

SETTLEMENT AND FORBEARANCE AGREEMENT

THIS SETTLEMENT AND FORBEARANCE AGREEMENT (“Agreement”) is made and entered into on this _____ day of _____ 2017, by and between ALACHUA COUNTY, FLORIDA, a political subdivision of the State of Florida (“County”) and the CITY OF GAINESVILLE, a municipal corporation (“City”).

RECITALS:

WHEREAS, on or about October 3, 1981, Alachua County executed a deed (herein, “1981 deed”) for Alachua County Tax Parcel #16005-000-000 (herein, “Original RTS Property”), located at 100 S.E. 10th Avenue, Gainesville, Florida 32601, in favor of the City of Gainesville for the purpose of operating a regional transit system; and

WHEREAS, according to the terms of the 1981 deed, executed on October 3, 1981, and recorded on January 7, 1983 in Alachua County Official Records Book 1457, Page 108, attached hereto and incorporated as Exhibit A, the title to the Original RTS Property would revert to the County immediately if the City ceased using the property for the operation of a regional transit system; and

WHEREAS, on April 22, 2016, Alachua County filed a Complaint for Recovery of Real Property and Motion for Emergency Injunction to Prevent Spoliation of Evidence naming the City as Respondent in the Eighth Judicial Circuit Court, Case No. 2016 CA 001445 (herein, the “Litigation”); and

WHEREAS, in an effort to resolve the conflict without the expense and risk of litigation, Alachua County and the City of Gainesville agreed to follow the procedure of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes; and

WHEREAS, the City Manager and County Manager conducted a conflict assessment meeting in accordance with Section 164.1053, Florida Statutes, and reached a tentative resolution of the Litigation, subject to agreement of the details, drafting of a settlement agreement and other documents, and subject to approval of the two governing bodies; and

WHEREAS, the Alachua County Board of County Commissioners and the Gainesville City Commission have approved this Settlement and Forbearance Agreement that embodies the entire agreement of the Parties resolving the Litigation; and

WHEREAS, this Settlement and Forbearance Agreement is in the best interests of the citizens of the City of Gainesville and Alachua County in that it conserves public resources, allows the City of Gainesville to continue to manage and determine present and future use of the Original RTS Property in a way that it deems most beneficial, and increases and improves the quality of conservation and recreation lands owned and managed by the County.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and City (collectively, the "Parties"), intending to be legally bound, agree as follows:

1. **Recitals.** The above-referenced recitals are true and correct and are hereby incorporated into this Agreement for all purposes.

2. **Terms of Agreement.** In connection with the Parties' mutual execution of this Agreement and the covenants and terms herein, the Parties agree as follows.

A. The City agrees to:

1. Within 5 calendar days following the effective date of this Settlement and Forbearance Agreement, provide termination notice to Gator Bowman in accordance with an Agreement for Use of Archery Range Property dated November 1, 2003, and First Amendment dated June 18, 2004; and
2. Following the termination notice to Gator Bowman, as required by Section 2A1, above, but no later than 10 calendar days following the effective date of this Settlement and Forbearance Agreement, execute and record in the Official Records of Alachua County a special warranty deed from the City to the County transferring title to Alachua County Tax Parcel # 07341-000-000, located at 10404 S.W. Williston Road, Gainesville, Florida 32618, just northwest of the junction of Williston Road and Wacahoota Road (herein, the "Williston-Wacahoota Property"), and more particularly described in the Warranty Deed dated May 17, 1966, and recorded on June 21, 1966 in Alachua County Official Records Book 389, Page 203, attached hereto as Exhibit B. The Williston-Wacahoota Property is subject to a Utility Easement recorded in the Alachua County Official Public Records Book 2922, Page 172; and
3. Indemnify, release and hold harmless the County for, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' and consultants' fees and disbursements and investigations for any and all environmental, health and safety liability, past, present or future, for Alachua County Tax Parcel #16005-000-000, located at 100 SE

10th Avenue, Gainesville, Florida, and more particularly described in the Warranty Deed dated October 3, 1981 and recorded on January 7, 1983 in the Alachua County Official Records Book 1457, Page 108 (herein, the "Original RTS Property"), including but not limited to the National Environmental Policy Act; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; and any similar federal, state or local laws; ordinances or regulations implementing such laws; liability or obligation arising under common law or under any local, state or federal environmental statute, regulation or ordinance; and

4. Accept all responsibility and liability for any and all Federal Transit Administration liens encumbering the Original RTS Property and any other lien encumbering the Original RTS Property existing on the effective date of this Settlement and Forbearance Agreement.

B. The County agrees to:

1. Within 10 calendar days following the effective date of this Settlement and Forbearance Agreement, execute and record in the Official Records of Alachua County a quit claim deed to the City releasing and extinguishing any interest the County has in the Original RTS Property (including the reversionary interest) and transferring the County's entire interest in the Original RTS Property to the City; and
2. Indemnify, release and hold harmless the City for, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' and consultants' fees and disbursements and investigations for any and all environmental, health and safety liability, past, present or future, for the Williston-Wacahoota Property, including but not limited to the National Environmental Policy Act; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; and any similar federal, state or local laws; ordinances or regulations implementing such laws; liability or obligation arising

under common law or under any local, state or federal environmental statute, regulation or ordinance; and

3. Within five calendar days following the recording of last of the deeds as required by Sections 2A2 and 2B1 above, the County shall file a Notice of Voluntary Dismissal with Prejudice as to the City in the Litigation.

3. **Scope of Agreement.** The Parties' obligations and rights under this Agreement are expressly made contingent upon the approval of this Agreement by the Alachua County Board of County Commissioners ("BOCC") and the City of Gainesville Commission ("City Commission"). In the event that either the BOCC or the City Commission does not approve this Agreement on or before March 1, 2017, this Agreement shall be null and void and the Parties shall retain all of their rights to continue with the Florida Governmental Conflict Resolution process and Litigation.

4. **Authority.** Both Parties represent and warrant, with respect to themselves, that the execution and delivery of this Agreement has been authorized by all necessary action of each Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms.

5. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Alachua County, Florida.

6. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, representatives, bankruptcy trustees, affiliates, officers, directors, and members of the Parties.

7. **Non-Waiver.** Failure by the Parties to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the Parties, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein. Any Party's waiver of any breach of this Agreement or forbearance from action shall not be a continuing waiver or a waiver of any other breach of this Agreement.

8. **Mutual Releases.**

- A. The County hereby waives and releases, acquits, satisfies, and forever discharges the City, including any elected officials, officers, directors, shareholders, managing members, and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which the County ever had or now has, in law or in equity, for, upon, or by any reason of any matter, cause, or thing

whatsoever in direct connection with any claim raised by any Party in the Litigation as of the date of this Agreement. In addition, and without waiving the generality of the foregoing, the County covenants with and warrants to the City, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets by the County against the City, with regard to any claim raised by any Party in the Litigation or relating to the Petition that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.

B. The City hereby waives and releases, acquits, satisfies, and forever discharges the County, including any elected officials, officers, directors, shareholders, managing members, and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which the City ever had or now has, in law or in equity, for, upon, or by any reason of any matter, cause, or thing whatsoever in direct connection with any claim raised by any Party in the Litigation as of the date of this Agreement. In addition, and without waiving the generality of the foregoing, the City covenants with and warrants to the County, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets by the City against the County, with regard to any claim raised by any Party in the Litigation or relating to the Petition that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.

C. These releases shall become effective only upon the BOCC and the City Commissions' approval of this Agreement.

9. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs, time, and uncertainty associated with the Litigation and to arrive at a fair and reasonable agreement with regard to the Parties' dispute. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.

10. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases

not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder," and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

11. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.

12. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.

13. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

14. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.

15. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted in the Litigation, and expressly deny any and all such liability. The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, agreement, or other legal duty of any nature whatsoever. Rather, this Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Agreement in a spirit of cooperation

for the purpose of ending the Litigation and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Agreement is part of a mediated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.

16. **Attorneys' Fees; Costs.** The Parties expressly agree to bear the fees and costs of their respective counsel, experts, and consultants in the Litigation and in the preparation of this Agreement, and the Parties expressly waive any and all rights to pursue an award of attorneys' fees and costs in the Litigation.

17. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

(a) To the County:

Dr. Lee A. Niblock, County Manager
Alachua County
12 S.E. 1st Street
Gainesville, Florida 32601

With a copy to:

Michele L. Lieberman, Esquire
County Attorney
12 S.E. 1st Street
Gainesville, Florida 32601

(b) To the City:

Anthony Lyons, City Manager
City of Gainesville
200 East University Ave
Gainesville FL 32601

With a copy to:

Nicholle Shalley, Esquire
City Attorney
200 East University Ave
Gainesville FL 32601

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

17. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

18. **Effective Date**. This Agreement shall become effective upon the date of execution by the last of the Parties.

19. **Waiver of Jury Trial**. The Parties hereby knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any claims arising in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner sufficient to bind them on the day and year identified above.

Signed, sealed, and delivered before me:

ALACHUA COUNTY:

Recommended for Approval:

By: 

Dr. Lee A. Niblock
County Manager

Date: 2/09/17

BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA

By: _____

Ken Cornell, Chair

Date: _____

ATTEST

J. K. "Jess" Irby, Clerk


APPROVED AS TO FORM


County Attorney

(SEAL)

CITY OF GAINESVILLE:

Recommended for Approval:

By: 
Anthony Lyons
City Manager
Date: 2-9-17

CITY OF GAINESVILLE, FLORIDA

By: _____
Lauren Poe, Mayor
Date: _____

ATTEST

Kurt Lannon, Clerk of the Commission

APPROVED AS TO FORM AND LEGALITY



City of Gainesville Attorney

(SEAL)

276
01-91

D E E D

THIS DEED, made this 3rd day of October, A.D., 1981, by Alachua County, Florida, a political subdivision of the State of Florida, party of the first part, and the City of Gainesville, a Florida municipal corporation, party of the second part;

W I T N E S S E T H:

That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, to it in hand paid by the party of the second part, receipt of which is hereby acknowledged, has granted, bargained, and sold to the party of the second part, its successors and assigns forever, all such interest as the County may have in the following described land, lying and being in Alachua County, Florida, to wit:

SEE ATTACHMENT "A".

This conveyance is subject to the interest of the United States Department of Transportation acquired under UTA Grant No. FL-03-0024, and shall be disposed of pursuant to OMB Circular A-102 should this property ever revert to the party of the first part.

PROVIDED, HOWEVER, this land and the improvements thereon is deeded to the City of Gainesville, party of the second part, to be used in the operation of a regional transit system. This conveyance is made subject to and upon the express condition that, should the City of Gainesville, party of the second part, cease to use the foregoing land and improvements thereon, in the operation of a regional transit system, then and in that event, the title to said property shall immediately revert to Alachua County, Florida, party of the first part, subject to the interest of the United States Department of Transportation.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairman of said Board, the day and year first above-written.

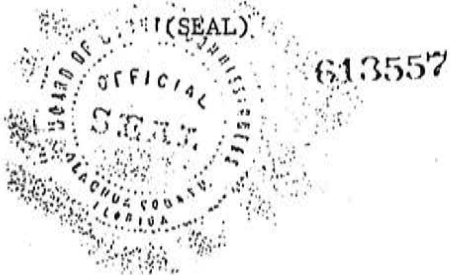
DOC. ST. - AMT \$0.45
A. CURTIS POWERS, Clerk of Circuit Court
Alachua County - by *J. S. ...*

ALACHUA COUNTY, FLORIDA

By: *Jack Durrance*
Jack Durrance, Chairman
Board of County Commissioners

ATTEST:

A. Curtis Powers
A. Curtis Powers, Clerk



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PREPARED BY
DENNIS R. ...
ASSISTANT COUNTY ATTORNEY
POST OFFICE BOX ...
GAINESVILLE, FL 32602

FILED
OCT 7 1981
CLERK OF CIRCUIT COURT
ALACHUA COUNTY

A tract of land situate in Sections 8 and 9, Township 10 South, Range 20 East, Alachua County, Florida, said tract of land being more particularly described as follows:

COMMENCE at the N.E. corner of the lot of land conveyed to Pearle Avera by A. Avera, Estelle Avera, and Drayton Avera, and run S 42 deg. 43 min. 08 sec. W, 230.00 feet to the point of beginning; thence continue S 42 deg. 43 min. 08 sec. W, 746.00 feet; thence run S 45 deg. 08 min. 56 sec. E, 220.50 feet; thence run N 68 deg. 39 min. 26 sec. E, 40.00 feet; thence run N 42 deg. 53 min. 00 sec. E, 611 feet; thence run N 23 deg. 10 min. 10 sec. W, 262.50 feet to the point of beginning, said tract of land containing 3.811 acres, more or less.

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APPROVED AS TO FORM:


Alachua County Attorney

Approved as to form and correctness

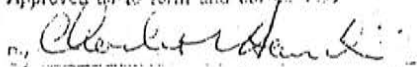

Clerk

Exhibit B

7341

123
240.00
95.00

WARRANTY DEED

THIS WARRANTY DEED, made this 17th day of May, A. D. 1966,
between Myrl J. Hanes and wife, Ann S. Hanes,

of the County of Alachua and State of Florida, hereinafter called Grantors, and
City of Gainesville, a municipal corporation,
Mail

whose post office address is: c/o City Hall, Gainesville,
of the County of Alachua and State of Florida, hereinafter called Grantee,

WITNESSETH, that the Grantors, for and in consideration of the sum of Ten and NO/100
-----Dollars, and other valuable considerations, the receipt of which is hereby acknowledged have granted, bargained and sold, aliened, remised, released, transferred, conveyed, and confirmed, and by this deed do grant, bargain and sell, alien, remise, release, transfer, convey, and confirm the Grantee, its successors and assigns in fee simple forever, the following described land situate in the County of Alachua and State of Florida, more particularly described as follows:

All of Fractional Section 3, Township 11 South, Range 19 East, lying west of the old right-of-way line of Tampa and Jacksonville Railroad, and less twenty acres in the southwest corner of said section, the same being a square with sides of 934 feet, and less that portion of Gainesville Oaks Subdivision recorded in Plat Book "B", pages 43 and 44, of the public records of Alachua County, Florida, lying north of the south line of Poinsettia Avenue, and less also the street designated on said Gainesville Oaks Plat as Beauregarde Avenue, containing 200 acres, more or less.
Subject to rights-of-way and Easements of record, and subject to taxes for the year 1966 and subsequent years.

FILED
1966 JUN 21 PM 1:19
RECORD VERIFIED
CLERK CLERK COURT
ALACHUA COUNTY, FLA.

ALACHUA COUNTY
STATE OF FLORIDA DOCUMENTARY STAMP TAX
JUN 21 1966
COMPTROLLER P.B. 190149 4200
FLORIDA STAMP TAX 9900
FLORIDA STAMP TAX 9900

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns in fee simple forever.

AND THE GRANTORS DO HEREBY COVENANT with the Grantee that the Grantors are lawfully seized of those premises, that they are free of all encumbrances, except as herein noted, and that the Grantors have good right and lawful authority to sell the same; and the Grantors do hereby fully warrant the title to that land, and will defend the same against the lawful claims of all persons whomsoever.

Signed, sealed and delivered in our presence as witnesses:

[Signatures]
..... (SEAL)
..... (SEAL)
..... (SEAL)
..... (SEAL)

STATE OF FLORIDA
COUNTY OF ALACHUA

Personally appeared before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, Myrl J. Hanes and Ann S. Hanes

to me known to be the persons described as Grantors in and who executed the foregoing instrument and acknowledged before me that said persons executed the same.

WITNESS my hand and official seal on this 17th day of May

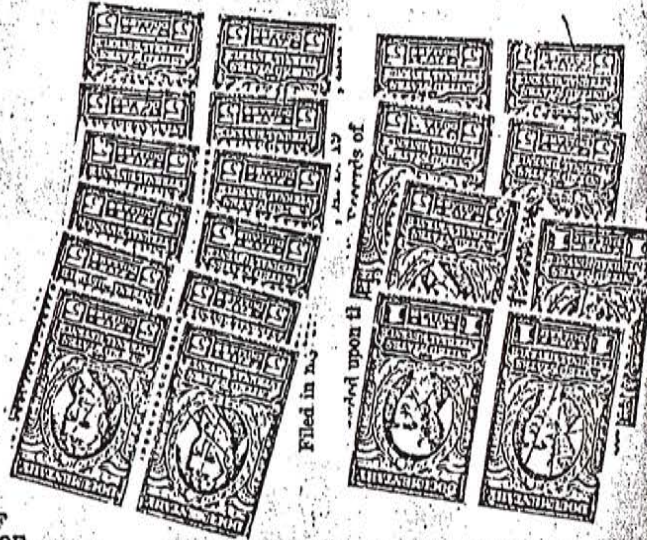
Notary Public, State of Florida at Large
My Commission Expires Aug. 25, 1969

My Commission Expires:.....
Issued By American Ins & Casualty Co.

Jean S. ...
NOTARY PUBLIC



WARRANTY DEED



Filed in No. 17
of records of

FAGAN, CROUCH & ANDERSON
212 S.E. First Street
Gainesville, Florida

Record _____
State _____
Federal _____
Total _____

STATE OF
COUNTY OF

I HEREBY CERTIFY that on this _____ day of _____ A. D. 19____
before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take
acknowledgments, personally appeared

to me known to be the persons described as _____ President and
respectively, of the corporation named as grantor in the foregoing deed, and acknowledged before me
that those persons executed the foregoing instrument in the name of and on behalf of that corporation,
affixing the corporate seal of that corporation thereto; and that as such corporate officers those persons
are duly authorized by that corporation to do so; and that the foregoing instrument is the act and
deed of that corporation.

WITNESS my hand and official seal the day and year above written.

My Commission Expires:.....

NOTARY PUBLIC