, for the termination, and specifying the effective date thereof.

4. Default/Termination by Recipient/Reimbursement. In the event, (a) CRA becomes aware of Cotton Club's default under these Covenants, and provides written notice of same to Cotton Club and a 30 day period to cure the default, and Cotton Club fails to cure the default, or (b) Cotton Club notifies CRA that it desires to terminate these Covenants; Cotton Club shall, within 30 days, reimburse CRA the grant funds paid through the date of default or termination as follows:

A. If the default occurs within five (5) years following the execution of the Agreement, 100% of the grant amount;

B. If the default occurs more than five (5) but less than six (6) years following execution of the Agreement, 80% of the grant amount;

C. If the default occurs more than six (6) but less than seven (7) years following execution of the Agreement, 65% of the grant amount;

D. If the default occurs more than seven (7) but less than eight (8) years following execution of the Agreement, 50% of the grant amount;

E. If the default occurs more than eight (8) but less than nine (9) years following the execution of the Agreement, 35% of the grant amount;

F. If the default occurs more than nine (9) but less than ten (10) years following the execution of the Agreement, 20% of the grant amount.

If Cotton Club fails to reimburse CRA the entire amount due under paragraph 4, CRA shall have the right to place a lien on the Property for the reimbursement of grant funds paid. Upon reimbursement of the grant funds to the CRA, the parties shall execute a Termination and Release of these Covenants.

5. Applicable Law and Venue. These Covenants shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

6. Recording. As a condition to receipt of the grant funds, Cotton Club shall, at its sole expense, record these Covenants with the Clerk of the Circuit Court of Alachua County, Florida, and provide a certified copy of the recorded covenant to the CRA.

IN WITNESS WHEREOF, the Declarant has affixed its signature to these Covenants.

THE COTTON CLUB MUSEUM AND CULTURAL
CENTER, INC., a Florida not for profit corporation

By: Vivian Filer

Name: Vivian Filer
Title: Executive Director

Witnesses:

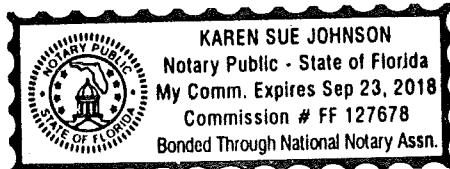
(1) Sign Name: Patricia Jackson
Print Name: Patricia Jackson

(2) Sign Name: Gwenael W. Mingo
Print Name: Gwenael W. Mingo

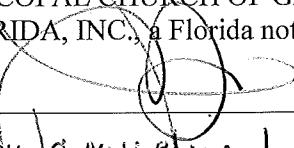
STATE OF FLORIDA
COUNTY OF Alachua

The foregoing instrument was acknowledged before me this 8th day of March, 2016, by Vivian Filer, as the Executive Director of The Cotton Club Museum and Cultural Center, Inc., a Florida not for profit corporation authorized to do business in the state of Florida, and who has acknowledged that she has executed the same on behalf of The Cotton Club Museum and Cultural Center, Inc., and that she was authorized to do so. She is personally known to me or has produced _____ as identification.

Karen Sue Johnson
Notary Public, State of Florida
Affix Stamp



MOUNT OLIVE AFRICAN METHODIST
EPISCOPAL CHURCH OF GAINESVILLE,
FLORIDA, INC., a Florida not for profit corporation

By: 

Name: Jacqueline L. Dupree
Title: Painter

Witnesses:

(1) Sign Name: Patricia Jackson
Print Name: PATRICIA JACKSON

(2) Sign Name: Janice W. Mingo
Print Name: Janice W. Mingo

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 8th day of March, 2016, by Jacqueline L. Dupree, as the President of, a Florida not for profit corporation authorized to do business in the state of Florida, and who has acknowledged that s/he has executed the same on behalf of Mount Olive African American Methodist Episcopal Church of Gainesville, Florida, Inc., and that s/he was authorized to do so. S/He is personally known to me or has produced _____ as identification.

Karen Sue Johnson
Notary Public, State of Florida
Affix Stamp

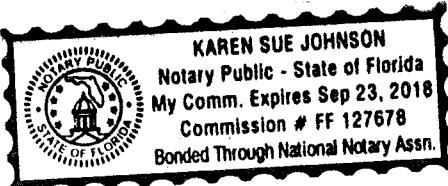


Exhibit "A"

LEGAL DESCRIPTION

Lots 13 and 14, Block 4, Range 1 of ROPER'S ADDITIONS TO THE CITY OF GAINESVILLE, according to plat recorded in Deed Book "J", page 550, of the Public Records of Alachua County, Florida, lying and being in the South ½ of Section 4, Township 10 South, Range 20 East.

EXHIBIT A
LEGAL DESCRIPTION

LEGAL DESCRIPTION

Lots 13 and 14, Block 4, Range 1 of ROPER'S ADDITION TO THE CITY OF GAINESVILLE, according to plat recorded in Deed Book "J", page 550, of the Public Records of Alachua County, Florida, lying and being in the South $\frac{1}{4}$ of Section 4, Township 10 South, Range 20 East.

EXHIBIT B
STATE OF FLORIDA, DEPARTMENT OF STATE
&
COTTON CLUB MUSEUM AND CULTURAL CENTER, INC
GRANT AGREEMENT

**AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
COTTON CLUB MUSEUM AND CULTURAL CENTER, INC.**

This Agreement is by and between the State of Florida, Department of State, Division of Cultural Affairs hereinafter referred to as the "Division," and the Cotton Club Museum and Cultural Center, Inc. hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Grant (CSFA 45.014) by the Division, grant number 16.9.200.583 for the project " " in the amount of \$489,350. Funds for this grant have been appropriated in the FY 2015-2016 General Appropriations Act on line 3123A. The Division has the authority to administer this grant in accordance with Section 265.701, *Florida Statutes*.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

- 1. Grant Purpose.** This grant shall be used exclusively for the "Cotton Club Main Building Phase II" project, the public purpose for which these funds were appropriated.

The Grantee shall perform the following **Scope of Work: Phase II**, the following will be completed:

Installation of fire sprinkler system
Installation of fire alarm system
Installation of power, electrical lighting, public address system
Installation of HVAC systems
Installation of building insulation
Installation of drywall
Complete interior painting
Installation of flooring
Complete interior finishes, non-painting
Installation of interior doors, windows, and hardware
Installation of cabinetry and countertops
Installation of stage
Installation of handicapped ramp
Installation of toilet accessories to complete bathroom building
Purchase and installation of kitchen

All tasks associated with the renovation, as outlined in the Project Description (See Attachment A), will be performed by June 1, 2017. All project work will be completed under the supervision of a licensed architect or licensed contractor.

- a) The Grantee agrees to provide the following **Deliverables and Performance Measures** related to the Scope of Work for payments to be awarded.

Payment 1:

- The first payment will be a fixed price advance in the amount of 25% of the grant award. The items in Section 4 of the Agreement ("Required Information Needed with Return of Signed

Agreement") must be submitted prior to release of this payment.

Payment 2, Deliverable/ Task 1:

- Payment 2 will be cost reimbursement. The Grantee will have completed at least 30 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1) along with a Contractor's Affidavit of Completion, showing at least 30 percent of the project completed.

Payment 3, Deliverable/ Task 2:

- Payment 3 will be cost reimbursement. The Grantee will have completed at least 60 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1) along with a Contractor's Affidavit of Completion, showing at least 60 percent of the project completed.

Payment 4, Deliverable/ Task 3:

- Payment 4 will be cost reimbursement. The Grantee will have completed 100 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702), Schedule of Contract Values (AIA Document G703), and a Certificate of Substantial Completion (AIA Document G704), or its equivalent (See Appendix 1) along with a Contractor's Affidavit of Completion, showing 100 percent of the project completed, including all retainage amounts paid.

b) The Grantee has provided an Estimated Project Budget (which is incorporated as part of this Agreement and entitled Attachment C). All expenditures for this agreement shall be in accordance with this budget (Attachment C).

c) **Change Orders.** Should grant expenditures exceed the budgeted grant amount for any work item by more than 20%, the Grantee shall be required to submit a proposal for revision of the Project Budget with a written explanation for the reason(s) for deviation(s) from the original Project Budget to the Division for review and written approval.

2. **Length of Agreement.** This Agreement shall begin on July 1, 2015, and shall end June 1, 2017, unless terminated in accordance with the provisions of Section 37 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Division approves such extension. The Grantee's written request for such extension must be submitted to the Division no later than thirty (30) days prior to the termination date of this Agreement.

3. **Contract Administration.** The parties are legally bound by the requirements of this agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by

utilizing the information below. Any change in the contact information below should be submitted in writing to the contract manager within 10 days of the change.

For the Division of Cultural Affairs:

Elsie Rogers, Grant Manager
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
Phone: 850.245.6483
Facsimile: 850.245.6454
Email: elsie.rogers@dos.myflorida.com

For the Grantee:

Vivian Filer
Cotton Club Museum & Cultural Center
P. O. Box 5534
Gainesville, Florida 32677-5534
Phone: 352.376.9956
Cell Phone: 352.219.7404
Email: vivianfiler@att.net

4. **Required Information Needed with Return of Signed Agreement.** Prior to the disbursement of the advance payment, the Grantee must provide the following with the return of the signed Agreement.
 - a) Signed Grant Award Agreement which details the Scope of Work and Deliverables.
 - b) Legal Description of the Property. The Grantee has provided and attached the legal description of the property on which the cultural facility is or will be located, (which is incorporated as part of this Agreement and entitled Attachment B).
 - c) Corporate Nonprofit Status. The Grantee must provide a copy of the corporations' not-for-profit status and continue to maintain its not-for-profit eligibility, as a public entity or a tax-exempt Florida corporation, for the duration of the Restrictive Covenant or Surety Bond.
 - d) Historic Preservation Review. The Grantee must submit the confirmation received from the Bureau of Historic Preservation regarding the historical significance of the property. Applies if structures are 50 years or older. (See Section 22)
 - e) Submit a copy of the Grantee's Florida Substitute Form W-9. (See Section 7)
5. **Grant Payments.** All grant payments are requested by submitting Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1). The total grant award shall not exceed \$489,350 which shall be paid by the Division in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. The grant payment schedule is outlined below:

- a) The first payment will be 25% advance of the grant award.
- b) The second payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 1.
- c) The third payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 2.
- d) The fourth payment will be cost reimbursement. Payment will be made in accordance with the completion of the Deliverable 3.

6. Electronic Payments. The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services. If EFT has already been set up for your organization, you do not need to submit another authorization form unless you have changed bank accounts. To download this form visit <http://www.myfloridacfo.com/Division/AA/Forms/DFS-A1-26E.pdf>. This page also includes tools and information that allow you to check on payments.

7. Florida Substitute Form W-9. A completed Substitute Form W-9 is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. The Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <https://flvendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted with the executed Agreement.**

8. Amendment to Contract. Either party may request modification of the provisions of this Agreement by submitting a Cultural Facilities Grant Amendment Request form to the Division. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement. If changes are implemented without the Division's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement. The Cultural Facilities Grant Amendment Request form is available on the Division's online grant system.

9. Financial Consequences. The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.

- a) The full amount of the first payment (fixed price advance in the amount of 25% of the grant award) will be returned to the State of Florida if Deliverable 1 is not satisfactorily completed.
- b) Second payment will be withheld if Deliverables are not satisfactorily completed.
- c) Third payment will be withheld if Deliverables are not satisfactorily completed.
- d) Fourth payment will be withheld if Deliverables are not satisfactorily completed.

10. Encumbrance of Funds. Encumbrance Period is between July 1, 2015 and June 30, 2016, during which state dollars must be obligated to pay for project expenses. To encumber means to have a signed

contract with an architect or contractor for the expenditure of all grant and matching funds. All grant funds must be encumbered under the terms of a binding contractual agreement by **June 30, 2016**, except as allowed below.

- a) **Extension of Encumbrance Deadline:** The encumbrance deadline indicated above may be extended by written approval of the Division. To be eligible for this extension, the Grantee must demonstrate to the Division that full encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above. The maximum extension of the encumbrance period shall be thirty (30) days.

11. Grant Reporting Requirements. The Grantee must submit the following reports to the Division, using the Cultural Facilities Progress Report form. The Cultural Facilities Progress Report form is available on the Division's website at
<http://dos.myflorida.com/media/31252/culturalfacilitiesreportform.pdf>

- a) **First Project Progress Report** is due by January 31, 2016, for the period ending December 31, 2015.
- b) **Second Project Progress Report** is due by July 31, 2016, for the period ending June 30, 2016.
- c) **Third Project Progress Report** is due by January 31, 2017, for the period ending December 31, 2016.
- d) **Final Report.** The Grantee must submit a Final Report to the Division by July 15, 2017.

12. Matching Funds (if any). Matching funds must meet the following requirements:

- a) Be directly related to the specific construction or renovation work described in the Project Description and detailed in the Estimated Project Budget.
- b) May not consist of general operating expenses as described in Section 10 of this agreement.
- c) Be clearly accounted for by documentation maintained at the Grantee's office.
- d) May not consist of any purchases or expenses paid within five (5) years prior to the award of the grant.
- e) May not consist of state dollars from any source.
- f) May not consist of matching funds claimed for any other state grant.
- g) May have been expended prior to July 1, 2015, as long as the expenditures are clearly a part of this grant project, as described in the Project Description and detailed in the Estimated Project Budget.
- h) If the Grantee's total support and revenue for the last completed fiscal year is \$500,000 or more, the Grantee must provide not less than \$2.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- i) If the Grantee's total support and revenue for the last completed fiscal year is less than \$500,000, the Grantee must provide not less than \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- j) Documentation of in-kind contributions must substantiate fair market value.

k) The matching requirement for grants for Rural Economic Development Initiative (REDI) counties or communities designated in accordance with Section 288.0656, *Florida Statutes*, and approved for reduction in accordance with Section 288.06561, *Florida Statutes*, by the application deadline is \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.

13. Grant Completion Deadline. The grant completion deadline is June 1, 2017. The Grant Completion Deadline is the date when the project is 100% complete and all grant and matching funds have been paid out in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, the extension may not exceed 60 days, unless the Grantee can demonstrate extenuating circumstances as described in Section 14 of this Agreement.

14. Extension of the Grant Completion Deadline. An extension of the completion date must be requested at least thirty (30) days prior to the end of the grant period and may not exceed 60 days, unless the Grantee can clearly demonstrate extenuating circumstances. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the project such as a natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation related to the project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Prior written approval is required for extensions.

15. Credit Line(s) to Acknowledge Grant Funding. All construction projects shall display a project identification sign in a prominent location at the Project site and shall maintain said sign while work is in progress. The sign must be a minimum of eight (8) square feet in area, be constructed of plywood or other durable material, and shall contain the following acknowledgment of grant assistance:

- a) "This project is sponsored in part by the Department of State, Division of Cultural Affairs, the Florida Council of Arts and Culture and the State of Florida" (Section 286.25, Florida Statutes).
- b) Any variation in the above specifications must receive prior approval in writing by the Department. The cost of preparation and erection of the project identification sign are allowable project costs. Routine maintenance costs of project signs are not allowable project costs.

16. Non-allowable Grant Expenditures. The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures shall be in compliance with the state guidelines for allowable project costs as outlined in the Department of Financial Services' Reference Guide for State Expenditures, which are incorporated by reference and are available online at http://www.myfloridacfo.com/aadir/reference_guide/. In addition, the following are not allowed as grant or matching expenditures:

- a) General operating expenses (including but not limited to salaries, travel, personnel, office supplies, mortgage, rent, operating overhead, indirect costs, etc.).
- b) Costs incurred in writing or submitting this grant application.
- c) Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency.

- d) Costs for planning, which include those for preliminary and schematic drawings, and design development documents necessary to carry out the project.
- e) Costs for bad debts, contingencies, fines and penalties, interest, and other financial costs.
- f) Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships.
- g) Projects which are restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, creed, national origin, disability, age, or marital status.
- h) Re-granting, contributions, and donations.
- i) Costs that are paid prior to the execution of the Grant Award Agreement and for which reimbursement is requested, or after June 1, 2017.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the *Reference Guide for State Expenditures*.

18. Repayment. All refunds or repayments to be made to the Department under this agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: Elsie Rogers, Division of Cultural Affairs, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. Unrestricted Use and Access. The Grantee must maintain Unrestricted Use of the land and buildings associated with the Cultural Facility for a minimum of 10 years following the Grant Award (Grant Award means the date on which the Grant Award Agreement is fully executed).

- a) **Lease of Land and Buildings.** If the land and buildings are leased, the Division may, from time to time, require certification from the Grantee or the property owner that the lease is in full force and effect, that it has not been modified or terminated, and that the Grantee is not in default of the lease (or in the case of an owner, documentation of ownership is required). Failure to provide such certification will constitute a default hereunder, which will give the Division the right to terminate this Agreement and demand the return of all or a part of any funds already delivered, and/or to withhold funds from subsequent grants.
- b) **Retaining Ownership of Land and Buildings.** The owner of land and building(s) must retain ownership of the land and buildings, along with improvements made to the land and building(s), for at least 10 years following the Grant Award. Exception: Land and buildings owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

20. Restrictive Covenant. The Grantee will record an updated Restrictive Covenant with the Clerk of the Circuit Court of the county where the property is located. If the Grantee chooses to record a Restrictive Covenant and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Restrictive Covenant Amortization Schedule (incorporated into this Agreement and attached as Attachment D).

21. Surety Bond instead of a Restrictive Covenant. If a Surety Bond is selected by the Grantee and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Surety Bond Amortization Schedule (incorporated into this Agreement and attached as Attachment E).

22. Historic Preservation Review. If the facility that is being renovated with state funds is fifty (50) years old or older, then in accordance with Section 267.061(2)(a) and (b), *Florida Statutes*, the Grantee must submit information about the grant project to the Division of Historical Resources, Bureau of Historic Preservation ("Bureau"), so that it may determine whether the project has historic significance. Should the Bureau deem the facility to have historic significance, grant funds may only be released after the Bureau notifies the Division, in writing, that the Grantee has satisfied the Bureau's requirements. If the facility is not deemed to be of historic significance, grant funds will be released to Grantee in accordance with Section 5 of this Agreement.

23. Single Audit Act. Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to Section 215.97, *Florida Statutes*. See Attachment F for additional information regarding this requirement.

24. Retention of Accounting Records. Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of eight (8) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the eight-year period, the records shall be retained until the litigation, audit, or claim has been resolved. Retention period shall match the ten (10) year Restrictive Covenant or Surety Bond period.

25. Obligation to Provide State Access to Grant Records. The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.

26. Obligation to Provide Public Access to Grant Records. The Division reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Division's Contract Manager for assistance if it receives a public records request related to this Agreement.

27. Investment of Funds Received But Not Paid Out. The Grantee may temporarily invest any or all grant funds received but not expended, in an interest bearing account pursuant to Section 216.181(16)(b), *Florida Statutes*. Interest earned on such investments should be returned to the

Division quarterly, except that interest accrued less than \$100 within any quarter may be held until the next quarter when the accrued interest totals more than \$100. All interest accrued and not paid to the Division, regardless of amount, must be submitted with the Grantee's Final Cultural Facilities Report at the end of the Grant Period.

28. Noncompliance with Grant Requirements. Any applicant that has not submitted required reports or satisfied other administrative requirements for other Division of Cultural Affairs grants or grants from any other Office of Cultural, Historical, and Information Programs (OCHIP) Division will be in noncompliance status and subject to the OCHIP Grants Compliance Procedure. (OCHIP) Divisions include the Division of Cultural Affairs, the Division of Historical Resources, and the Division of Library and Information Services.) Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any OCHIP grant may be released.

29. Accounting Requirements. The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:

- a) The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;
- b) Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Division.
- c) An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.
- d) The name of the account(s) must include the grant award number;
- e) The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
- f) Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).

30. Availability of State Funds. The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature. In the event that the state funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Division shall have no further liability to the Grantee, beyond those amounts already expended prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.

31. Independent Contractor Status of Grantee. The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.

32. Grantee's Subcontractors. The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Division shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be an agents, servants, joint venturers, or partners of the Division.

33. Liability. The Division will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Division.

- a) The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee shall indemnify and hold the Division harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with this Section.
- b) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.
- c) The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
- d) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; provided that such subcontract has been approved in writing by the Department prior to its execution; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

34. Strict Compliance with Laws. The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law.

35. No Discrimination. The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national

origin, age, handicap or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.

- 36. Breach of Agreement.** The Division will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.
- 37. Termination of Agreement.** The Division will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Division will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Division will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Division terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Division deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Division, with interest, within thirty (30) days after termination of this Agreement. The Division does not waive any of its rights to additional damages, if grant funds are returned under this Section.
- 38. Preservation of Remedies.** No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.
- 39. Non-Assignment of Agreement.** The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Division, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the project. If the Division approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Division to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.
- 40. Required Procurement Procedures for Obtaining Goods and Services.** The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project in accordance with Section 287.057, *Florida Statutes*.
- 41. Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.

42. Binding of Successors. This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Division of Cultural Affairs.

43. No Employment of Unauthorized Aliens. The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

44. Severability. If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.

45. Americans with Disabilities Act. All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990.

46. Governing Law. This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

47. Entire Agreement. The entire Agreement of the parties consists of the following documents:

- a) This Agreement
- b) Project Description (Attachment A)
- c) Legal Description of the Property (Attachment B)
- d) Estimated Project Budget (Attachment C)
- e) Recorded Restrictive Covenant and Amortization Schedule (Attachment D) or Issued Surety Bond and Amortization Schedule (Attachment E)
- f) Single Audit Act Requirements and Exhibit I (Attachment F)
- g) Schedule of Contract Values form (Appendix 1)

In acknowledgment of Grant Number 16.9.200.583 provided for from funds appropriated in the FY 2015-2016 General Appropriation Act in the amount of \$489,350, I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State:

By: _____
Sandy Shaughnessy, Division Director

Witness _____

Date _____

Grantee: Vivian Filer
By: _____
Authorizing Official for the Grantee*

VIVIAN FILER
Print name and title
Cynthia Powell
Witness _____

11/20/2015
Date _____

ATTACHMENT A

Project Description

The Cotton Club building was originally built to serve as a PX at Camp Blanding, Florida during World War II. It was moved to its current location after the war ended. The Mt. Olive A.M.E. Church, in partnership with the University of Florida's Powell Center for Construction & Environment and Historic Preservation Program, is restoring the building for use as a cultural center, museum and neighborhood center. Historic Preservation coupled with green building Guidelines will ensure that this building continues to play a significant role in the East Gainesville Community.

The Cotton Club, also been known as the "Perry Theater" and the "Blue Note," was part of the "Chitlin' Circuit" in the late 1940s and early 1950s. The Chitlin' Circuit was the general name given to the string of venues throughout the eastern and southern United States that catered primarily to African American audiences and entertainers during the period of segregation when African Americans were not permitted to attend or entertain in white establishments.

Over time the Cotton Club building was vacated and eventually fell into severe disrepair.

By 2006 the roof and walls had deteriorated to the point that they had large holes which allowed enormous quantities of rainwater into the interior of the building, all but destroying it. The community and the University of Florida collaborated to seek funding from private and public sources to begin the process of restoring the Cotton Club and to convert it into a cultural facility and museum that would once again serve as a gathering place for the community.

Phase I of the Cotton Club building restoration project entailed the design phase of the project, which produced a complete set of permitted architectural and engineering plans for the restoration of the facility. This phase included the stabilization of the existing building with a new foundation, doors, windows, roof, and exterior siding. A new bathroom facility was constructed adjacent to the main Cotton Club building. Additionally, road cuts and repaving to bring power, water, and fire protection water to the main building were completed in Phase I.

We are requesting Cultural Affairs funding totaling \$489,350 which will be matched by the Community Redevelopment Agency with \$146,650, for a project total of \$636,000. Funds from the Cultural Facilities grant and the matching funds will be used to complete Phase II of the restoration of the Cotton Club building. Phase II involves the completion of the electrical power, lighting, heating and air-conditioning, fire sprinklers, sound system, insulation, interior walls and doors, interior finishes, insulation, cabinetry, and kitchen. The end product will be a completed building to house historical artifacts and one that is capable of handling cultural and music events with audiences of up to 300 people.

We have not applied for or received funding from the Division of Historical Resources for the period of the Cultural Facilities grant.

Attachment B - Legal Description

Alachua County Curr Roll
AP01190U

Property Data Print Request - 10/16/15
Requested by: FSANDERSON

Property: R 12095 000 000

Taxpayer: MOUNT OL

Street Address: 837-

SE 7TH AVE

STR 04-10-20

* * * * * Legal Description * * * * *
ROPER ADD DB J-550 LOTS 13 14 BK 4 RG 1
(LESS R/W PER OR 4260/0345) OR 2011/1664

ATTACHMENT C

Estimated Project Budget

	SYSTEM	COST ESTIMATE	MATCH	IN-KIND MATCH	STATE GRANT
1	Fire Sprinklers	35,000			35,000
2	Fire Alarm	11,500			11,500
3	Plumbing	16,500			16,500
4	Electrical; lighting; public address system	144,300			144,300
5	HVAC	215,000			215,000
6	Insulation	25,750			25,750
7	Drywall	22,500		5,000	17,500
8	Interior Painting	30,800		7,000	23,800
9	Interior doors/windows	24,000	24,000		
10	Flooring	44,500	44,500		
11	Cabinetry & Countertops	4,750	4,750		
12	Toilet Accessories complete bathroom	14,400	14,400		
13	Kitchen Appliances	12,000	12,000		
14	Stage	19,500	19,500		
15	Other interior finishes	14,500	14,500		
16	Exterior Handicap Ramp	13,000	3,000		
17	Project Management	20,000		20,000	
A.	Total Project Expenses	668,000	146,650	32,000	489,350

ATTACHMENT D

Restrictive Covenant Provisions and Amortization Schedule

1. If the Grantee chooses to record a Restrictive Covenant, the Grantee, and the property owner(s) (if the land or buildings or both are leased by the grantee), shall execute and file a Restrictive Covenant with the Clerk of the Circuit Court in the county where the property is located, prior to the date that the agreement is executed.
2. The Restrictive Covenant shall include the following provisions:
 - a) That the Restrictive Covenant shall run with title to the building(s) and the associated land and improvements funded by the grant, shall encumber them, and shall be binding upon the Grantee (and the owner(s), if different person(s), and the successors in interest), for (10) ten years from the Grant Award.
 - b) The owner(s) of the improvements made to the building(s) and associated land, funded in whole or in part by grant funds, must also execute the Restrictive Covenant. Exception: Land or buildings or both owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.
 - c) The Grantee (and owners, if different persons) shall permit the Division to inspect the Cultural Facility and associated land at all reasonable times to determine whether the Grantee is in compliance with the Grant Award Agreement and the Restrictive Covenant.
 - d) The Grantee must maintain the building(s) as a "Cultural Facility." For the purposes of this program, a "Cultural Facility" is defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the foregoing for any of the cultural disciplines listed in Section 265.283(7), *Florida Statutes*. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - e) The Restrictive Covenant shall also contain the following amortization schedule for repayment of grant funds, should the Grantee or owners or their successors in interest violate the Restrictive Covenant.
 - a. If the violation occurs within five (5) years following the Grant Award, 100% of the grant amount;
 - b. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 80% of the grant amount;

- c. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 65% of the grant amount;
- d. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 50% of the grant amount;
- e. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 35% of the grant amount; and
- f. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.
- g. Other provisions as agreed upon by the Division and the Grantee.

ATTACHMENT E

Surety Bond and Amortization Schedule

1. Any Grantee entering into a Grant Award Agreement with the Division for the acquisition, renovation, or construction of a Cultural Facility that chooses not to record a Restrictive Covenant must purchase a 10-year Surety Bond.
2. A certified copy of the Bond Agreement must be provided to the Division prior to the execution of the Grant Award Agreement.
3. The Bond Agreement must:
 - a) Provide that the facility described in Attachment A: Scope of Work, incorporated by reference in the Grant Award Agreement, will be used as a "Cultural Facility" for (10) ten years following the Grant Award; A Cultural Facility means a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the arts and cultural disciplines defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - b) Be purchased from a surety insurer authorized to do business in the Florida as a Surety;
 - c) Provide that there will be a violation of the Bond Agreement if the facility ceases to be used as a "Cultural Facility" as required by Section 265.701(4), *Florida Statutes*, within 10 years following the Grant Award, and that the surety insurer must immediately repay funds to the Division, pursuant to the following amortization schedule:
 1. If the violation occurs within three (3) years following the Grant Award, 100% of the grant amount;
 2. If the violation occurs more than three (3) but less than four (4) years following the Grant Award, 80% of the grant amount;
 3. If the violation occurs more than four (4) but less than five (5) years following the Grant Award, 70% of the grant amount;
 4. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 60% of the grant amount;
 5. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 50% of the grant amount;

6. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 40% of the grant amount;
7. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 30% of the grant amount;
8. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

ATTACHMENT F

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 2 Subpart F -- Audit Requirements, and Section 215.97, *Florida Statutes*, monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR 2 §200.328, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization that has received federal funds awarded through the Department of State. EXHIBIT 1 to this attachment indicates whether federal resources have been awarded through the Department of State by this agreement.

2 CFR 2 §200.501 Audit Requirements

- (a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 2 CFR §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to

have a program-specific audit conducted in accordance with 2 CFR §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office www.ecfr.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2) (1), *Florida Statutes* and had received state funds awarded by the Department of State. EXHIBIT 1 to this attachment indicates whether state resources have been awarded by the Department of State by this agreement.

Section 215.97 *Florida Statutes* Single Audit Requirements

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, *Florida Statutes*; applicable rules of the Executive Office of the Governor and the Chief Financial Officer; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), *Florida Statutes*. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department Financial Services (Chief Financial Officer)
<http://www.fldfs.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act)
<http://www.leg.state.fl.us/>

PART III: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 2 §200.512, and required by PART I of this attachment shall be submitted, when required by 2 CFR 2 §200.512, by or on behalf of the recipient directly to each of the following:

- A. The Department of State at the following address:

Office of Inspector General
Florida Department of State
R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

- B. The Federal Audit Clearinghouse electronically at *harvester.census.gov/sac/* as designated in 2 CFR 2 §200.512.
 - C. Other Federal agencies and pass-through entities in accordance with 2 CFR 2 §200.513.
2. In the event that a copy of the reporting package for an audit required by PART I of this attachment and conducted in accordance with 2 CFR 2 §200.501 Audit Requirements, is not required to be submitted to the Department of State for the reasons pursuant to 2 CFR 2 §200.501, the recipient shall submit the required written notification pursuant to 2 CFR 2 §200.501 (d) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Office of Inspector General
Florida Department of State
R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

3. Copies of financial reporting packages required by PART II of this attachment agreement shall be submitted by or on behalf of the recipient directly to the following:

- A. The Department of State at the following address:

Office of Inspector General
Florida Department of State
R. A. Gray Building, Room 114A

500 South Bronough St.
Tallahassee, FL 32399-0250

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR 2 Subpart F—Audit Requirements, Section 215.97, *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, as applicable.
5. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 2 Subpart F or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART IV: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, Chief Financial Officer, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING: \$ 0

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS: Not Applicable.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING: \$489,350

MATCHING RESOURCES FOR FEDERAL PROGRAMS: Not Applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Florida Department of State Cultural Facilities Grants, CSFA Number 45.014

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in the Compliance Supplement to CSFA Number 45.014 found in Part Four (State Project Compliance Requirements) of the State Projects Compliance Supplement located at <https://apps.fldfs.com/fsaa/>.

EXHIBIT C
ADDITIONAL SCOPE OF WORK

CCMCC, in partnership with the Powell Center for Construction and Environment, has developed a scope of work for the redevelopment of the entire Cotton Club site, which includes:

Perryman Grocery Store (PGS)
Shotgun Houses
Sitework