

STATE BOARD OF EDUCATION

Consent Item

November 28, 2017

SUBJECT: Release of Use Restriction; 407 SW 13th St., Gainesville, Florida

PROPOSED BOARD ACTION

Release use restriction on subject property

AUTHORITY FOR STATE BOARD ACTION

Section 1001.02, Florida Statutes

EXECUTIVE SUMMARY

On or about April 28, 1921, D. S. Graham and Eva Laura Graham conveyed title to a parcel located in Gainesville, Florida, to one Thomas Simpson. The parcel is described as follows:

Lots One and Two of Block No. Nine in that certain sub-division to the City of Gainesville, Fla. Known as University Heights, according to a plat thereof recorded in Plat Book A page 99 thereof of the Public Records of Alachua County, State of Fla.

In conveying title, the Grahams established use restrictions as follows:

The said Thomas M. Simpson party of the second part, for himself or themselves, and his or their representative heirs, executors, administrators and assigns, owners of any of the said lot or lots herein and hereby described and conveyed, covenant and agree that no buildings shall hereafter be erected on the said lot or lots herein and hereby conveyed, to be used for any offensive [sic] occupation, and that there shall not be allowed or erected on any part of said lots of land any brewery or saloon, slaughter house, forge, foundry [sic], carpenter, carriage or car shop, stores or general mercantile establishments, glue varnish or turpentine [sic] establishments, or any establishments for dressing hides, nor any theater, circus or menagerie – that the lot or lots herein and hereby described and conveyed shall be used exclusively for dwelling house purposes, and that no dwelling house shall or will hereafter be constructed upon either or any of the said lots above described and conveyed, for or [sic] less value than \$2500.00 Twenty five hundred dollars [...]

On or about May 20, 1954, Mr. Simpson and his wife deeded the above-described property, along with adjacent lots seven and nine of the same block, to the State Board of Education. The instrument reincorporates the use restrictions previously established by the Grahams.

On October 23, 1963, the State Board of Education conveyed title to the above-described parcel to Alpha Gamma Rho Chapter House Association, Inc. (hereinafter "Alpha Gamma Rho"). The conveyance describes the parcel as follows, therein repeating and reincorporating the use restrictions established by the Grahams:

Lots One, Two, Seven and Nine, in Block Nine, of University Heights Addition to the City of Gainesville, as per map thereof recorded in Plat Book "A", Page

99, of the Public Records of Alachua County, Florida, *subject to reservations and restrictions as to use appearing of record in Deed Book 114, on Page 65, of the Public Records of Alachua County, Florida.*

Presently, Alpha Gamma Rho seeks to build a new chapter house on a separate property, and has contracted to sell the above-described property in order to fund the project. In order to achieve marketable title, Alpha Gamma Rho has previously requested the release of certain use and sale restrictions on the property, which requests have been granted by the Board. However, only after submitting its previous requests has Alpha Gamma Rho discovered the additional restrictive language described herein.

This in mind, Alpha Gamma Rho seeks to remove the deed restrictions placed by the Graham-Simpson conveyance, circa 1921. Accordingly, Alpha Gamma Rho now requests that the Board release, insofar as it is able, the restrictive language encumbering title to the property. Such release would be granted only as to the Board's conveyance, and does not guarantee marketable title to the property. In order to obtain marketable title, Alpha Gamma Rho will seek similar releases from other parties named in the chain of title.

Supporting Documentation Included: Graham-Simpson Conveyance, April 28, 1921; Simpson-Board Conveyance, May 20, 1954; Board-AGR Conveyance, October 23, 1963; Corrective Instrument, February 18, 1994; and Request to Release Use Restriction, October 3, 2017

Facilitator: Matt Mears, General Counsel

Ramona M. Chance, Attorney at Law

4703 NW 53rd Ave., Suite A-1
Gainesville FL 32653-3403
(352)335-3189 FAX (352)335-4356
EMAIL ramona@chancelaw.net

October 3, 2017

Jason D. Borntreger, Esq.
Office of the General Counsel
Florida Department of Education
325 West Gaines Street, Suite 1244
Tallahassee, FL 32399-0400

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RE: Use Restriction in Deeds to Alpha Gamma Rho Chapter House Association, Inc.

Dear Mr. Borntreger:

On behalf of my client, Alpha Gamma Rho Chapter House Association, Inc., please accept this letter as a request that the Board of Education release the use restrictions recorded in Deed Book 114, Page 65 of the Public Records of Alachua County, Florida which were reimposed by being referenced in the deeds recorded in O.R. Book 253, Page 424 and O.R. Book 1874, Page 1518 from the Board of Education to Alpha Gamma Rho.

Sincerely,



Ramona M. Chance
cc: Alpha Gamma Rho

DB 114 Pg 65

D. S. GRAHAM AND WIFE

TO

WARRANTY DEED

THOMAS M. SIMPSON

THIS INDENTURE, Made this 28th day of April A. D. 1921 between D. S. Graham and wife Eva Laura Graham of the County of Levy, in the State of Florida parties of the first part, and Thomas M. Simpson of the County of Alachua in the State of Florida, part of the second part, WITNESSETH; That the said parties of the first part, for and in consideration of the sum of One Hundred Dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, to-wit;

Lots Nos. One and Two of Block No. Nine in that certain sub-division to the City of Gainesville, Fla. known as University Heights, according to a plat thereof recorded in Plat Book A page 99 thereof of the Public records of Alachua County, State of Fla.

The said Thomas M. Simpson party of the second part, for himself or themselves, and his or their representatives heirs, executors, administrators and assigns, owners of any of the said lot or lots herein and hereby described and conveyed, covenant and agree that no buildings shall hereafter be erected on the said lot or lots herein and hereby conveyed, to be used for any offensive occupation, and that there shall not be allowed or erected on any part of said lots of land any brewery or saloon, slaughter house, forge, foundry, carpenter, carriage or car, shop, stores or general mercantile establishments, glue, varnish or turpentine establishments, or any establishments for dressing hides, nor any theater, circus or magazine; that the lot or lots herein and hereby described and conveyed shall be used exclusively for dwelling house purposes, and that no dwelling house shall or will hereafter be constructed upon either or any of the said lots above described and conveyed, for or less value than \$2500.00 Twenty five hundred dollars, And the said parties of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomever.

IN WITNESS WHEREOF, the said parties of the first part hereunto set their hands and seal this the 28th day of April A. D. 1921

Signed, sealed and delivered

in our presence as witnesses

J. M. Stydstill

D. S. Graham (SEAL)

M. M. Clyatt

Eva L. Graham (SEAL)

STATE OF FLORIDA, COUNTY OF LEVY

I hereby certify that before me personally appeared D. S. Graham and Eva Laura Graham to me well known to be the individuals described in , and who signed, sealed and delivered the foregoing instrument and who acknowledged to me that they signed, sealed and delivered the foregoing instrument for the uses and purposes therein set forth and expressed. I further certify that before me personally appeared Eva Laura Graham to me well known to be the wife of D. S. Graham and the individual described in and who executed the foregoing instrument, who, being examined by me separate and apart from her husband, the said Eva Laura Graham did acknowledge before me that she executed the said instrument for the purpose of conveying and relinquishing her right of dower, separate estate, and other rights in and to the said property described in said agreement and for the purpose therein expressed, and that she executed the same freely, voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

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STATE BOARD OF EDUCATION OF FLORIDA

OFFICIAL RECORDS

253 PAGE 424

DEED NO. _____

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the State Board of Education of Florida, under authority of law, for and in consideration of the sum of Twenty Thousand Five Hundred (\$20,500.00) Dollars, to them in hand paid by AGR House Association of Gainesville, Alachua County, State of Florida, have granted, bargained and sold and do by these presents grant, bargain, sell and convey unto the said AGR House Association, its successors and assigns, the following described lands situate at the intersection of Southwest 13th Street and Southwest 5th Avenue in Gainesville, Alachua County, Florida, more particularly described as follows:

Lots One, Two, Seven and Nine in Block Nine of University Heights Addition to the City of Gainesville as per map thereof recorded in Plat Book "A," page 99 of the public records of Alachua County, Florida, subject to reservations and restrictions as to use appearing of record in Deed Book 114, on page 65 of the public records of Alachua County, Florida.

(Said property to be used exclusively for housing, feeding and other activities in connection with its use as part of the chapter house facilities of the Alpha Gamma Rho Fraternity)

TO HAVE AND TO HOLD the above granted and described premises forever.

Conditioned, however, that if, during the time hereafter while the University of Florida or its successor shall be maintained and operated at the City of Gainesville, Alachua County, Florida, the AGR House Association shall decide to sell the premises hereby conveyed, it shall and will afford to the State Board of Education a reasonable opportunity to repurchase the land hereby conveyed for the same consideration offered by any other person desirous of purchasing the same upon the same terms.

SAVING AND RESERVING unto the said State Board of Education of Florida, and their successors, title to an undivided three-fourths of all phosphate, minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with

RECORD VERIFIED
CLEAN ELECTRIC COURT
NOV 18 1964
FILED

NOTARIAL PUBLIC
STATE OF FLORIDA
COMMISSION EXPIRES 12-31-64
[Signature]

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OFFICIAL RECORDS

253 425

the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the members of said Board have subscribed their names and affixed their seals, and have caused the seal of the "DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA" to be hereunto affixed, at the Capitol, in the City of Tallahassee, on this the 22nd day of October, A. D. 1963.

[Signature] (SEAL)
Governor

[Signature] (SEAL)
Secretary of State

[Signature] (SEAL)
Attorney General

[Signature] (SEAL)
Treasurer

[Signature] (SEAL)
Superintendent of Public Instruction

ATTEST:

[Signature]
Commissioner of Agriculture

10-4-63
[Signature]

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604

STATE BOARD OF EDUCATION OF THE STATE OF FLORIDA

RECORDED
OFFICIAL RECORDS
92 SEP 17 AM 10:07

Deed Number 485

THIS CORRECTIVE INSTRUMENT IS BEING RECORDED TO CORRECT THE NAME OF THE GRANTEE IN THE DEED DATED OCTOBER 22, 1963, AND RECORDED IN DEED BOOK 253, AT PAGE 424, OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the State Board of Education of the State of Florida, under authority of law, for and in consideration of the sum of Twenty Thousand Five Hundred (\$20,500.00) Dollars, to them in hand paid by ALPHA GAMMA RHO CHAPTER HOUSE ASSOCIATION, INC., have granted, bargained and sold and do by these presents grant, bargain, sell and convey unto the said ALPHA GAMMA RHO CHAPTER HOUSE ASSOCIATION, INC., its successors and assigns, the following described lands situate at the intersection of Southwest 13th Street and Southwest 5th Avenue in Gainesville, Alachua County, Florida, more particularly described as follows:

Lots One, Two, Seven and Nine, in Block Nine, of University Heights Addition to the City of Gainesville, as per map thereof recorded in Plat Book "A", Page 99, of the Public Records of Alachua County, Florida, subject to reservations and restrictions as to use appearing of record in Deed Book 114, on Page 65, of the Public Records of Alachua County, Florida.

(Said property to be used exclusively for housing, feeding and other activities in connection with its use as part of the chapter house facilities of the Alpha Gamma Rho Fraternity).

TO HAVE AND TO HOLD the above granted and described premises forever.

Conditioned, however, that if, during the time hereafter while the University of Florida or its successor shall be maintained and operated at the City of Gainesville, Alachua County, Florida, the Alpha Gamma Rho Chapter House Association, Inc. shall decide to sell the premises hereby conveyed, it shall and will afford to the State Board of Education a reasonable opportunity to repurchase the land hereby conveyed for the same consideration offered by any other person desirous of purchasing the same, upon the same terms.

SAVING AND RESERVING unto the said State Board of Education of Florida, and their successors, title to an undivided three-fourths of all phosphate, minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with the privilege to mine and develop the same.

Doc. St. Amt. \$ 0.60
A. Curtis Powers, Clerk of Circuit Court
Alachua County - By *Jean S. White*

PAGE ONE OF TWO PAGES

1156352

92-1874 PG 1518

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BRYANT, MILLER AND OLIVE, P.A.
SUITE 900
201 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301

RETURN TO

Page Two of Deed Number 485. Corrective Instrument to Deed dated October 22, 1963, recorded in Deed Book 253, at Page 424, of the Public Records of Alachua County, Florida.

IN TESTIMONY WHEREOF, the members of said Board have subscribed their names and affixed their seals, and have caused the seal of the Board of Trustees of the Internal Improvement Trust Fund to be hereunto affixed; at The Capitol, in the City of Tallahassee, on this, the 18th day of February, 1992.

(SEAL)
BOARD OF TRUSTEES OF
THE INTERNAL IMPROVEMENT
TRUST FUND OF THE STATE
OF FLORIDA



[Signature]
GOVERNOR

[Signature]
SECRETARY OF STATE

[Signature]
ATTORNEY GENERAL

[Signature]
COMPTROLLER

[Signature]
TREASURER

[Signature]
COMMISSIONER OF AGRICULTURE

[Signature]
COMMISSIONER OF EDUCATION

Approved as to Form
and Legality

By: *[Signature]*
DNR Attorney

As and Constituting the
STATE BOARD OF EDUCATION OF THE STATE OF FLORIDA

PAGE TWO OF TWO PAGES

APPROVED AS TO FORM, BUT LEGALITY
SUBJECT TO EXECUTION BY ALL PARTIES
OFFICE OF THE GENERAL COUNSEL
FLORIDA BOARD OF EDUCATION

[Signature]

CR 1874 PG 1519

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