

ITEM V

MEMORANDUM MF NO. 18-14

DATE: December 21, 2018

TO: Marine Advisory Board Members

FROM: Andrew Cuba, Manager of Marine Facilities

RE: January 3, 2019 MAB Meeting – Application for Dock Permit – Neal R. Kalis as Trustee of the 1700 Brickell Land Trust / 1700 Brickell Drive (east end of Brickell Drive)

APPLICATION AND BACKGROUND INFORMATION

The applicant is seeking approval for use, maintenance and repair of an existing fixed marginal dock on public property abutting the waterway and encroaching into the Sospino Canal (**Exhibit 1**). City Code Section 8- 144 authorizes the use of docks on public property, and allows for the permit to be issued for a fixed period provided the permit holder agrees to maintain the improvements and seawall.

PROPERTY LOCATION AND ZONING

The property is located within the Colee Hammock RS-8 Residential Single Family Low/Medium Density Zoning District. The dock is located on the Sospino Canal.

ENGINEERING REVIEW REQUIREMENT

As a requirement of City Code Section 8-144, approval of the application is contingent upon all improvements to the property being maintained in accord with City Engineering standards and in full compliance with building and zoning regulations including construction permits required for any future electrical and water feeds to the property.

The granting of this Permit is subject to all of the provisions of City Code Section 8-144 as well as the following terms and conditions, violation of any of which shall be grounds for revocation of the Permit:

1. The fixed period of the Permit issued for use of the seawall and fixed marginal dock described in the application is for a period of five (5) years in accordance with City Code Section 8-144 (1). The Permit is revocable at the will of the City Commission, without cause with 90 days advance notice.
2. As a special condition, the City reserves the right to remove the proposed dock structures for replacement of the seawall in the event that this might be required during the term of the Permit as determined by the City Engineer. The sole cost of removal and replacement of the Dock shall be the responsibility of the Permit Holder. Furthermore, the Permit Holder shall be responsible for maintaining and beautifying a reasonable area in and around the dock location and failure to do so shall be grounds for revocation of this Permit.

3. As a special condition of the Permit, the Permit Holder is prohibited from erecting any signs, landscaping or fencing to restrict public access to the Dock Area except where permitted by Code. The "Dock Area" shall include the marginal dock and adjoining seawall.
4. The public property abutting the waterway or Dock Area being used by the Permit Holder shall be kept open at all times as means of reasonable ingress and egress to the public, but Permit Holder shall have the right to exclude the public from a reasonable portion upon which improvements have been placed, not exceeding fifty (50%) percent of the area.
5. All improvements to the Dock Area must be in accord with City Engineering design standards and in compliance with applicable building and zoning permit requirements.
6. The Permit granted herein shall not be assignable without the written approval by Resolution adopted by the City Commission.
7. Permit Holder shall not charge or collect any rent or fees from anyone using such dock constructed on public property. No signage shall be placed upon such dock indicating it is a private dock.
8. As a special condition, vessels berthed within the Dock Area are prohibited from extending beyond the maximum distance of 30% of the width of the waterway.
9. As a special condition, vessels berthed within the Dock Area must not encroach into the northerly or southerly extension of the 5' vessel set-back required for the RS-8 zoning district for Applicant's (Permit Holder's) Property, unless as specified in applicant's narrative a set-back waiver is granted via the City's Board of Adjustment.
10. As a special condition of the permit, in the event Permit Holder is found by the City Commission to have violated any of the above conditions or is found by the Code Enforcement Board, Special Magistrate or County Court Judge to have violated any Code sections relative to the use of the Dock Area, Dock and Mooring Piles, then the Permit granted herein may be repealed or rescinded by the City Commission upon thirty days' advance notice to the Permit Holder.
11. Use of the dock is limited to the docking of a vessel owned by the Permit Holder with a copy of the documentation showing the name and registration number of all vessels provided by the Applicant to the Supervisor of Marine Facilities.
12. The Permit Holder is prohibited from mooring any watercraft or vessel in such a manner that it is "rafted out" from any additional vessel owned or operated by the Applicant.

AC

Attachment

cc: Enrique Sanchez, Deputy Director of Parks and Recreation
Jonathan Luscomb, Supervisor of Marine Facilities

1700 BRICKELL DRIVE
PRIVATE USE OF PUBLIC LANDS

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**CITY OF FORT LAUDERDALE
MARINE FACILITIES
APPLICATION FOR WATERWAY PERMITS, WAIVERS AND LICENSES**

Any agreement with the City of Fort Lauderdale and other parties, such as, but not limited to, licenses, permits and approvals involving municipal docking facilities or private uses in the waterways as regulated by Section 8 of the City Code of Ordinances or Section 47-19.3 of the City's Urban Land Development Regulations, shall be preceded by the execution and filing of the following application form available at the Office of the Supervisor of Marine Facilities. The completed application must be presented with the applicable processing fee paid before the agreement is prepared or the application processed for formal consideration (see City of Fort Lauderdale Code Section 2-157). If legal publication is necessary, the applicant agrees to pay the cost of such publication in addition to the application fee.

APPLICATION FORM
(Must be in Typewritten Form Only)

1. LEGAL NAME OF APPLICANT - (If corporation, name and titles of officers as well as exact name of corporation. If individuals doing business under a fictitious name, correct names of individuals, not fictitious names, must be used. If individuals owning the property as a private residence, the name of each individual as listed on the recorded warranty deed):

NAME: Neal R. Kalis as Trustee of the 1700 Brickell Land Trust

TELEPHONE NO: _____ 954-791-0477 _____ FAX NO. 954-791-0506
(home) (business)

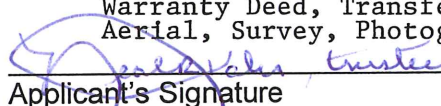
2. APPLICANT'S ADDRESS (if different than the site address): 7320 Griffin Road, Suite 109
Davie, FL 33314

3. TYPE OF AGREEMENT AND DESCRIPTION OF REQUEST: DOCK PERMIT
DESCRIPTION OF REQUEST: SEE attached Justification Statement

4. SITE ADDRESS: East End of Brickell Drive ZONING: RS8
Apx. 100 feet from 1700 Brickell Drive

LEGAL DESCRIPTION:

5. EXHIBITS (In addition to proof of ownership, list all exhibits provided in support of the applications).
Warranty Deed, Transfer and Assignment of Dock Permit together with Exhibits,
Aerial, Survey, Photographs of the Dock


Applicant's Signature

12/20/18
Date

=====

The sum of \$ 300.00 was paid by the above-named applicant on the _____ of
_____, 2018 Received by: _____

City of Fort Lauderdale

=====For Official City Use Only=====

Marine Advisory Board Action

Formal Action taken on _____

Commission Action

Formal Action taken on _____

Recommendation _____
Action _____

Dock Permit Application

Justification Statement

I. Application and Location:

In accordance with the City of Fort Lauderdale, FL Code of Ordinances Sect. 8-144(4) Private use of Public property abutting waterways, Applicant seeks the adoption of a Resolution by the Fort Lauderdale City Commission approving the Assignment of Dock Permit from The Theodora C. Emery Trust dated October 28, 1999 (Assignor) to Neal R. Kalis, as Trustee under Land Trust known as 1700 BRICKELL LAND TRUST (Assignee) or, in the alternative, the issuance of a new Dock Permit. The City owned Dock, for which Applicant seeks the Dock Permit, is located on the Sospiro Canal ("Sospiro Dock") approximately 100 feet due East of the Applicant's residential real property at 1700 Brickell Drive ("1700 Brickell Drive Property").

II. History:

Theodora C. Emery received approval from the City Commission for the Assignment of the Sospiro Dock Permit to her from Joseph E Russell by Resolution No. 78-325 dated October 3rd, 1978. At the time of adoption of Resolution No. 78-325, Theodora C. Emery was the owner of the 1700 Brickell Drive Property. On the 30th day of November 2018 the Applicant acquired title to the 1700 Brickell Drive Property from the Theodora C. Emery Living Trust dated October 28, 1999. For over four (4) decades the owners of the 1700 Brickell Drive Property have continuously utilized the Sospiro Canal Dock for the mooring of their vessels.

III. Dock Dimensions:

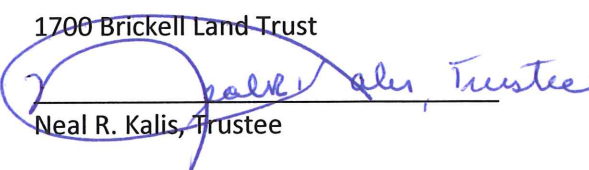
The approximate dimensions of the existing Sospiro Dock is 46' by 8', however, the width of the City right-of-way occupied by the Sospiro Dock is approximately 50' by 10'. The Dock appears to be in good condition.

IV. Safety Concerns:

The rear property line of the 1700 Brickell Drive Property is located on a narrow part of the New River in close proximity to the marked channel. As such, the extensive amount of boat traffic and swift current make it both unsafe to moor a vessel and for passengers to embark and disembark from a docked vessel on the New River behind the 1700 Brickell Drive Property. There is no existing dockage on the New River behind the 1700 Brickell Drive Property. The Sospiro Dock provides safe and convenient dockage.

The Applicant agrees to abide by all conditions and restrictions prescribed in Fort Lauderdale, FL Code of Ordinances Sec. 8-144.

1700 Brickell Land Trust


Neal R. Kalis, Trustee

**TRANSFER AND ASSIGNMENT OF
DOCK PERMIT**

This Transfer and Assignment of Dock Permit ("Assignment") is made, entered into and effective as of the 5th day of December, 2018, by and among DUNCAN B. PITCAIRN and NATHANIEL A. PITCAIRN, as Co-Trustees of the Theodora C. Emery Living Trust dated October 28, 1999, ("Assignor") and Neal R. Kalis, as Trustee under Land Trust known as 1700 BRICKELL LAND TRUST, ("Assignee").

RECITALS

WHEREAS, Assignor and Assignee entered into that certain "As Is" Residential Contract for Sale and Purchase Agreement, dated October 31, 2018, and First Amendment to "As Is" Residential Contract for Sale and Purchase dated November 14, 2018 (the "Purchase Agreement"); and

WHEREAS, Assignor is the owner of certain real property located at 1700 Brickell Drive, Ft. Lauderdale, Florida 33301 (the "Property");

WHEREAS, The Closing on the Purchase of the Property by Assignee from Assignor occurred on even date herewith;

WHEREAS, Assignor is the current holder of a dock permit issued by City of Fort Lauderdale, Florida under the City of Fort Lauderdale Resolution N. 78-325 dated October 3rd, 1978 (the "Dock Permit") a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the dock is on public property abutting a waterway located at the east end of Brickell Drive and is in close proximity to the Property.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions contained herein, Assignor and Assignee agree as follows:

1. Assignment. Assignor grants, assigns, conveys, and transfers to Assignee all of Assignors right, title and interest in and to the Dock Permit. This Assignment is made without representation or warranty on the part of the Assignor.
2. Assumption of Obligations and Liabilities by Assignee. Assignee accepts the foregoing transfer and assignment and assumes all of the obligations and liabilities under the Dock Permit arising after the date of this Assignment.
3. Transfer and Assignment Approval. The transfer and assignment of the Dock Permit by Assignor to Assignee is subject to the approval by the City Commission for the City of Fort Lauderdale, Florida as prescribed in Section 8-144 of the Fort Lauderdale, FL Code of Ordinances.

4. Further Assurances. The parties shall promptly execute and deliver any additional instruments or other documents which are reasonably necessary to evidence or better effect the transfer and assignment of Dock Permit and without expense to the Assignor.

5. Governing Law. This Assignment shall be governed by the law of the State of Florida.

IN WITNESS WHEREOF, this Transfer and Assignment of Dock Permit has been duly executed as of the 30 day of November, 2018.

WITNESSES:

[Signature]
Witness Signature

Liza M Siegle
Printed Name of Witness

[Signature]
Witness Signature

Lisa A Feix
Printed Name of Witness

[Signature]
Duncan B. Pitcairn,
Co-Trustee under the Theodora C.
Emery Living Trust dated October 28, 1999

WITNESSES:

[Signature]
Witness Signature

Liza M. Siegle
Printed Name of Witness

[Signature]
Witness Signature

Lisa A Feix
Printed Name of Witness

[Signature]
Nathaniel A. Pitcairn
Co-Trustee under the Theodora C.
Emery Living Trust dated October 28, 1999

State of Florida

County of BROWARD

The foregoing instrument was acknowledged before me this 30 day of November, 2018 by Duncan B. Pitcairn, Co-Trustee under the Theodora C. Emery Living Trust dated October 28, 1999, who ☐ is personally known or ☒ has produced a driver's license as identification.

[Notary Seal]



Mary E. Siegle
Notary Public

Printed Name: Mary E. Siegle

My Commission
Expires: 9/7/2022

State of Florida

County of BROWARD

The foregoing instrument was acknowledged before me this 30 day of November, 2018 by Nathaniel A. Pitcairn, Co-Trustee under the Theodora C. Emery Living Trust dated October 28, 1999, who ☐ is personally known or ☒ has produced a driver's license as identification.

[Notary Seal]



Mary E. Siegle
Notary Public

Printed Name: Mary E. Siegle

My Commission
Expires: 9/7/2022

ASSIGNEE ACCEPTANCE

IN WITNESS WHEREOF, the Assignee accepts and agrees to the terms of the foregoing Transfer and Assignment of Dock Permit this 5th day of December, 2018.

WITNESSES:

Kimberly P. Fohr
Witness Signature
Kimberly P. Fohr
Printed Name of Witness

Yvonne Thiele
Witness Signature
Yvonne Thiele
Printed Name of Witness

Neal R. Kalis
Neal R. Kalis, as Trustee under Land Trust
known as 1700 BRICKELL LAND TRUST

State of Florida
County of Broward

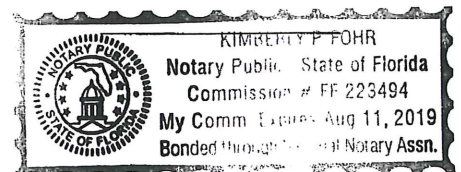
The foregoing instrument was acknowledged before me this 5th day of December, 2018 by Neal R. Kalis, as Trustee under Land Trust known as 1700 BRICKELL LAND TRUST, who ☐ is personally known or ☐ has produced a driver's license as identification.

[Notary Seal]

Kimberly P. Fohr
Notary Public

Printed Name: Kimberly P. Fohr

My Commission
Expires:





CITY OF
FORT LAUDERDALE
FLORIDA

P. O. BOX 1181 * 33302

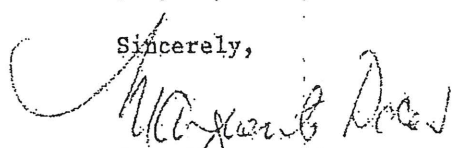
October 12, 1978

Mrs. Theodora C. Emery
1700 Brickell Drive
Fort Lauderdale, Florida

Dear Mrs. Emery:

For your information and records, I am enclosing a copy of Resolution No. 78-325 approving the transfer and assignment from Joseph E. Russell to you of a permit for a dock on public property.

Sincerely,


(Mrs.) Marguerite Döcen, CMC
City Clerk

MD/my/2862

Enclosure

Exhibit "A"

RESOLUTION NO. 78-325

A RESOLUTION APPROVING THE TRANSFER AND ASSIGNMENT FROM JOSEPH E. RUSSELL TO THEODORA C. EMERY OF A PERMIT FOR A DOCK ON PUBLIC PROPERTY AT THE END OF BRICKELL DRIVE AT THE SCUPIRO CANAL, FORT LAUDERDALE, FLORIDA, SUCH TRANSFER AND ASSIGNMENT BEING SUBJECT TO CERTAIN TERMS AND CONDITIONS.

WHEREAS, Theodora C. Emery has made application for approval of a transfer and assignment of a permit to use public property abutting a waterway for dock purposes, in accordance with the provisions of Section 11-12 of the Code of Ordinances of the City of Fort Lauderdale; and

WHEREAS, ownership of such permit is currently in the name of Joseph E. Russell, who now wishes to transfer the same to Theodora C. Emery;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the transfer and assignment of that certain permit for the maintenance of a dock on public property at the end of Brickell Drive at the Scupiro Canal, Fort Lauderdale, Florida, from Joseph E. Russell to Theodora C. Emery is hereby approved subject to, and in accordance with the provisions of Section 11-12 of the Code of Ordinances of the City of Fort Lauderdale, and any dock on such premises is to be maintained according to specifications approved by the City Engineer.

SECTION 2. That all provisions of Section 11-12 of the Code of Ordinances of the City of Fort Lauderdale shall be applicable to the transfer and assignment of the aforesaid permit hereby approved by this Resolution.

SECTION 3. That the transfer and assignment hereby approved is revocable at will and may be revoked at any time for violation of any of the provisions of Section 11-12 of the Code of Ordinances of the City of Fort Lauderdale.

ADOPTED this the 3rd day of October, 1978.

Mayor - Cornelius L. Loefer

ATTEST:

City Clerk

the U. S. Coast Guard and U. S. Army Corps of Engineers governing boats, docks and waterways. (Ord. No. C-68-23, § 2, 6-4-68)

Sec. 11-11. Rights of city on property abutting public waterways.

Whenever a public street or thoroughfare is laid out or existing in the city abutting or touching a waterway open to public use, the city as trustee for the public, has and owns riparian rights at such place. The city shall have the right to regulate the use of the waters adjacent to such place, and to construct docks, public landings, piers or wharves at such places.

Whenever a street, laid out and existing in the city, ends at a waterway in the city, the portion of such dead-end streets abutting the waterway is hereby declared to be public property, and the city shall have the right to regulate the use of the waters adjacent to such place and to construct docks, public landings, piers or wharves at such place. (Ord. No. C-68-23, § 2, 6-4-68)

Sec. 11-12. Private use of public property abutting waterways.

The city commission, by resolution duly adopted, may permit the use by private persons of public property abutting or touching a waterway, including all public property described in section 11-11 of the Code of Ordinances, (except areas being utilized as municipal docks for which docking fees are being charged and collected) under the following conditions and restrictions, to wit:

- (a) Unless a fixed period of time is prescribed in the resolution, permits shall be temporary in nature, revocable at the will of the city commission without cause. Permission granted for fixed periods of time may be conditioned upon the requirement that the permit holder shall repair, replace or maintain the adjacent seawall during the term. In such event, permission may be revoked by the city upon at least ninety (90) days of advance notice to the permit holder.
- (b) All improvements such as docks, seawalls and the like which are made or placed upon such public property by a private person shall be constructed and all maintenance and repairs shall be performed according to city engineering department standards and in compliance with building permits obtained from the building and zoning department.
- (c) The holder of the permit shall be responsible for maintaining improvements to the area and for beautifying a reasonable area in and around the dock location to be specified, and failure to do so shall be grounds for revocation of permission.

Rec 81251'89

- (d) Such permits shall not be assignable without the written approval by resolution of the city commission.
- (e) The holder of such permit shall not charge or collect any rent or fees from anyone using such dock constructed on public property. No sign shall be placed upon said dock indicating it is a private dock.
- (f) A permit to a private individual to construct a dock upon public property and the acceptance and use of same by such private person, shall constitute a guarantee from such private person to the City of Fort Lauderdale to hold the city harmless for any damage or injury to any person using such facilities.
- (g) Such street ends or public property abutting waterways so used by a private person shall be kept open at all times as means of reasonable ingress and egress to the public, but the permit holder shall have the right to exclude the public from a reasonable portion upon which he has placed improvements (not exceeding fifty (50) per cent of the area).
- (h) The violation of any provisions hereof or any regulations hereafter enacted shall constitute cause for revocation of permit.
- (i) Upon direction of the city, the former holder of a permit shall remove at his own expense any non-fixture improvements placed by him upon public lands, whenever permission is revoked, and shall make the necessary repairs to the city property to place the same in good condition.
- (j) The resolution granting the permit may specify other terms and conditions pertaining to the use or improvement of the property.
- (k) Only public lands which are not needed by the city for public docking purposes are available for private use under the terms hereof, and the supervisor of marine facilities shall furnish to the city manager a complete list of all street ends and other city-owned property abutting waterways which is not needed for dockage purposes from time to time. (Ord. No. C-68-23, § 2, 6-4-68; Ord. No. C-87-95, § 1, 11-17-87)

Sec. 11-13: Authority of city to regulate waterways.

The city shall have the right to regulate the use of all waterways within the city limits and the conduct of all persons using same, consistent with and not in conflict with federal or state

PREPARED BY:

Liza M. Siegle, Esquire
MAURER & MAURER
3020 N.E. 32nd Ave., suite 226 Fort
Lauderdale, FL 33308

RETURN TO:

Kalis & Kleiman PA
7320 Griffin Road, Suite 109
Davie, FL 33314

Tax Folio No. 504211-01-2020

WARRANTY DEED

THIS INDENTURE, executed this 30 day of November, 2018, by and between **DUNCAN B. PITCAIRN**, a married man, and **NATHANIEL A. PITCAIRN**, a married man, both individually and as Co-Trustees of The Theodora C. Emery Living Trust dated October 28, 1999, ("Grantor") and **NEAL R. KALIS**, as Trustee of the **1700 BRICKELL LAND TRUST**, (Grantee") whose post office address is c/o Kalis & Kleiman, P.A., 7320 Griffin Road, Suite 109, Davie, FL 33314.

WITNESSETH: That the said Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained and sold unto the said Grantees, their heirs, successors and assigns, as the case may be, forever, the following described real property lying in the County of Broward, State of Florida, to wit:

Lots 3 and 4, Block 36, COLEE HAMMOCK, according to the map or plat thereof as recorded in Plat Book 1, Page 1 7, Public Records of Broward County, Florida.

SUBJECT TO land use designation, zoning restrictions, prohibitions and other requirements imposed by governmental authority, none of which are hereby reimposed; restrictions, easements and matters appearing on the plat or otherwise common to the subdivision, none of which are hereby reimposed; and taxes for the year 2019.

To Have and to Hold, the same in fee simple forever, **and** the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2018.

This deed is given and accepted by the Trustee in accordance with Section 689.073, Florida Statutes, together with the powers with which the Trustee shall be vested as provided for therein. The Trustee shall have no personal liability whatsoever for action as trustee under the trust agreement referred to above or by virtue of taking title to the land described above and sole liability of Trustee hereunder shall be limited to the property which the Trustees holds under the trust agreement referred to above.

NOTE: The above described property is not the homestead or contiguous to the homestead property of either Duncan B. Pitcairn or Nathaniel A. Pitcairn. Duncan B. Pitcairn resides at 2666 Alnwick Rd., Bryn Athyn, PA 19009. Nathaniel A. Pitcairn resides at 5781 S.W. 8th Ct., Plantation, FL 33317.

*"Grantor" and "Grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered
in the presence of:

Lisa M. Siegle
Witness Print Name: Lisa M. Siegle

Lisa A Feix
Witness Print Name: Lisa A Feix

GRANTOR:

Duncan B Pitcairn, individually and as co-trustee
Duncan B. Pitcairn, individually and as Co-
Trustee of The Theodora C. Emery Living
Trust dated October 28, 1999
2666 Alnwick Rd., Bryn Athyn, PA 19009

Nathaniel A. Pitcairn, individually and as co-trustee
Nathaniel A. Pitcairn, individually and as
Co-Trustee of The Theodora C. Emery
Living Trust dated October 28, 1999
5781 S.W. 8th Ct, Plantation, FL 33317

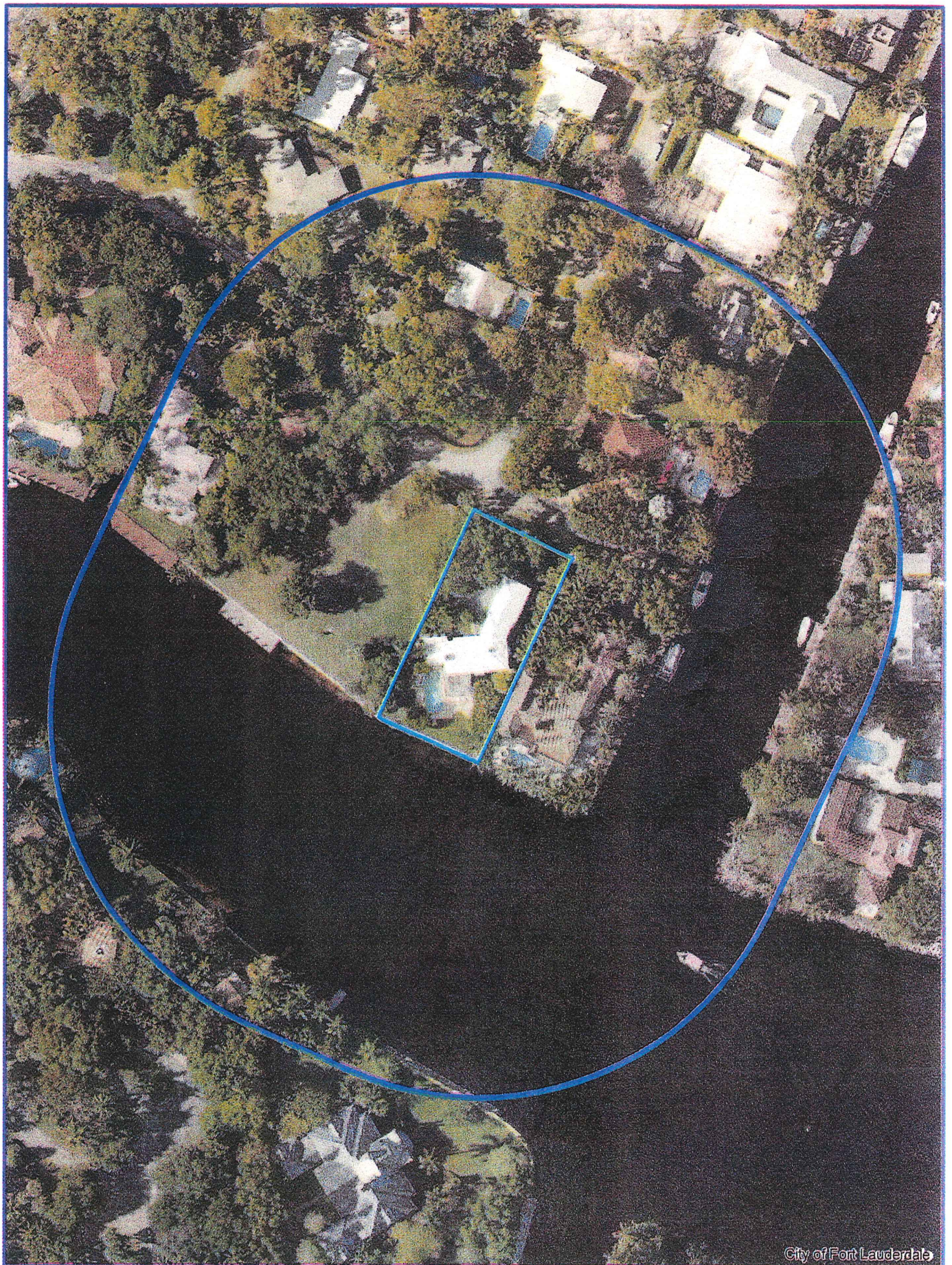
STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 30 day of November, 2018, by Duncan B. Pitcairn and Nathaniel A. Pitcairn, individually and as Co-Trustees of The Theodora C. Emery Living Trust dated October 28, 1999, who are personally known to me or who produced PA DR LIC & FL DR LIC as identification.

(NOTARY SEAL)

Mary E. Siegle
NOTARY PUBLIC
Print Name: Mary E. Siegle
My Commission Expires: 9/7/2022
Commission No.: 66215387





City of Fort Lauderdale



CITY OF FORT LAUDERDALE

1700 Brickell Drive



0 60 120 Feet

GIS

CAM 19-0215

Exhibit 1







