

PUBLIC ART LOAN AND DISPLAY AGREEMENT

THIS PUBLIC ART LOAN AND DISPLAY AGREEMENT

(**"Agreement"**), made and entered into this _____ day of _____, 20_____, by and between Alachua County, a charter county and political subdivision of the State of Florida, ("County") and Robert G. Dornberg ("Artist").

WHEREAS, the County is the owner of the Alachua County Administration Building located at 12 SE 1st Street, Gainesville, Florida 32601 (the "Administration Building"); and

WHEREAS, the County's Board of County Commissioners (the "Board") holds its regular public board meetings in the Jack Durrance Boardroom located in room number 209 on the second floor of the Administration Building; and

WHEREAS, by Resolution 19 – 45, the County created the *Art in Jack Durrance Boardroom Program* (the "Program"), through which the County selects art created by local artist to be temporarily displayed in the Jack Durrance Boardroom; and

WHEREAS, the Artist is the creator and owner of a work of art entitled "Beach Umbrella," "Shoppers," "Healing," "Check Out," "Color Store," "Beach Walk," "Serving," "Outdoor Lunch," "Shop Girls," and "Red Store" (the "Art"), which is depicted the photograph of the Art that is attached hereto and incorporated herein as **Exhibit "A"**; and

WHEREAS, the Artist submitted an application seeking to loan the Art to the County for the purposes of having it temporarily displayed in the Jack Durrance Boardroom; and

WHEREAS, the Board has approved the Artist's application and the parties hereto now desire to enter into this Agreement to establish the rights, duties, obligations and responsibilities of the parties with regard to the temporary loan and display of the Art in the Jack Durrance Boardroom.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto do mutually covenant and agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are hereby incorporated into and made a part of this Agreement.
2. **Effective Date**. This Agreement shall be effective when executed by both parties and shall expire upon the date that the Artist removes his/her art from the Administration Building ("Term"), unless this Agreement is terminated earlier as provided

herein.

3. **Artist's Warranties and Representations.** The Artist represents and warrants to the County that he/she: (i) is the sole creator of the Art; (ii) is the owner of the Art and all of the rights under copyright in the Art; and (iii) has full authority to loan the Art and grant the rights provided in this Agreement. The Artist further represents and warrants that nothing in the Art defames any person or entity, infringes any copyright, or otherwise violates the rights of any third party.

4. **Loan and Grant of License.**

a. **Loan.** The Artist grants to the County a loan of the Art, subject to the terms of this Agreement.

b. **Copyright Permission.** The Artist grants to the County: (i) the right to display the Art in the Administration Building, including the Jack Durrance Boardroom; and (ii) the irrevocable right to use images of the Art in materials about or relating to the exhibition of the Art and/or the Administration Building and/or the County, and to allow others to do so, in all media now known or later developed and including, but not limited to, television, the Internet and the World Wide Web, provided that the such use by the County shall not be for commercial purposes. As the Art will be displayed in a room that, from time to time, is open and accessible to the general public and is broadcast on television, the Artist agrees that the Art may be photographed or videotaped by the general public and may also be broadcast on television. This paragraph and the grant of right herein shall survive the termination of this Agreement.

c. **Personality Rights.** The Artist grants the County the irrevocable right to use the Artist name, photograph, likeness, and biography in connection with the County's exercise of the rights granted in this Agreement. This paragraph and the grant rights herein shall survive the termination of this Agreement.

5. **Transfer, Installation, Care, and Removal of Art.**

a. **Condition of Art upon Transfer to the County.** The Artist and the County will make mutually agreeable arrangements for the Art to be delivered to the Administration Building. The absence of any notation on this Agreement or its attachments as to the condition of the Art at the time it was received by the County shall not mean it was in good condition on receipt.

b. **Shipping and Installation.** The Artist shall make all arrangements, and shall pay all costs, for shipping the Art to and from the Administration Building, including but not limited to all packing, unpacking and shipping and handling. Upon its arrival at the

Administration Building, the Artist shall unpack the Art and shall be responsible for directing and supervising the installation of the Art in the Jack Durrance Boardroom by County staff; however, consent to the installation or removal techniques in all areas of the Jack Durrance Boardroom shall be solely within the discretion of the County Manager and upon such terms and conditions as the County Manager shall, in his/her sole discretion, deem necessary. Consent may be withheld unless the Artist agrees to all terms and conditions imposed by the County Manager.

c. Signage. Signage for the Art shall be provided by the Artist and shall be limited to a plaque no larger than 6" wide, 4" long, and ¼" deep. Wording on the plaque must be limited to the following information: the name of the Art, and the name, physical address, website address, and telephone number of the Local Artist.

d. Care of Art. The Artist shall be solely responsible for the care and maintenance of the Art and for any required repairs while it is on display or otherwise in the possession of the County. The County shall provide the Artist with reasonable access to provide such care, maintenance and repairs after request by the Artist. The County shall use reasonable efforts not to damage the Art, but the County shall not have any duty, obligation or responsibility to actively care for or otherwise actively maintain the Art. The County has the right, but not the duty, obligation or responsibility, to execute any emergency preservation measure without the Artist's permission if such measure, in the sole discretion of the County, is required to protect the Art or other property, or to protect the health and safety of County staff or the public.

e. Duration of Display and Loan. The County anticipates displaying the Art in the Jack Durrance Boardroom for a period of three months. The County may, in its sole discretion, shorten, interrupt or terminate the display period. The Artist may request termination of the display period and surrender of the Art back to the Artist upon sending twenty (20) calendar days written notice to the County in accordance with this Agreement.

f. Surrender and Removal. The Art will be surrendered only to the Artist or to Artist's authorized agent or representative, or, in the event of the death of the Artist, to the authorized legal representative of the estate of the Artist. The County reserves the right, in the County sole discretion, to terminate the display of the Art at any time and de-install it from the Jack Durrance Boardroom. Upon such termination and de-installation, the County shall notify the Artist that the Art has been de-installed and that the Art is available for the Artist to remove it from the Administration Building. The Artist shall make all necessary arrangements, and pay all costs, to remove the Art from the Administrative Building within ten (10) calendar days after receipt of said notice from the County (the "Removal Deadline").

6. Termination. In addition to the other termination rights set forth in this Agreement, either party has the right to terminate this Agreement for convenience by giving the other party twenty (20) calendar days' written notice. In the event of termination, County shall de-install the

Art and notify the Artist that the Art is available for the Artist to remove it from the Administration Building. The Artist shall make all necessary arrangements, and pay all costs, to remove the Art from the Administrative Building within ten (10) calendar days after receipt of said notice from the County (the "Removal Deadline").

7. **Post-Termination Rights.** If the Artist does not remove the Art by the Removal Deadline, then the County has the absolute right to place the Art in storage, to charge regular storage fees and any related insurance costs, if any, and to perfect and enforce a lien for these fees and charges. If the Artist does not remove the Art within twenty (20) calendar days after the Removal Deadline, the Art shall be deemed an unrestricted gift by the Artist to the County.

8. **Notices.** All notices shall be in writing and sent to the other party by one of the following methods: (i) certified mail, return receipt requested, (ii) personal delivery with receipt, or (iii) via electronic mail. Notice by certified mail, return receipt requested shall be deemed delivered and received two (2) business days after mailing. Notice by personal delivery shall be deemed received upon actual receipt by the other party, and notice by electronic mail will be deemed received when sent. For purposes of all notices, the County's and the Artist's representatives are:

For the County:

Alachua County
County Manager's Office
12 SE 1st Street
Gainesville, Florida 32601
Attn: Gina Peebles, Assistant County Manager
Email: gpeebles@alachuacounty.us

For the Artist:

Bob Dornberg
3325 NW 34 Terr.
Gainesville, FL 32605
Joun500@gmail.com

9. **Security, Insurance, Risk and Indemnification.**

a. **Security, Insurance and Risk.** The County shall, as a voluntary accommodation to the Artist, exercise as much care in respect to the Art as it does in safeguarding its own property; however, the County **DOES NOT** owe any duty to the Artist to care for, maintain or safeguard the Art. The Artist acknowledges and agrees: (i) to hold harmless

the County, and its Board, employees, agents, attorneys, contractors, guests, invitees, and Advisory Committee, from any and all claims, damages, loss or injury of any kind resulting from or in any way arising directly or indirectly out of this Agreement; and (ii) that the County will provide no additional security for the Art beyond the currently security measures provided in the Administration Building and Artist shall be solely responsible for any and all loss or damage to the Art which occurs during the Term of this Agreement. Artist bears sole responsibility for obtaining and maintaining insurance for the Art while it is in transit to or from the Administration Building, being installed and de-installed, and on display/exhibit. The County shall not insure the Art. Artist agrees that any insurance policy obtained by the Artist for the Art shall waive subrogation against the County, including its Board, employees, agents, attorneys, contractors, guests, invitees, and Advisory Committee. Artist agrees that the value he/she selects for insurance purposes is the true value of the Art. Nothing contained in this Agreement shall constitute a waiver by the County of sovereign immunity, the limits of liability or other provisions of §768.28, Florida Statutes.

b. Indemnification and Release. **THE ARTIST AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY HARMLESS FROM ANY LIABILITY (INCLUDING ATTORNEY'S FEES AND THE COST OF DEFENDING ANY ACTION) ARISING OUT OF ANY CLAIM BY ANY INDIVIDUAL, INSTITUTION, OR OTHER PERSON CLAIMING FULL OR PARTIAL TITLE OR COPYRIGHT TO THE ART. THE ARTIST ACCEPTS ALL RISK ASSOCIATED WITH THE ART BEING ON DISPLAY OR STORED IN THE ADMINISTRATION BUILDING OR ELSEWHERE, AND HEREBY RELEASES ALL CLAIMS AND SUBROGATION AGAINST THE COUNTY, INCLUDING ITS BOARD, EMPLOYEES, AGENTS, ATTORNEYS, CONTRACTORS, AND ADVISORY COMMITTEE FOR ANY LOSS OR DAMAGE TO THE ART, HOWEVER CAUSED.**

10. County's Discretion. The County retains sole and complete discretion regarding the County's exercise of the rights granted in this Agreement, including but not limited to whether the County will accept physical delivery or display the Art, where the Art will be displayed within the Administration Building, the manner of installation and de-installation of the Art, how long the Art will be exhibited (within the duration of this Agreement), and whether the County will use in any way images of the Art. The Artist shall not install, de-install or remove the Art from the Administration Building, or modify the Art's display, except with the permission of the County Manager and in conjunction with an authorized County representative.

11. Waiver. A party's waiver of any provision, right or remedy under this Agreement must be in writing and signed by an authorized representative of the waiving party (*i.e.*, the Artist or the County Manager) to be effective. If a party does waive any provision, right, or remedy under this Agreement, such waiver will not preclude the party from enforcing any other

provision, right or remedy. A party's failure, neglect, or delay to enforce the provisions, rights, or remedies of this Agreement will not be construed or deemed to be a waiver of such party's rights to do so and will not affect the validity or all or any part of this Agreement or prejudice such party's right to take subsequent action.

12. **No Joint Venture.** Nothing contained in this Agreement creates a joint venture, partnership, or agency relationship between the parties.

13. **Binding Effect.** This Agreement shall be binding on all parties, as well as their respective personal representatives, agents, attorneys, heirs, assigns, or successors in interest.

14. **Severability Clause.** If any provision of this Agreement is declared invalid, void or unenforceable by court of competent jurisdiction, the remainder of this Agreement will not be affected, and each remaining provision will be valid and enforceable to the fullest extent permitted by law.

15. **Governing Law and Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. The sole and exclusive venue for any action arising under or related to this Agreement shall be in the state court in and for Alachua County, Florida, and each party hereby submits to the jurisdiction of said court.

16. **Amendments.** The parties may amend this agreement only by mutual written agreement that is executed by both parties.

17. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

[This space was intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

By: _____
Robert Hutchinson, Chair
Board of County Commissioners

Date: _____

ATTEST:

J.K. "Jess" Irby, Esq., Clerk

(SEAL)

APPROVED AS TO FORM

David Forziano
Alachua County Attorney's Office

ARTIST

(Artist's signature)

Robert G. Dornberg
(Artist's name printed)

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 30 day of September, 2020, by Robert Dornberg, as artist, on behalf of the corporation, who is ☐ personally known to me, or who ☒ produced drivers license as identification.



Notary Public

IF THE ARTIST IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBANCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION. IF THE ARTIST IS A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.

EXHIBIT A: Color Photograph of the Art



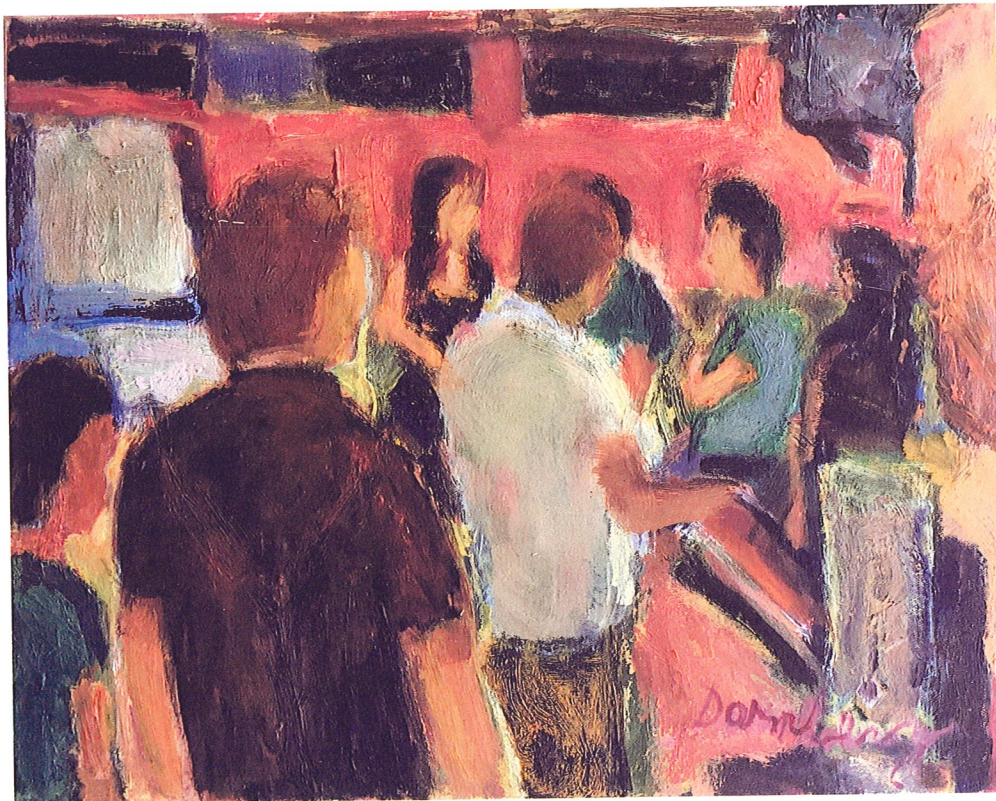
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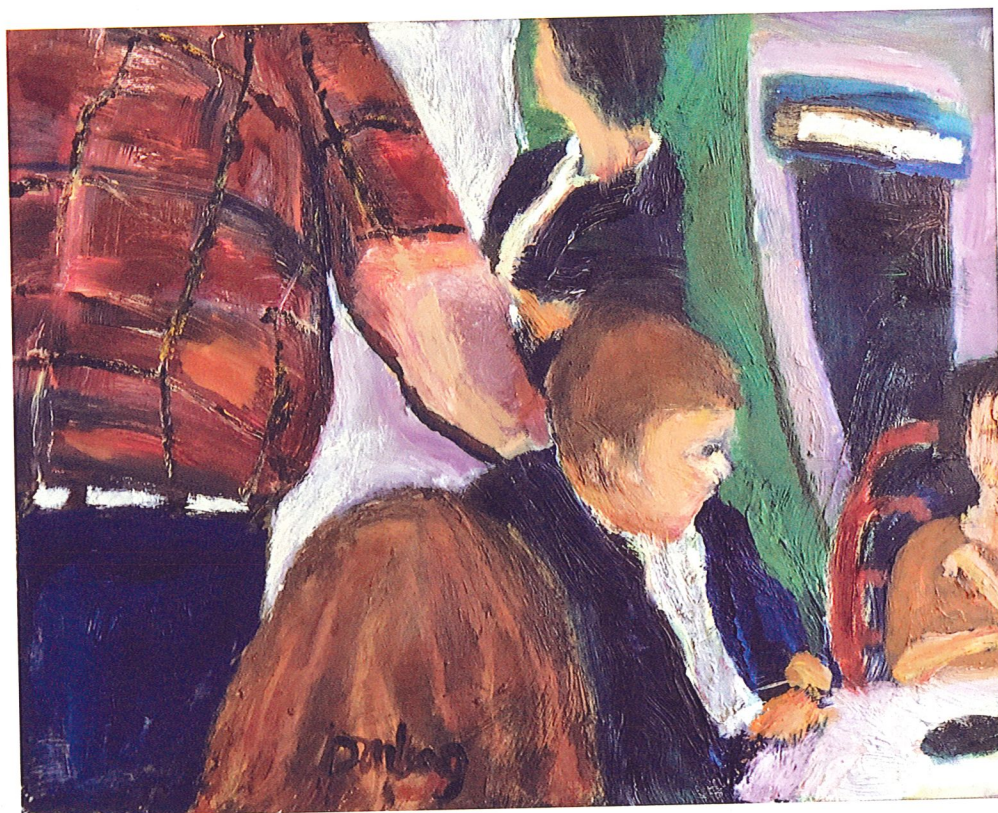
Beach Umbrellas 16 x 20



Shop girls 16x20



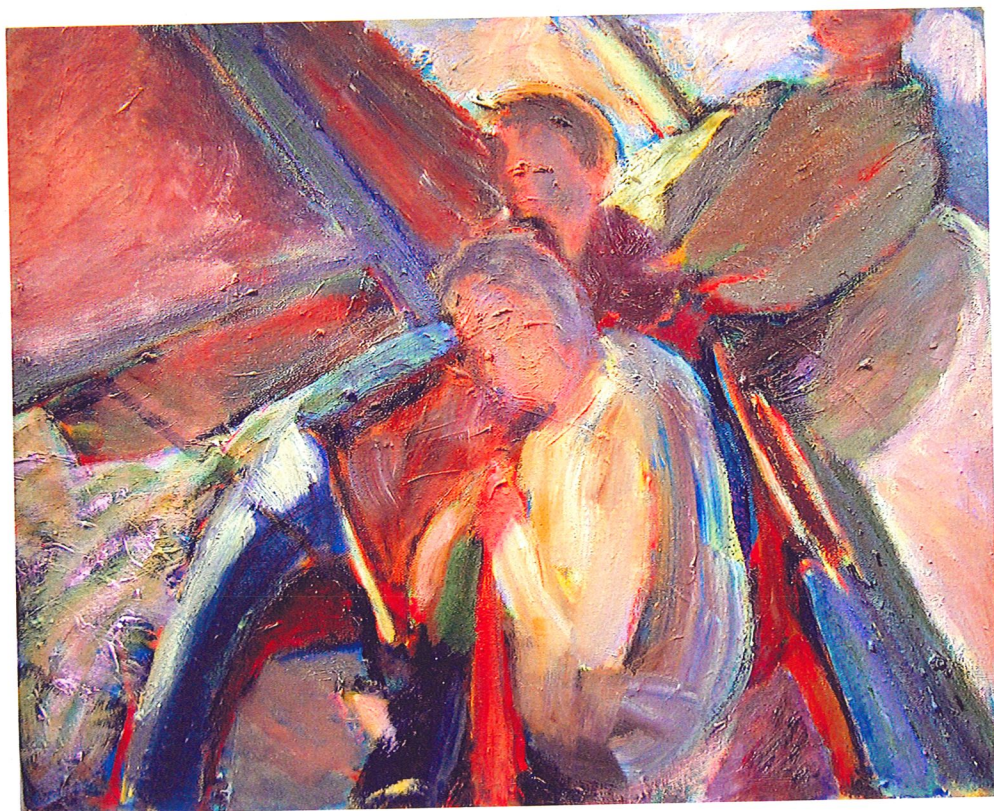
Red Store 16x20



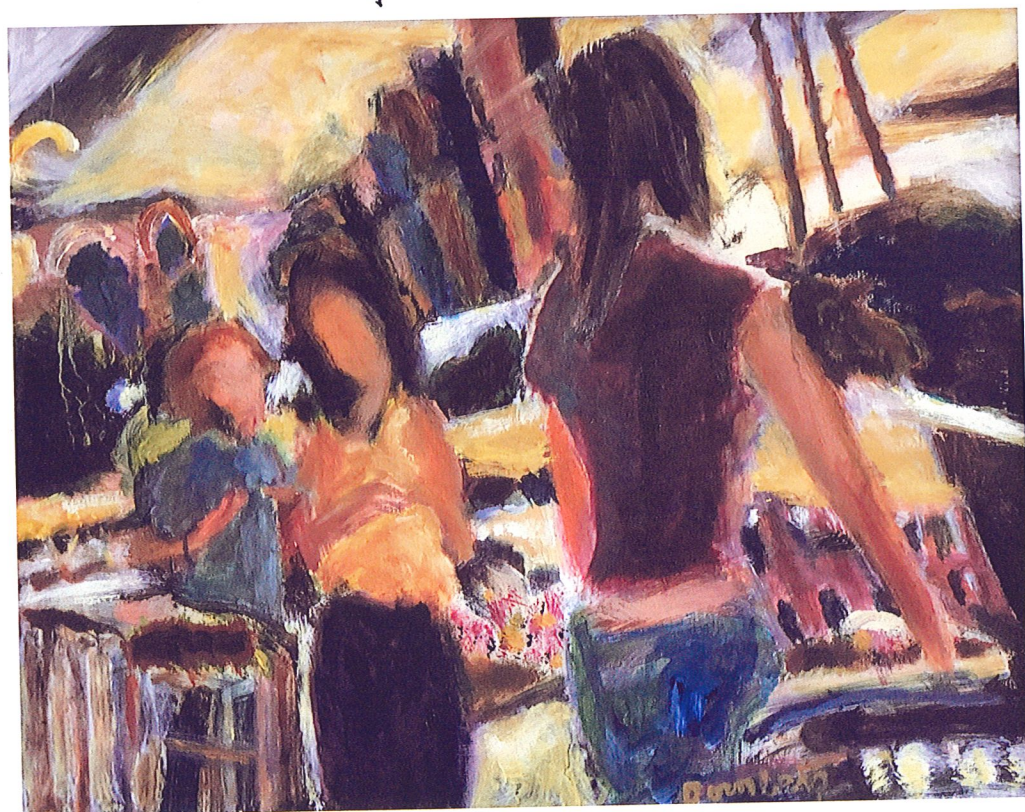
serving 16x20



Outdoor Lunch 16x20



Healing 16x20



Shoppers 16x20



check out 16 x 20



Beach Walk 16 x 20

Certificate of Completion

Envelope Id: 336419A7FD824856A50673B45BD6388F

Status: Completed

Subject: Updated Dornberg Art Agreement

Source Envelope:

Document Pages: 13

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Thomas (Jon) Rouse

AutoNav: Enabled

trouse@alachuacounty.us

Envelopeld Stamping: Enabled

IP Address: 35.196.167.22

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Record Tracking

Status: Original

Holder: Thomas (Jon) Rouse

Location: DocuSign

9/29/2020 3:11:50 PM

trouse@alachuacounty.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Alachua County

Location: DocuSign

Signer Events

David Forziano

dforziano@alachuacounty.us

Security Level: Email, Account Authentication
(None)

Signature

DocuSigned by:
David Forziano
70E5E81DBE1E4D3...

Signature Adoption: Pre-selected Style

Using IP Address: 216.194.144.254

Timestamp

Sent: 9/29/2020 3:13:48 PM

Resent: 9/30/2020 2:29:44 PM

Viewed: 9/29/2020 3:37:03 PM

Signed: 9/30/2020 3:51:45 PM

Electronic Record and Signature Disclosure:

Accepted: 9/2/2020 2:02:38 PM

ID: 64124040-3dd9-4e93-9b56-757b83b044a0

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent

Hashed/Encrypted

9/30/2020 2:29:44 PM

Certified Delivered

Security Checked

9/30/2020 2:29:24 PM

Signing Complete

Security Checked

9/30/2020 3:51:45 PM

Completed

Security Checked

9/30/2020 3:51:45 PM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Alachua County (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Alachua County:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mguidry@alachuacounty.us

To advise Alachua County of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mguidry@alachuacounty.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Alachua County

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mguidry@alachuacounty.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Alachua County

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to mguidry@alachuacounty.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Alachua County as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Alachua County during the course of your relationship with Alachua County.