

Phi Delta Theta Foundation Chapter Housing Grant Program

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For more information about the Chapter Housing Grant Program, please contact:

**Robert A. Biggs
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Oxford, OH 45056
513.523.6966
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bob@phideltatheta.org**

Phi Delta Theta Foundation Chapter Housing Grant Program

Is your house corporation facing the dilemma of an aging chapter house that needs major renovation or maybe even replacement of the existing structure? If the answer to that question is yes, then the Phi Delta Theta Foundation may be able to help.

If your house corporation is like most other house corporations across the country, it is not eligible to receive tax-deductible contributions for a chapter house. This may come as a surprise for some members on your board because many people believe that any non-profit organization can receive tax-deductible contributions. That is a misconception that can prove very costly.

Based on a ruling received by the Internal Revenue Service, the Foundation can give direct grants in support of the purely educational areas of chapter houses. Under certain circumstances, this means that your chapter's alumni are able to make tax-deductible contributions to the Foundation, which are then earmarked for your chapter's house construction or renovation project.

Purely educational areas include:

Study Rooms	Libraries
Computer Rooms	Drafting & Educational Work Rooms
Leadership Training Rooms	Educational Storage Rooms

In addition, the grant may also be used to provide furniture, such as desks, conference tables, bookcases, equipment and other educational materials for these educational areas.

Here is an example of how the program works:

Assume your house corporation has decided to build a new chapter house and the total cost for the project is \$1,000,000. After consultation with the Foundation, the architect and tax counsel, it is determined that 35% of the square footage of the new chapter house qualifies as educational space. (The percentage will vary from project to project based upon the building design.)

\$1,000,000	Total Cost
<u> x 35%</u>	Educational %
\$ 350,000	Max. Amount of Contributions Eligible for Housing Grant Program

In this example, \$350,000 in contributions can be given directly to our Foundation and then earmarked for your project. Once construction is underway, the Foundation will grant the \$350,000 back to the house corporation. This is purely a grant and not a loan. The alumni who contributed the \$350,000 can claim a full tax-deduction, up to the maximum allowed by law, for their contributions.

The remaining \$650,000 must be provided through a combination of non-tax-deductible contributions, loans through the Walter B. Palmer Fund and/or through other lending institutions.

For more information about the Chapter Housing Grant Program, please contact:

Robert A. Biggs
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 Oxford, OH 45056
 513.523.6345
 513.523.9200 Fax
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**Phi Delta Theta Foundation
Chapter Housing Grant Program
Information Required to Participate in This Program**

1. Architect's plans showing each floor and room dimensions. (Reduced plans are preferable.)
2. Current Articles of Incorporation, Bylaws and Internal Revenue Service letter of exemption for the House Corporation.
3. List of current Officers and Directors of the House Corporation.
4. Name and narrative description as to the proposed use of each room.
5. Square footage, broken down by each floor and room.
6. Complete budget, broken down into construction costs, furnishings and fixtures costs. The furnishings and fixtures costs should be further divided into those for educational versus non-educational spaces.
7. Evidence that 10% or more of the undergraduate population on the campus involved belongs to fraternities or sororities, and 5% or more of such undergraduate population lives in chapter houses. (If your campus does not meet these criteria, discuss the specific situation with the Foundation President.)
8. A letter signed by an appropriate university official evidencing general support of the project. (See attached sample.)

{TO BE RETYPED ON UNIVERSITY LETTERHEAD}

(Date)

Phi Delta Theta Foundation
c/o Robert A. Biggs, President
2 South Campus Avenue
Oxford, OH 45056

Gentlemen:

We understand that _____ (the “House Corporation”) is engaged in a housing project to remodel and enhance the housing it provides for the members of the _____ chapter of Phi Delta Theta Fraternity on this campus. We also understand that your Foundation plans to make a grant to the House Corporation to fund certain expenses incurred in connection with the educational spaces in the house, and that in that regard you have requested this letter.

Based upon the above understanding, we hereby acknowledge, as a matter of policy, on behalf of the University, the following;

The University is committed to providing facilities for individual and group study, library facilities, and/or educational equipment (including the provision of computer and internet access in University dormitories and other buildings) to students living both on and off its campus. The educational facilities at the chapter house, including study rooms, library facilities, and/or specialized areas, such as computer rooms and housewide computer and internet access, drafting rooms, laboratories or other instructional areas, are similar in nature to those provided by the University. As a result, the provision of these additional facilities will:

- (1) relieve the University of the burden of providing such facilities to students who are members of the chapter;
- (2) supplement the resources of the University by providing additional equipment and facilities; and
- (3) alleviate the current use of the University’s existing facilities by providing an alternative source for members of the chapter and guests.

We also wish to confirm that _____% of our undergraduate population belongs to a fraternity or sorority, and _____% of our undergraduate population resides in a fraternity or sorority chapter house.

Sincerely yours,

(Signed by an Authorized University Official)

EDUCATIONAL AREA GRANT AGREEMENT

The Phi Delta Theta Foundation (hereinafter "Foundation") agrees to make a Grant in the amount determined below to _____ (hereinafter "House Corporation") for the development of certain educational areas through the construction of a building used by the _____ Chapter of the Phi Delta Theta Fraternity (hereinafter "Chapter") and particularly identified in Exhibit 3 (hereinafter "Building"), subject to the following express conditions:

Sec. 1. **In General.**

Sec. 1.1 The Grants shall be used by the House Corporation exclusively to fund expenses directly attributable or allocable to the purposes specified in Section 2 below. Payments from the Grant funds may be made during construction of the Building upon the House Corporation's written request to fund Building Construction Costs (as defined in Exhibit 1), subject to the limitations specified in Section 3.1 below. The Foundation's Grant may take the form of cash funds or in-kind provision for specified educational facilities pursuant to direct contract with third party contractors by the Foundation in which the House Corporation shall cooperate, subject always to the limitations set forth in Section 3 hereof.

Sec. 1.2 Payments from the Grant funds may be made to purchase Educational Equipment, Educational Materials and Fire Safety Equipment (all as defined in Exhibit 1) upon written request of the House Corporation, which request shall describe the educational use or function thereof, up to the amounts specified in Section 3.2 below.

Sec. 1.3 An additional amount of the Grant may be set aside in a separate fund, the income from such amount shall be used by the House Corporation to pay for the operating costs attributable to the Educational Area subject to the conditions and limitations specified in Section 3.3 below.

Sec.2. Use of Grant.

The Grant shall be used exclusively for the construction, operation and maintenance of Educational Areas of the Building, and for the provision of Educational Equipment, Educational Materials and Fire Safety Equipment (all as defined in Exhibit 1, attached).

Sec.3. Amount of Grant.

Sec.3.1 The amount of the Grant allocable to the Building Construction Costs shall be determined by multiplying the total Building Construction Costs by a fraction, the numerator of which shall be the square footage of the Building used as Educational Areas, and the denominator of which shall be the total square footage of the entire Building. This fraction is summarized and calculated on Exhibit 4. The portion of the Grant used for Building Construction Costs shall not exceed \$ _____ based upon a construction budget of \$ _____.

Sec.3.2 A portion of the Grant may also be used for the purchase of Educational Equipment, Educational Materials and Fire Safety Equipment. The portion of the Grant for these items shall not exceed \$ _____.

Sec.3.3 A portion of the Grant also may be segregated and then in income or, if the Foundation adopts a spending policy providing a distribution standard in lieu of net income, the amount determined in accordance with such policy, shall be used for the operating costs attributable to the Educational Areas, subject to the following limitations:

3.3.1 Payments of Grant funds for real estate taxes, casualty and liability insurance premiums, utility costs and any other operating costs which cannot be directly attributable or allocable to any specific area of the Building shall not exceed the amount determined by multiplying the total of such cost by a fraction, the numerator of which shall be that portion of the square footage of the Educational Areas, and the denominator of which shall be the total square footage of the entire Building. This fraction is summarized and calculated on Exhibit 4.

3.3.2 Payments of Grant funds may be used for personal property taxes assessed on Educational Materials and Educational Equipment and any other operating costs which are directly attributable and allocable to such Educational Areas, including, but not limited to, regular recurring maintenance expenses (e.g., those incurred for the painting of Educational Areas) and regular expenses related to computer networking equipment and Internet Wiring throughout the Building.

3.3.3 No part of this fund may be used by the House Corporation without the Foundation's prior approval in writing acknowledging that such funds will be used exclusively for educational purposes.

Sec. 4. **Exclusive Use .**

No part of the Educational Areas or of the Educational Equipment and Educational Materials shall be used for any other purpose than those described in Exhibit 2, such as for dining, sleeping, social, recreational or fraternal purposes (except for minor social or recreational uses such as a reception held in a library).

Sec. 5. **Record Keeping.**

Sec. 5.1 The House Corporation agrees to deposit all Grant funds in a separate fund and to maintain its books and records in such a way that such Grant funds will be shown separately on the House Corporation's books. Expenses made in furtherance of the educational purposes specified in Sections 2 and 3 shall be charged against the Grant funds. The House Corporation will maintain records for such expenditures adequate to identify the funds for the percentage of the Building Construction Costs attributable to the Educational Areas, as determined under Section 3.1. The House Corporation also will maintain separate records to identify the purchase of Educational Equipment, Educational Materials and Fire Safety Equipment, as well as the principal and income of the Grant described in Sections 1.3 and 3.3.

Sec. 5.2 If any part of the Grant funds are paid over by the House Corporation to the Chapter to cover any part of the expenses for which the Grant was made, as opposed to the House Corporation directly paying for such expenses, then the Chapters shall also

maintain a separate fund to pay for such costs and such funds shall be subject to the same record keeping requirements as are applicable to the separate fund of the House Corporation under Section 5.1.

Sec.6. **Reports to the Foundation.**

Sec.6.1 With respect to all Grant funds paid to the House Corporation under Section 3.1 of this Agreement, the House Corporation shall provide the Foundation with semi-annual reports showing the use of such funds for the construction of the Building in a manner consistent with the allocations described in Section 3.1. Upon completion of the construction of the Building, the House Corporation shall, within 90 days of such completion, provide a report to the Foundation certifying that the Grant funds used for Building Construction Costs have not exceeded the authorized amount described in Section 3.1.

Sec.6.2 During the construction period, and thereafter until all funds available under this Agreement have been paid in full to the House Corporation, the semi-annual reports required under this section shall include financial information on all Educational Equipment, Educational Materials and Fire Safety Equipment purchased for use in the Educational Areas of the Building.

Sec.6.3 The House Corporation shall also provide the Foundation with an annual report as to that portion of the Grant described in Sections 1.3 and 3.3 that has been allocated for the operating costs of the Educational Areas. Such reports shall indicate the amount of this fund at year-end, the annual income produced by this fund, and the expenses charged to it during the year.

Sec.6.4 After completion of the construction of the Building, the Chapter and the House Corporation shall provide the Foundation with semi-annual reports in order to assure the Foundation that the activities carried on in the Educational Areas are educational in nature and to enable the Foundation to monitor the use of such areas for educational purposes. Such reports shall include descriptions of all conferences, meetings, seminars, instructional activities, etc., that have taken place in the Educational

Areas during the period. Such reports shall also include a certification by the President of the Chapter that the Educational Areas of the Building and the Educational Equipment and Educational Materials used in those areas have not been used for non-educational purposes or activities, such as for dining, sleeping, social, recreational or fraternal purposes, except for minor social or recreational use.

Sec. 7. **Repayment.**

Sec. 7.1 The House Corporation or the Chapter must repay to the Foundation any portion of the Grant which is not used for the educational purposes specified in Section 2.

Sec. 7.2 Should any part of the Educational Areas financed under this Agreement cease to be used exclusively for the purposes specified in Exhibit 2 or should any part of the Grant exceed the amount determined in Section 3, that portion of the Grant allocated to any Educational Area that is not used exclusively for educational purposes, or that exceeds the amount determined in Section 3, must be repaid to the Foundation. Moreover, the payments made from that portion of the Grant described in Sections 1.3 and 3.3 for the operating costs allocable to the Educational Areas, if any, shall be reduced proportionately, the amount of the Grant being segregated at that time shall be reduced in the same proportion, and such reduced amount shall be repaid to the Foundation. Notwithstanding the above, the House Corporation shall have 30 days from the date of written notice by the Foundation to the House Corporation that such a situation has been found to exist, to correct the situation, and if it does not do so within the 30 day period, it must so repay the Foundation.

Sec. 8. **Monitoring of Use of Grant Proceeds.** The House Corporation and the Chapter shall cooperate with, and provide access to the premises to, representatives of the Foundation making periodic visits and inspections to monitor the use of the Educational Areas. The House Corporation and the Chapter shall also make their financial records freely available to the Foundation, either in connection with the inspection of its representatives or upon request.

Signature Page Follows

PHIDELTATHETAFOUNDATION

By: _____

[THEHOUSECORPORATION]

By: _____

[THECHAPTER]

By: _____

DateofthisAgreement: _____

EXHIBIT 1

DEFINITIONS

- a) **Building.** The Building means the building owned by the House Corporation, used by the Chapter, and more particularly identified on the architectural plans attached as Exhibit 3 to this Agreement.
- b) **Building Construction Costs.** The term Building Construction Costs means the cost of constructing the Building. The term includes, but is not limited to, the cost of architectural plans and specifications, acquisition of the site, demolition of any existing structure, general site work, foundation work, framework and exterior finish, the roof, insulation, drywall, mechanical and electrical, landscaping, interest and taxes during construction, and other similar costs, and the installation of Fire Safety Equipment.
- c) **Educational Areas.** In general, the term Educational Areas means the area in the Building used exclusively for educational purposes, except for minor social or recreational use. The specific Educational Areas of the Building are more particularly described and identified in the summary description attached as Exhibit 2 to this Agreement and on the architectural plans attached as Exhibit 3 to this Agreement.
- d) **Educational Equipment.** The term Educational Equipment means personal property and fixtures used in the Educational Areas. The term includes, but is not limited to: (i) furniture, such as desks, conference tables, bookcases, and other furniture or equipment used in Educational Areas; (ii) computers and printers; (iii) laboratory and science equipment; (iv) other equipment used for the study of such disciplines as engineering, architecture, graphic design and fine arts; and (v) audio and visual equipment. Educational Equipment shall also include desks, chairs and computers in student rooms.
- e) **Educational Materials.** The term Educational Materials shall include reference materials, course books, general literature, historical memorabilia, and other materials having an educational purpose and that are used in the Educational Areas.

- f) **Internet Wiring** .The term Internet Wirings shall include the installation, configuration and maintenance of a house-wide computer network and a house-wide wiring to allow for internet access.
- g) **Fire Safety Equipment** .The term Fire Safety Equipments shall include fire alarms, smoke detectors and internal sprinklers systems installed for any of the Educational Areas.

EXHIBIT 2

DESCRIPTION OF EDUCATIONAL AREAS

[SAMPLE ONLY]

Study Room (474 square feet) The Study Room will be located in the basement of the Building and will be used exclusively as a quiet study area for individuals and small group projects. It will be furnished with tables and chairs and will be wired to support access to the University mainframe/network and the Internet. The Study Room will be used exclusively for charitable and educational purposes (except minor social and recreational use).

Library (654 square feet) The Library will be located on the first floor of the Building and will be used exclusively as a library as well as a quiet study area for students. It will be furnished with bookshelves, tables and chairs and will be wired to support access to the University mainframe/network and the Internet. The Library will be used exclusively for charitable and educational purposes (except minor social and recreational use).

Computer Room (62 square feet) The Computer Room will be located on the first floor of the Building and will be used exclusively as computer lab for students. It will be furnished with two computers, a work table and two task chairs and will be wired to support access to the University mainframe/network and the Internet. The Computer Room will be used exclusively for charitable and educational purposes (except minor social and recreational use).

Study Rooms (2,770 total square feet) There will be seventeen Study Rooms located throughout the Building which will be used exclusively as private study rooms for resident members. They will be equipped with study carrels and chairs and will be wired to support access to the University mainframe/network and the Internet. The Study Rooms will be used exclusively for charitable and educational purposes (except minor social and recreational use).

SUMMARY

Floor	EducationalArea	Purpose	SquareFootage
Basement	StudyRoom	IndividualandGroup Study/Projects	474SquareFeet
	StudyRoom	IndividualStudyArea	237SquareFeet
FirstFloor	Library	LibraryandStudyArea	654SquareFeet
	ComputerRoom	ComputerLab	62SquareFeet
	StudyRooms	IndividualStudyAreas	237SquareFeet
SecondFloor	StudyRooms	IndividualStudyAreas	1,1 48SquareFeet
ThirdFloor	StudyRooms	IndividualStudyAreas	1,1 48SquareFeet
	TotalofEducationalAreas		3,960SquareFeet

EXHIBIT3

ARCHITECTURALPLANSFORTHEBUILDING

EXHIBIT 4

ALLOCATION OF BUILDING CONSTRUCTION COSTS

Total Square Feet of Educational Areas* 3,960 square feet
Total Square Feet of Building 6,740 square feet

Allocation of Construction Costs to Educational Areas as

$$\frac{3,960 \text{ square feet}}{6,740 \text{ square feet}} = 58.8\%$$

*This includes 5,666 square feet of floor space but does not include the support areas of the Buildings such as restrooms, hallways, boiler room, foyer, stairways and storage areas. With these areas included, the total square footage of the Building is 11,645 square feet.

PHIDELTATHETA FOUNDATION
UNIFORM GRANT PROCEDURES FOR EDUCATIONAL AREA GRANT PROGRAM

Sec.1.Purpose.

The purpose of these procedures is to establish an Educational Area Grant Program and to set forth the requirements under this Program for making grants to local house corporations affiliated with Phi Delta Theta Fraternity to be used exclusively for the construction of Educational Areas in local chapter houses, including the purchase of Educational Equipment, Educational Materials and Fire Safety Equipment, the installation of Internet Wiring, and the establishment of an Operating Fund.

Sec.2.Educational Areas.

The term "Educational Area" shall be limited to (1) study rooms; (2) libraries; (3) computer rooms; (4) drafting and educational work rooms; (5) leadership training rooms; and (6) storage rooms for educational materials and equipment, as defined below.

Sec.3.Definition of Educational Areas.

Sec.3.1 Study Rooms

Study rooms must be used exclusively for individual study or group study projects. Each study room must be equipped with desks for individual use and/or conference tables for small group study projects. If practical, study rooms should be cabled and wired to support computer workstations.

Sec.3.2 Libraries

Libraries must be used exclusively for individual study or group study projects. In addition to facilities for maintaining books, reference works, and course materials, libraries should also have desks, tables, or carrels for individual study by persons using the library.

Sec.3.3 Computer Rooms.

Computer rooms must be used exclusively for individual study or group study projects. These rooms will be equipped with desks or tables, shelves or cabinets, computers, and

other equipment to permit tie-ins to study rooms and libraries, as well as university computer facilities where feasible.

Sec.3.4 Drafting and Educational Work Rooms

Drafting and educational workrooms must be used exclusively for individual study or group study projects. These rooms will have equipment and study areas for students in engineering, architecture, graphic design, and fine arts, and may also have laboratory equipment and space for science students to conduct their studies or projects.

Sec.3.5 Leadership Training Rooms

Leadership Training Rooms may contain visual and audio aids and other equipment that will aid students in developing their skills in speaking and making presentations. It is also intended that these rooms may serve as meeting rooms for student affairs, which would include other students who are not members of the fraternity. However, to ensure that the leadership training rooms are used for these educational purposes rather than chapter functions, grants for leadership training rooms will be made only to those chapters which already have, or will have constructed, separate and adequate space to conduct social, recreational, or fraternal functions, such as fraternity meetings or social events.

Sec.3.6 Educational Storage Rooms

These areas must be used exclusively for storing educational equipment and materials used in connection with educational study and work. Thus, educational storage rooms may not be used to store non-educational personal effects or materials that relate primarily to the chapter.

Sec.3.7 Definition of Educational Equipment

Educational equipment shall include (1) computers; (2) printers; (3) other equipment used for the study of such disciplines as engineering, architecture, graphic design, and fine arts; (4) laboratory and science equipment; (5) audio and visual equipment; and (6) furniture, such as desks, desk chairs, conference tables, bookcases, and other furniture or equipment used in the Educational Area or in a student's room (provided the house corporation retains ownership of such equipment).

Sec.3.8 Definition of Educational Materials

Educational materials shall include reference materials, course books, general literature, and other reading material having an educational value.

Sec.3.9FireSafetyEquipment.

The term Fire Safety Equipment shall include fire alarms, smoke detectors and internal sprinkler systems installed for any of the Educational Areas.

Sec.3.10InternetWiring.

The term Internet Wirings shall include the installation, configuration, and maintenance of a house-wide computer network and house-wide wiring to allow for access to the university's main frame and network and to allow for internet access.

Sec.4OperatingFund.

The Operating Fund may be established for the maintenance and operation of the Educational Areas. Expenditures from this fund may be used for maintaining insurance, paying utility bills, and satisfying other regular operating expenses of the designated Educational Areas. No portion of this Fund may be used for expenses relating to a non-educational area of the local chapterhouse.

Sec.5ExclusiveUse.

No part of the Educational Areas referred to in Section 2 and defined in Section 3 may be used for other than educational purposes other than a minor social or recreational use. No dining, sleeping, social, recreational or fraternal activities may be carried on in any area dedicated exclusively to educational purposes and treated as an Educational Area under Sections 2 and 3 (other than a minor social or recreational use).

Sec.6GrantApplicationProcedures.

Sec.6.1 All grants made for the construction of Educational Areas must be directly attributable or allocable to the Educational Areas and may only be used to fund expenses for such Areas. Payments from the Foundation may be made to the house corporation during the construction of such Area upon the house corporation's written request, as needed. However, such payments shall not exceed the percentage of the total construction costs incurred at that time which are allocable to the Educational Areas upon completion.

Sec. 6.2 Payments made for Educational Equipment, Educational Materials, Fire Safety Equipment and Internet Wiring described in Sections 3.7 through 3.10 above may be made upon the written request of the house corporation.

Sec. 7 Application for Educational Area Grants.

Sec. 7.1 Applications for Educational Area Grants must provide detailed descriptions of the Educational Areas of the chapter house for which the grant will be used and the educational use to which such Areas will be put. Such descriptions must include architectural plans and Educational Area descriptions in the form attached as Exhibit 2 to the Grant Agreement. Additionally, the application must include a letter from an authorized representative of the university in the form attached hereto as Schedule 1.

Sec. 7.2 If the grant application requests that a portion of the grant be used for Educational Equipment and/or Materials, such equipment and/or materials must be described in detail and accompanied by an explanation of the educational use or function to which they will be put.

Sec. 7.3 The grant application may also request that a portion of the grant be used to fund the installation of Fire Safety Equipment, Internet Wiring, and/or the maintenance of an Operating Fund.

Sec. 8 Amount of Grant.

Sec. 8.1 The amount of the grant allocable to the construction costs (including the costs of purchasing and installing Fire Safety Equipment) shall be determined by multiplying the total cost of the construction or purchase by a percentage, the numerator of which shall be that portion of the square footage of the building to be used exclusively for educational purposes (i.e., the Educational Areas), and the denominator of which shall be the total square footage of the entire building. A description of such allocation must be submitted in the form attached as Exhibit 4 to the Grant Agreement.

Sec. 8.2 If application is made to include funds for the purchase of Educational Equipment, Educational Materials, Fire Safety Equipment, and/or Internet Wiring, the applicants shall indicate the portion of the Educational Area Grant to be used for such purposes and describe them as part of their submission.

Sec.8.3 The amount of the grant to be used as an Operating Fund will be subject to the following limitations:

Sec.8.3.1 Payments of grant funds for real estate taxes, casualty and liability insurance premiums, utility costs and any other operating costs which cannot be directly attributable or allocable to any specific area of the chapter houses shall not exceed the amount determined by multiplying the total of each such cost by a percentage, the numerator of which shall be that portion of the square footage of the Educational Areas, and the denominator of which shall be the total square footage of the entire building.

Sec.8.3.2 Payments of grant funds may be used for personal property taxes assessed on Educational Materials and Educational Equipment and any other operating costs which can be directly attributable and allocable to such Educational Areas, including, but not limited to, regular recurring maintenance expenses (e.g. those incurred for the painting of Educational Areas) and regular expenses related to computer networking equipment and internet wiring throughout the Building.

No part of this fund may be used by the applicant without the Foundation's prior approval in writing acknowledging that such funds will be used exclusively for educational purposes.

Sec.9 Educational Area Committee.

Sec.9.1 An Educational Area Committee of the Foundation's Board shall be established to screen all requests from local house corporations for Educational Area Grants. The Committee shall review all requests to ensure that the requirements of these procedures for Educational Area Grants have been satisfied.

Sec.9.2 If the Committee is satisfied that such requirements have been met, the Committee shall present its recommendation to the Foundation's Board on whether an Educational Area Grant should be made to the local house corporation, the amount of such grant and the portion of such grant, if any, that may be applied to the purchase of Educational Equipment, Educational Materials, and Fire Safety Equipment to be used in connection with such Educational Areas, to the purchase and installation of house-wide Internet Wiring, and to the establishment of an Operating Fund.

Sec. 10 Grant Agreement.

Both the chapter and house corporation must execute a grant agreement in the form attached as Exhibit 1 to these Uniform Grant Procedures.

Sec. 11 Record Keeping.

Sec. 11.1 All funds from Educational Area Grants must be deposited in a separate fund of the house corporation and its books and records must be maintained in such a way that such grant funds will be shown separately on the house corporation's books. Expenditures made in furtherance of the educational purposes specific to the grant funds shall be charged against the grant funds. The house corporation will maintain records for such expenditures adequate to identify the funds used for the percentage of the construction costs (including the costs of Fire Safety Equipment) attributable to the educational areas, as determined under Section 8. Separate records shall also be maintained to identify the purchase of Educational Equipment, Educational Materials and Internet Wiring and the establishment of an Operating Fund.

Sec. 11.2 If any part of the grant funds are paid by the house corporation to the local chapter to cover any part of the expenses for which the Educational Area Grant was made, as opposed to the house corporation directly paying for such expenses, then the local chapter shall maintain a separate fund to pay for such costs and such funds shall be subject to the same record keeping requirements as are applicable to the separate fund of the house corporation under Section 11.1.

Sec. 12 Report to the Foundation.

Sec. 12.1 With respect to all funds paid to the house corporation as part of an Educational Area Grant, the house corporation shall provide the Foundation with semi-annual reports showing the use of such funds for construction of the building (as well as for the purchase of Fire Safety Equipment) in a manner consistent with the allocation described in Section 8 and Exhibit 4 of the Grant Agreement. In addition to the foregoing reports required of the house corporation during construction, upon completion of the building, the house corporation shall, within 90 days of such completion, provide a report to the Foundation certifying that the funds used for construction from this grant have not exceeded the authorized

amount of this grant for educational areas, as determined under Section 8 and Exhibits 2 and 4 of the Grant Agreement.

Sec. 12.2 During the construction period, and thereafter, until all funds available under Section 8 have been paid in full to the house corporation, the semi-annual reports required under this section shall include financial information with respect to all Educational Equipment, Educational Materials and Fire Safety Equipment purchased for use in the Educational Areas of the building, as well as any Internet Wiring for the building.

Sec. 12.3 The house corporation shall also provide the Foundation with an annual report as to that portion of the grant used to establish an Operating Fund. Such report shall indicate the amount of this Fund at year end, the annual income produced by this Fund, and the expenses charged to it during the year.

Sec. 12.4 After completion of the construction, renovation, or rehabilitation of, or addition to, the building, the house corporation shall require the local chapter to provide the Educational Area Committee of the Foundation with semi-annual reports in order to assure the Foundation that the activities carried on in the educational areas of the building (as described in Exhibit I to the Grant Agreement) are exclusively educational in nature and to enable the Educational Area Committee to monitor the use of such areas for educational purposes. Such reports shall include descriptions of conferences, meetings, seminars, instructional activities, etc., that have taken place in the Educational Areas during the reporting period. Such reports shall also include a certification by the President of the chapter that the Educational Areas of the building have not been used for non-educational purposes or activities, such as social, recreational, or fraternal activities, other than minors social or recreational use.

Sec. 13 Repayment.

Sec. 13.1 Subject to the provisions of Section 13.2 below, the house corporation will repay to the Foundation any portion of the grant, which is not used for the educational purposes for which the grant was made.

Sec. 13.2 Should any part of the Educational Areas financed by an Educational Area Grant cease to be used for educational purposes or should any part of the grant exceed the amount determined in Section 8, that portion of the grant allocated to any Educational Area in the building which is not used for educational purposes, or any amount of the grant proceeds that

exceeds the amount determined in Section 8, will be repaid to the Foundation, provided, however, that the house corporation shall have thirty (30) days from the date of written notice by the Foundation to the house corporation that such a situation has been found to exist, to correct the situation, and if it does not do so within said thirty (30) days it will so repay to the Foundation.

Sec. 14 Monitoring of Use of Grant Proceeds.

Each house corporation and local chapter receiving an Educational Area Grant shall cooperate with, and provide access to the premises to, representatives of the Educational Area Committee making periodic visits and inspections to monitor the use of the Educational Areas. Both the house corporation and local chapter shall also make their financial records freely available to the Foundation, either in connection with the inspection of its representatives, or upon request.

Sec. 15 Effect on Tax Exemption.

Sec. 15.1 The Foundation's counsel shall prepare and provide an opinion that the Educational Area Grant Program described herein will not adversely affect the Foundation's tax-exempt status as an organization described in Internal Revenue Code Section 501(c)(3).

Sec. 15.2 After the Educational Area Committee has screened an applicant for an Educational Area Grant and the Foundation Board has approved the making of a grant to an applicant, counsel shall be requested to review each such grant and to provide a legal opinion that each grant complies with the Foundation's Educational Area Grant Program and therefore, that the grant in question will not adversely affect the Foundation's tax-exempt status under Internal Revenue Code Section 501(c)(3).

***THE MOST FREQUENTLY ASKED QUESTIONS CONCERNING NEW IRS
GUIDELINES ON FRATERNITY FOUNDATION FUNDING OF EDUCATIONAL AREAS
IN FRATERNITY CHAPTER HOUSES***

by

Barbara Schwartz Bromberg

Dinsmore & Shohl LLP

Cincinnati, Ohio

Introduction:

This article will be a followup to my previous article in the November issue of "Fraternal Law" which described the new IRS guidelines issued in July, 2001, concerning the subject of fraternity foundation funding of educational areas in fraternity chapter houses. Since we have been working with these guidelines for approximately six months now, a pattern has emerged of frequently asked questions in connection with the new guidelines. This article will share these questions and will provide my views as to the appropriate answers.

Questions and Answers:

1. What does it mean that a fraternity foundation is permitted to fund educational facilities similar to what the university provides? Does this mean all universities or the particular university where the project is located and how does one document that the university is providing comparable facilities?

Answer: Definitely, the guidestar for this part of the inquiry is the particular university where the project is located and whether it provides comparable educational facilities in its dormitories or other student housing. This is the unique case where the appropriate tax standard relied upon by the IRS could be different from campus to campus, although to date it appears that most universities and colleges today are providing similar facilities and the rule does not appear to be a practical problem so far. I recommend that the particular university's provision of these facilities be documented by a letter from an appropriate university official to this effect.

2. Since these new IRS guidelines have been recently issued, do you recommend that fraternity foundations planning to fund these types of projects seek an IRS private letter ruling or handle the project on a less formal "opinion of counsel" basis?

Answer: The answer to this question really depends on the mind set of the foundation and its degree of conservatism. Since these guidelines are recently issued, it is not likely that they will change soon unless the Service discerns abuses in the area. However, we all know that similar guidelines have changed several times in the past, so for those organizations that are conservative and want absolute assurance, an IRS private letter ruling is the best way to proceed. However, most fraternity foundations seem to be happy to go forward with an opinion of counsel, especially those who have received IRS private letter rulings under the former guidelines. In summary, this is a question that needs to be discussed and resolved between the fraternity foundation and its advisors.

3. Since the new guidelines seem straightforward and fairly precise, is a grant agreement still necessary when a fraternity foundation is funding a housing project?

Answer: The answer to this question is a definite yes in my view. Whenever a Code Section 501(c)(3) charitable organization is making an educational or leadership grant to a non-Code Section 501(c)(3) organization, even if it is tax exempt under another Section, such as a house corporation or local chapter, an appropriate grant agreement is definitely required. This is especially true in a situation like this where the projects are usually sizable and the buildings hopefully will endure for several decades. The grant agreement should be tailored to a housing project and not the type that is used for a non-housing educational grant.

4. I understand that under the new guidelines, grants can be made for fire alarms, smoke detectors and internal sprinkler systems in a fraternity house - is this correct?

Answer: It is correct that grants can be made for this type of safety equipment; however, the grant is limited to educational areas in the chapter house and those areas that are directly servicing or adjacent to educational areas, so that this type of funding is not available on an "entire house" basis.

5. What about fraternity foundation funding of computer network equipment and wiring for the entire house - is this like the safety equipment referenced above or can this be provided throughout the entire house?

Answer: As with all fraternity foundation funding of these projects, the first inquiry is whether the university provides such ubiquitous computer access in its residences. If it does, then the fraternity foundation may indeed fund such equipment and wiring for the entire house. In other words, such funding is not limited to designated educational areas in the way that funding for fire safety equipment is.

6. I have heard that there are some new guidelines on fraternity foundation funding of educational furniture - what are these?

Answer: This is indeed an area where there has been a relaxation of the previous rules. As before, if the university provides these items in its residences, then computers, study desks and chairs as well as other types of furniture that are in the designated educational areas may be funded by the fraternity foundation, as long as these items are not personally owned by members. There is a new guideline that as long as these items are not owned by the members, a computer, desk and chair may also be provided in sleeping areas, whether or not these areas are separately designated educational areas.

7. I know that the prior rules required educational areas funded by a fraternity foundation to be 100% educational in use - has there been any relaxation of this standard?

Answer: Here again, there is some good news as to the IRS' view on this question and it has, in my view, taken a more practical approach to this question. In the past, no mixed-use areas such as dining areas and sleeping quarters could be considered educational, but now, a minor social or recreational use such as a reception occasionally held in a library will not be considered to change an educational facility into one of mixed use. This is indeed helpful but caution and good judgment should be exercised in this regard.

8. Has there been any change under the new guidelines as to grants by fraternity foundations being made for annual operating expenses in a chapter house?

Answer: No, grants can still be made for annual operating expenses (insurance, utilities and similar items) relating to dedicated educational areas. In this connection, as well as with the overall funding of educational areas in fraternity houses, any reasonable allocation may be used for determining educational space in the fraternity house.

Conclusion:

This article has necessarily covered only the most commonly asked questions relating to fraternity housing projects funded by fraternity foundations. In my experience, each project is unique and in connection with such a project, numerous questions will arise, with some of them likely to be novel. The best way to proceed in securing accurate answers to these questions is for

a foundation involved in such a project to work closely with its fundraising advisors, counsel and architects as a team so as to ensure the success of the project as well as the protection of the foundation's tax exempt status under Code Section 501(c)(3).

BSB

Internal Revenue Service

RECEIVED

SEP 19 1994

Department of the Treasury

Washington, DC 20224

Phi Delta Theta Educational
Foundation
Two South Campus Avenue
Oxford, OH 45056

Person to Contact:

Telephone Number:

Refer Reply to:

CP:E:EO:R:2

Date:

SEP 15 1994

Dear Sir or Madam:

This is in reference to a letter dated May 19, 1994, submitted by your authorized representative, requesting a ruling to the effect that the adoption and implementation of the "Educational Area Grant Program" described below will not adversely affect your status as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you (the "Foundation") are an Ohio not-for-profit corporation described in section 501(c)(3) of the Code and are classified as other than a private foundation under section 509(a)(a). The Foundation is organized and operated to further the charitable and educational programs of the Phi Delta Theta Fraternity, a national men's fraternity whose local chapters and house corporations are generally described in section 501(c)(7) of the Code.

The Foundation wishes to implement a new program, to be known as its Educational Area Grant Program (the "Program"), which will improve both the educational facilities available at selected local chapters and, at the same time, relieve the college or university (collectively, the "university") at which a Phi Delta Theta chapter house is located from a significant burden of providing study and library facilities for their students. Toward this end, the Foundation has adopted a set of Uniform Procedures and a Grant Agreement for the Program. All grants will be made to the house corporations for the local chapters, although both the house corporation and the chapter will be bound by, and required to execute, the Grant agreement with the Foundation.

Under its Educational Area Grant Program, the Foundation's program will be limited to making grants for the construction, renovation, rehabilitation, and additions of wholly educational areas of local chapter houses. In addition, a portion of the grant may be used for educational equipment and materials used in connection with the wholly educational areas. An Educational Area Committee will be established by the Foundation to assist its Board in administering the Program.

Phi Delta Theta Educational Foundation

Under the Program's Procedures, the following six types of space will qualify for grants as wholly educational areas:

1. Study Rooms
2. Libraries
3. Computer rooms
4. Drafting and Educational Work Rooms
5. Leadership Training Rooms
6. Educational Storage Rooms

In addition, applicants for Educational Area Grants may also request that a portion of the grant be used to provide furniture, such as desks, conference tables, bookcases, etc., and equipment and educational materials for the wholly educational areas as to which such grants will be made.

The Grant Procedures and Grant Agreement will preclude any dual use of these six types of educational areas. No dining, sleeping, social, recreational, or fraternal activities will be permitted in any of the educational areas.

Further the Foundation will take steps to ensure that none of the educational areas are used for anything but the educational purposes for which the grants are made in number of ways. First, the information submitted by any house corporation seeking an Educational Area Grant will require a complete description of the specific spaces to be used as educational areas and the use to which each such space will be put.

Second, the Grant Agreement to be executed by both the house corporation and local chapter will require that such areas will be used solely for the educational purposes described in the information submitted with the grant request.

Third, all proceeds from the Educational Area Grant Program must be maintained in a separate account by the house corporation, interim and final accounting must be made, and any amount not used exclusively for the purposes for which the grant was made must be returned to the Foundation.

Fourth, the Foundation will require semi-annual reports certified by the president of the chapter, to assure the Foundation that the educational areas are being used only for the educational purposes stated in the application for the grant.

Fifth, the Foundation intends to have its representatives schedule periodic visits to all chapters that have received Educational Area Grants on a continuing basis and the chapters will be required to make their premises and financial records

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available for inspection. A purpose of these visits will be to verify that the areas described in the Grant application as being put to educational use are, in fact, being used for such purposes.

If it is discovered during the course of an inspection by Foundation representatives that an educational area funded by a Foundation grant is not being used for the purpose described in the Grant Agreement and attached exhibits, the house corporation will be required to repay that portion of the grant allocable to the non-conforming (or non-educational) area. If a part of a specific educational area is being used for non-educational purposes, then the amount of the grant allocable to the entire specific area must be returned. For example, even if only a part of a specific study room is substantially used for non-educational purposes, that part of the grant allocated to the entire specific study room becomes returnable.

In order to further ensure that Educational Area grants are made only for defined educational areas and not for other areas of a chapter house which is being constructed, renovated, rehabilitated, or added on to, each house corporation applying for a grant will be required to attach both a description of each educational area, as well as a floor plan and measurements of the facilities under construction, renovation, rehabilitation, or addition. The Program will adhere strictly to a formula under which no grant may be made for any part of the total costs of construction, renovation, rehabilitation, or addition that are not allocable to the educational areas.

For example, if an addition of 12,000 square feet is being built onto an existing chapter house, and the designated educational areas falling within the definition of that term as described in section 3 of the Grant Procedures, is 4,000 square feet, then the Educational Area Grant may only be used for 33-1/3% of the total cost of construction (4,000 allocable to educational areas out of 12,000 for construction of the entire addition).

As indicated above, at the house corporation's request, a portion of the Educational Area Grant may be use for furniture, fixtures, furnishings, and equipment for use in the Educational Areas, as well as educational materials such as library books, reference books, etc. As part of the periodic inspection by Foundation representatives, all purchases of furniture, equipment, and educational materials made with the proceeds of a Foundation Grant will be reviewed and inspected for compliance with the requirements of the Grant Agreement.

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To insure that Educational Area Grants also serve the broader educational interests of the college or university, all grant applicants will also be required to establish: first, that the university is committed to providing study and library facilities to their student body; second, that the construction of educational areas in the chapter house will relieve the burden on the college or university for providing such facilities; and, third, that a significant number of undergraduate students are both members of fraternities and sororities and live in chapter houses.

As a general rule, the Foundation will regard 10% or more of the undergraduate population belonging to fraternities and sororities as a significant percentage and 5% or more of the undergraduate population living in chapter houses as a significant percentage of students maintaining such residence. Educational Area Grants may be made to chapters at universities where a lesser percentage of undergraduate students belong to fraternities or sororities or where a lesser percentage live in chapter houses, but only upon a showing that special circumstances exist to establish that the proposed addition of educational facilities to their chapter house will otherwise provide a significant benefit to the university.

Finally, in addition to all of the other requirements discussed above, the Foundation will seek a legal opinion from qualified tax counsel that each proposed grant is consistent with the facts as presented in this ruling.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

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Section 1.501(c)(3)-1(d)(3)(a) of the regulations provides that the term "educational" as used in section 501(c)(3) relates to the instruction or training of the individual for the purpose of improving or developing his capabilities.

Rev. Rul. 69-545, 1969-2 C.B. 117, states that the promotion of health, like the relief of poverty and the advancement of education and religion, is one of the purposes in the general law of charity that is deemed beneficial to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit from its activities does not include all members of the community, such as indigent members of the community, providing that the class is not so small that its relief is not of benefit to the community.

Rev. Rul. 75-196, 1975-2 C.B. 155, provides that the maintenance of a law library is an educational activity even though the use of the library is restricted to bar association members and their designees. The ruling concluded that despite the restricted use of the law library, it was nevertheless operated for a public purpose since the personal benefit derived by the attorneys who use the library was incidental to this purpose.

Based on the information provided, we have concluded that the educational areas of the chapter houses serve a public purpose by relieving the college or university of its financial burden of providing similar activities or facilities. In addition, the cumulative effect of all fraternities and sororities on campus providing similar facilities is significant or substantial enough to characterize the private benefit derived by the chapter members as incidental.

Accordingly, we rule that the implementation of the proposed Educational Area Grant Program will not adversely affect the status of the Foundation as an organization described in section 501(c)(3) of the Code.

We are informing your key District Director of this ruling. Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

Phi Delta Theta Educational Foundation

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

This letter supersedes our letter of July 19, 1994.

Sincerely yours,

Jeanne S. Gessay

Jeanne S. Gessay
Chief, Exempt Organizations
Rulings Branch 2

PHI DELTA THETA FOUNDATION

POLICY FOR PARTICIPATION IN LOCAL CHAPTER HOUSING PROJECTS

(1) The Foundation will consider participating in suitable local Phi Delta Theta chapter housing projects (hereafter sometimes “projects” or “project”), if, as a minimum, the project meets all of the terms and conditions contained in this Policy. In addition, the Trustees, in their sole discretion, may amend and interpret this Policy from time to time by majority vote of the Trustees; may add additional conditions for the Foundation’s participation in any project; and may decline participation in any project, for reasons they deem to be in the best interests of the Foundation.

(2) The minimum amount of any such project to be eligible for Foundation participation is twenty five thousand dollars (\$25,000.00) in tax-deductible funds to be raised through the Foundation for the project.

(3) Such projects must be to raise funds for new chapter house constructions, constructions of a new wing, major renovations for an existing chapter house only, or to pay off an existing mortgage for such a project.

(4) If the Foundation agrees to participate in a project, all tax-deductible funds to be raised through the Foundation must be in place no later than three (3) years from the date of the grant documentation covering the project, or the Foundation will review the project to determine whether it will, in its sole discretion, continue participation in the project. If the Foundation, in the sole discretion of the Trustees, declines to continue its participation in the project, all remaining tax deductible funds previously raised through the Foundation will be treated as a restricted fund of the Foundation to benefit educational purposes of the particular location involved, or if the amount so raised does not meet the Foundation's minimum requirement for its restricted funds, will be added to the general funds of the Foundation.

(5) The local group involved in the project must be cohesive and well-organized and present a "marketing" plan for potential fundraising. The local group will also be expected to appoint one liaison person for all Foundation contact. Further, there must be complete cooperation with the Foundation by the local group as well as its architects and other advisors, and normally, the local group must bear all professional and fundraising fees incurred in arranging the project. Please note that, if requested, the Foundation will grant from the tax deductible funds raised through the Foundation a maximum of the greater of 10% of the

total amount so raised or \$25,000, for professional fundraising fees and related expenses.

(6) The Foundation will participate in such projects only on the basis of awarding grants for construction and furnishing of solely educational spaces in such a chapter house.

(7) Before the Foundation agrees to establish a Foundation account to accept such deductible gifts for a project, all required grant documentation must be executed by all parties and approved by the Foundation's attorney, and the Foundation's attorney must have give a written legal opinion to the Foundation to the effect that the project falls within the guidelines established under the Foundation's favorable IRS private letter ruling.

(8) The Foundation retains the right to charge an administrative fee to any local group for its administration services in handling a project for \$2,500, as well as an annual 3% administrative fee on all monies received. The Foundation may adjust this fee from time to time for its services. Any legal fees incurred by tax counsel to obtain the required opinion letter will be the responsibility of the house corporation.

- (9) The Foundation must review all fundraising materials and other related items concerning the solicitation of funds for a project to the Foundation, and no such solicitations will be made or other materials used without prior Foundation approval through its attorney or other authorized person.
- (10) The Trustees retain the sole discretion to determine from time to time all administrative details concerning the portions of local chapter housing projects through the Foundation, including without limitation, banking agreements with respect thereto, allocation of income thereto, allocation of expenses thereto, the investment of such accounts and all other accounting and legal matters concerning such local chapter housing projects, and the decision of the Trustees of the Phi Delta Theta Foundation concerning any or all of these matters will be final, conclusive and binding upon all interested parties.