

Memorandum



Date: July 16, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Supplement to
Agenda Item No. 8(C)3

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Supplement to Agenda Item Regarding the Coconut Grove Playhouse: Approval of a Lease with the State of Florida

On July 9, 2013, the Finance Committee approved the agenda item regarding the *Coconut Grove Playhouse: Approval of a Lease with The State of Florida* for consideration by the Board of County Commissioners at its July 16, 2013 meeting. The memorandum for the agenda item explained that “the Lease will not become effective until there has been satisfactory resolution of the encumbrances affecting the title of the Coconut Grove Playhouse property.” The memorandum also referenced the State of Florida’s surplus property process, which was initiated through a notice sent by the State’s Department of Environmental Protection (DEP). That notice, which was not attached to the original item, is now provided in this supplement, and is the source and authority for the statement that the Lease will not become effective until the encumbrances are resolved.

Attachment

A handwritten signature in black ink, appearing to read "Lisa M. Martinez", written over a horizontal line.

Lisa M. Martinez
Senior Advisor, Office of the Mayor



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

JENNIFER CARROLL
LT. GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

NOTICE

DATE: March 1, 2013

FROM: Tracy Peters, Senior Program Analyst
State of Florida Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration

SUBJECT: NOTICE OF STATE-OWNED LAND FOR LEASE/SALE: Coconut Grove Playhouse
PID #01-4121-056-0030 – Building next to Playhouse
PID #01-4121-045-0140 – Playhouse
Dade County - Section 21, Township 54 South, South, Range 41 East
See attached legal description and map.

You are hereby notified that the state-owned land described in the attached legal description (the "Property") is currently being evaluated for lease or sale. Section 253.034(15), Florida Statutes, requires that before a building or parcel of land is offered for lease or sale to a local or federal unit of government or a private party, it shall first be offered for lease to state agencies, state universities and community colleges, with priority consideration given to state universities and community colleges. A state university or community college must submit a plan for review and approval by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees") regarding the intended use of the Property before approval of a lease. If the Board of Trustees awards a lease to a state university, community college or state agency, Section 253.034(6)(h), Florida Statutes, requires the selected entity to have the Property under lease within six (6) months from the date of expiration of this notice.

If the Property is not leased pursuant to Section 253.034(15), Florida Statutes, Miami-Dade County, Florida may elect to purchase the Property in accordance with Section 253.111, Florida Statutes. If the County or other unit of government in which the Property is located elects not to purchase the Property, state universities, community colleges and state agencies with the statutory authority to hold title to real property may, in the alternative, purchase the Property and may contact our office for additional information including the conditions of sale.

In order to assist the State of Florida Department of Environmental Protection, Division of State Lands ("DSL") and the Board of Trustees in determining the highest and best use for the Property, please evaluate whether you have any interest in the Property. You should also evaluate, consistent with your jurisdictional authority and responsibility, whether there are any public benefits in retaining state ownership of the Property. Please complete and return the attached questionnaire to this office within forty-five (45) days of receipt of this notice and refer to the respective inventory number when making comments about the Property. Failure to respond within forty-five (45) days of receipt of this notice will indicate that you have no interest in the Property. Location maps have been attached for your convenience.

The Property will be leased or conveyed in an "AS IS, WHERE IS CONDITION," without warranties or representations. DSL has obtained Old Republic National Title Insurance Company Commitment Fund File Number 01-2012-016250A, a copy of which is attached hereto (the "Title Commitment") that identifies a number of encumbrances on the Property (the "Encumbrances").

In the event the Property is leased, it will be the lessee's responsibility to satisfy and/or obtain releases of those Encumbrances identified in Schedule B-1, Nos. 8-16, inclusive, and Schedule B-II, Nos. 6 and 8 of the Title Commitment at lessee's sole cost and expense. A fully executed lease shall be held in escrow and upon satisfaction and/or release of the Encumbrances identified in this paragraph, the fully executed lease will be delivered to the lessee. If the lessee does not satisfy and/or obtain a release of the Encumbrances identified in this paragraph within 3 months of the full execution of the lease, the fully executed lease shall be returned to the Board of Trustees and the lessee's right to lease the Property shall terminate. The lessee agrees to hold harmless the Board of Trustees and the State of Florida Department of Environmental Protection against any loss or damage that the lessee may suffer as a result of the Encumbrances. In the event additional encumbrances attach to the Property prior to the execution of the lease or during the term of the lease, it will be the lessee's responsibility to remove these additional encumbrances from the Property at lessee's sole cost and expense.

In the event of a sale of the Property, the purchaser agrees to hold harmless the Board of Trustees and the State of Florida Department of Environmental Protection against any loss or damage that the purchaser may suffer as a result of the Encumbrances.

DSL makes no warranties or representations whatsoever as to the condition of the Coconut Grove Playhouse or any other improvements located on the Property, or the fitness of either for any particular use or purpose.

If you should have any questions, please call me at (850) 245-2772.

/tp
Attachments

DATE: _____

TO: Florida Department of Environmental Protection
Bureau of Public Land Administration
Division of State Lands
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
Mail Station #130
Attn: Tracy Peters

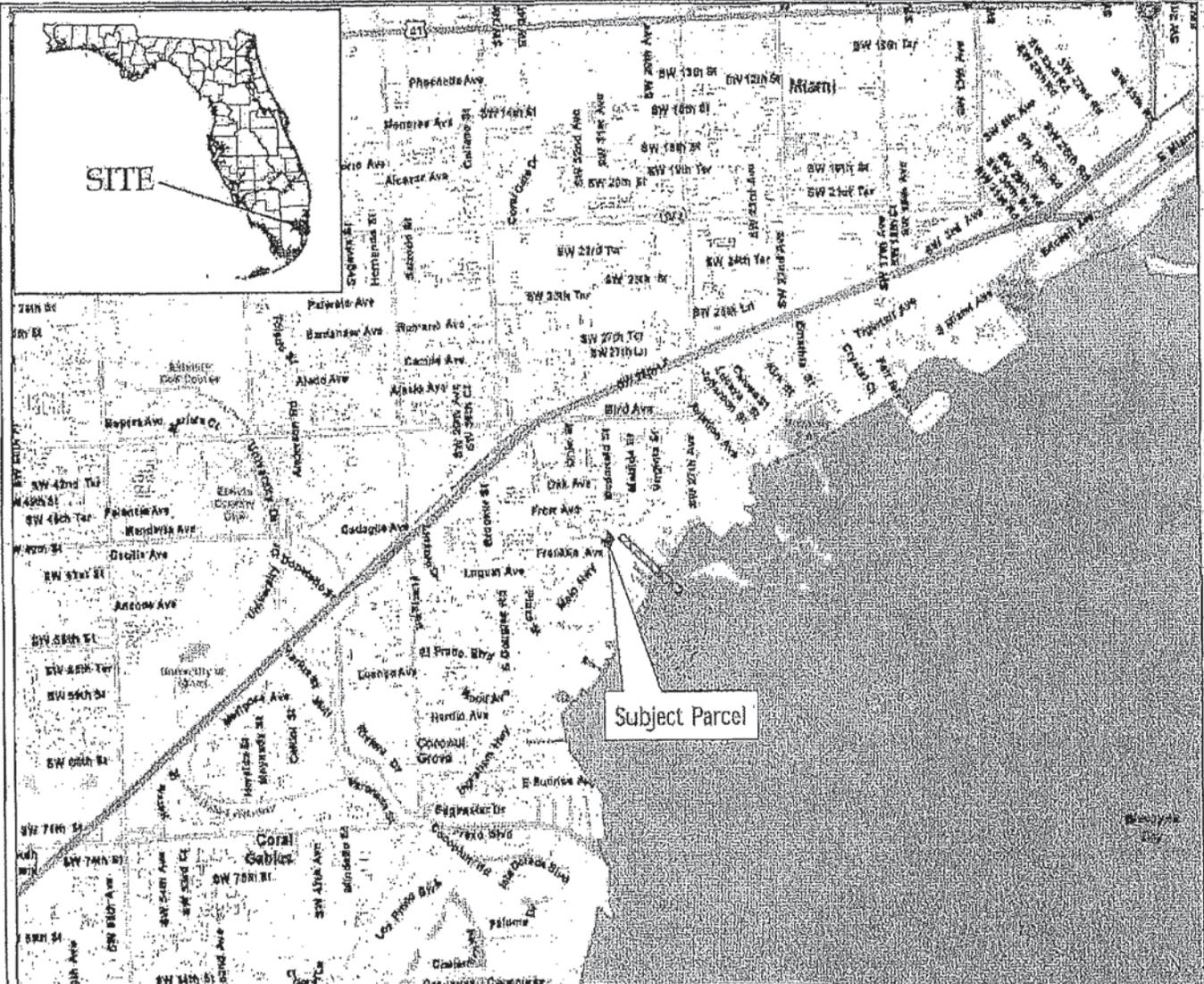
SUBJECT: NOTICE OF STATE-OWNED LAND FOR LEASE/SUBLEASE/SALE:
Coconut Grove Playhouse
PID #01-4121-056-0030 - Building next to Playhouse
PID #01-4121-045-0140 - Playhouse
Dade County - Section 21, Township 54 South, South, Range 41 East

THE STATE SHOULD RETAIN OWNERSHIP BECAUSE:
____ CURRENT AGENCY NEED
____ ENVIRONMENTAL VALUE
____ RECREATIONAL VALUE
____ ARCHAEOLOGICAL SIGNIFICANCE
____ HISTORICAL SIGNIFICANCE
____ NO INTEREST

If your agency has a current need for this parcel(s) or recommends that this parcel(s) be retained in state ownership due to its environmental and recreational value or historical and archaeological significance, please provide appropriate documentation and refer to the respective inventory number.

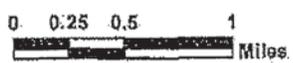
(Use additional pages if necessary)

FROM: Signature: _____
Name: _____
Title: _____
Agency: _____
Department: _____
Division: _____
Address: _____
City, State, Zip: _____
Email Address: _____



Distances to:
 Florida Forever Project - 4.5 miles to Dade County Archipelago Project - Miami Rockridge Pinelands - Site 1
 State Managed Conservation Lands - 80 feet to The Barnacle Historic State Park
 Water - 1,500 feet to Biscayne Bay

-  Subject Parcel
-  State Managed Conservation Lands
-  Locally Managed Conservation Lands



STATE LANDS SURPLUS LAND SALE

Section 21, Township 54 South, Range 41 East

Miami-Dade County, Florida

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT
Schedule A

Fund File Number: 01-2012-016250A
Effective Date:
September 25, 2012 @ 11:00
PM

Agent's File Reference:
BOT,COCONUT

Premium:

1. Policy or Policies to be issued: Proposed Amount of Insurance:
OWNER'S: ALTA Owner's Policy (06/17/06). (With Florida Modifications) \$6,000,000.00
Proposed Insured: Board of Trustees of the Internal Improvement Trust Fund of the State of Florida
MORTGAGEE:
MORTGAGEE:
2. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
3. Title to the Fee Simple estate or interest in the Land is at the Effective Date vested in:
Coconut Grove Playhouse, LLC, a Florida limited liability company
4. The Land referred to in this Commitment is described as follows:
See Exhibit A attached.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
400 Second Avenue South, Minneapolis, MN 55401, (612) 371-1111

Issuing Agent:

Agent No.: 2850801

Tallahassee Title Group LLC
1407 Piedmont Drive E
Tallahassee, FL 32308


Agent's Signature
Tallahassee Title Group LLC

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT
Schedule B-I

Fund File Number:
01-2012-016250A

Agent's File Reference:
BOT.COCONUT

I. The following are the requirements to be complied with:

1. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
2. Instruments creating the estate or interest to be insured which must be executed, delivered and filed for record:
 - A. Warranty Deed from Coconut Grove Playhouse, LLC, a Florida limited liability company to the proposed insured purchaser(s).
3. If closing does not occur within six weeks of the effective date of this product, the member must confirm the continued good standing of any buyer, seller, or mortgagor which is not a natural person.(Coconut Grove LLC, Coconut Grove INC)
4. Review certified copy of Articles of Organization and amendments thereto, if any, to verify who may sign for the company as well as procedures to authorize such signatory. Further requirements may be necessary upon review thereof.(Coconut Grove LLC)
5. Review of a true and correct copy of regulations or operating agreement to verify who may sign for the company as well as procedures to authorize such signatory. Further requirements may be necessary upon review thereof. If the regulations or operating agreement is not produced, then all of the members of the limited liability company, or a majority of the members if the number of members is substantial, must execute an affidavit consenting to the transaction. The affidavit shall establish the names of all the current members of the limited liability company.(Coconut Grove LLC)
6. A determination should be made that the limited liability company is not one of a family or group of entities. If it is, then it should be determined that none of the other entities in this family or group of entities is a debtor in bankruptcy. The determination may be made by an affidavit of the manager or managing member of the limited liability company. In the event that one or more of the other entities is a debtor in bankruptcy, Fund underwriting counsel must approve the transaction before title is insured.(Coconut Grove LLC)
7. A determination should be made that the member executing the Warranty Deed is not a debtor in bankruptcy and has not been a debtor in bankruptcy since becoming a member of the limited liability company. If the LLC is a sole member LLC, then a determination should be made there are no creditors who have acquired or are attempting to acquire control of the LLC by executing on or attaching or seizing the member's interest in the LLC. These determinations may be made by an affidavit of the member executing the instruments to be insured.(Coconut Grove LLC)
8. Record a Partial Release or reassignment of the Assignment of Leases, Rents and Profits recorded August 20, 2007, in O.R. Book 25868, Page 159, re-Recorded in O.R. Book 25958, Page 2039 Public Records of Miami-Dade County, Florida. Note: See Mortgage recorded in O.R. Book 25868, Page 138, Collateral Assignment of Contracts, Permits Licenses, Etc. in O.R. Book 25958, Page 2052, Public Records of Miami-Dade County, Florida, as to the subject property.
9. Record a Partial Release or reassignment of the Assignment of Leases, Rents and Profits recorded in O.R. Book 25868, Page 177, Public Records of Miami-Dade County, Florida, as to the subject property.
10. Record Partial Release as to the subject property of the Financing Statements recorded August 20, 2007, in O.R. Book 25868, Page 169, O.R. Book 25868, Page 190, Public Records of Miami-Dade County, Florida.
11. Record partial release of the Subordination, Non-Disturbance and Attornment Agreement between Coconut Grove Playhouse, LLC, a Florida limited liability company and GH Mortgage LLC., a Florida limited liability company recorded in O.R. Book 25868, Page 198, Public Records of Miami-Dade County, Florida, as to the subject property.
12. Record dismissal of court action with prejudice and discharge of Lis Pendens recorded in O.R. Book 28061, Page 1745, in that certain Case No. 12-06197 CA 21 in the Circuit Court of Miami-Dade County, Florida. For involuntary dismissal, appeal period must expire.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT

Schedule B-I (Continued)

Fund File Number:
01-2012-016250A

Agent's File Reference:
BOT.COCONUT

13. Satisfaction of the judgments and/or liens against Coconut Grove Playhouse, LLC, a Florida limited liability company, or a similar name, certified copies of which are recorded in the following O.R. Books and Pages: O.R. Book 25478, Page 4836, O.R. Book 25875, Page 1165, O.R. Book 27439, Page 674, O.R. Book 26427, Page 1848, Public Records Miami-Dade County Florida.
14. Satisfaction of the Notices and/or Liens against Coconut Grove Playhouse, LLC, a Florida limited liability company, or a similar name, certified copies of which are recorded in the following O.R. Books and Pages: O.R. Book 24336, Page 3521, O.R. Book 27396, Page 3939, O.R. Book 27396, Page 3948, O.R. Book 27329, Page 3691, O.R. Book 27501, Page 2607, O.R. Book 27546, Page 1526, O.R. Book 27617, Page 752, Public Records Miami-Dade County, Florida.
15. Proof of payment of GOVT PROPERTY Certificate No. 49615 for taxes for the year 2011 must be furnished.
16. Proof of payment of GOVT PROPERTY Certificate No. 49730 for taxes for the year 2010 must be furnished.
17. A survey meeting The Fund Title Note requirements must be furnished. If such survey reveals any encroachments, overlaps, boundary line disputes, or other adverse matters, they will appear as exceptions in the policy to be issued based upon this commitment.
18. A search commencing with the effective date of this commitment must be performed at or shortly prior to the closing of this transaction. If this search reveals a title defect or other objectionable matters, an endorsement will be issued requiring that this defect or objection be cleared on or before closing.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

COMMITMENT

Schedule B-II

Fund File Number:
01-2012-016250A

Agent's File Reference:
BOT.COCONUT

II. Schedule B of the Policy or Policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.
2. a. General or special taxes and assessments required to be paid in the year(s)2012 and subsequent years.
b. Rights or claims of parties in possession not recorded in by the Public Records.
c. Any encroachment, encumbrance, violation, variation, or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
d. Easements, or claims of easements, not recorded in the Public Records.
e. Any lien, or right to a lien, for services, labor, or material furnished, imposed by law and not recorded in the Public Records.
3. Any Owner Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
4. Easements, dedications and restrictions contained on the Plat of Engle Subdivision, as recorded in Plat Book 64, Page 43, Public Records of Miami-Dade County, Florida.
5. Easements, dedications and restrictions contained in Plat of Frow Homestead, as recorded in Plat Book B, Page 106, Public Records of Miami-Dade County, Florida.
6. Agreement and Covenant to Run with the Land recorded in O.R. Book 10269, Page 830, O.R. Book 10269, Page 833, O.R. Book 10269, Page 906, Public Records of Miami-Dade County, Florida.
7. Covenants, conditions and restrictions recorded December 15, 1998, in O.R. Book 18391, Page 1042, Public Records of Miami-Dade County, Florida.
8. Notice of Lease recorded in O.R. Book 26654, Page 904, Public Records of Miami-Dade County, Florida.
9. Lease Agreement NO. 3185 with Second Modification recorded in O.R. Book 14493, Page 147, O.R. Book 14493, Page 131, O.R. Book 14493, Page 143; Assignment and Assumption of Sublease in O.R. Book 22498, Page 4549; Public Records of Miami-Dade County, Florida.
10. Terms, provisions and restrictions in Quit Claim Deed recorded in O.R. Book 22498, Page 4535, Public Records of Miami-Dade County, Florida.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT

Fund File Number:
01-2012-016250A

Agent's File Reference:
BOT.COCONUT

EXHIBIT A

PARCEL I: Lots 1 and 2 of Engle Subdivision according to the Plat thereof recorded in Plat Book 64 at Page 43 of the Public Records of Dade County, Florida.

PARCEL II: Beginning at the intersection of the agreed Westerly line of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 21, Township 54 South, Range 41 East, with the Northerly right-of way line of Charles Avenue (formerly Evangelist street) according to the Plat of Frow Homestead as recorded in Plat Book B at Page 106 of the Public Records of Dade County, Florida; thence south 89 degrees 56 minutes 00 seconds East along said right of way line for 150.76 feet to its intersection with the Northwesterly right of way line of Main Highway; thence North 28 degrees 49 minutes 45 seconds East along said right of way line for 83.04 feet to a point on the Southwesterly right of way line of a former 14.12 foot alley lying Southwesterly of and adjacent to Lots 75 through 80 of the DeHedouville subdivision according to the Plat thereof as recorded in Plat Book B at Page 150 of the public, Records of Dade County, Florida; thence North 45 degrees 01 minutes 30 seconds West along said right of way line of 12.519 feet to the most Southerly corner of Engle subdivision according to the Plat thereof recorded in Plat Book 64 at Page 43 of the Public Records of Dade County, Florida; thence North 28 degrees 49 minutes 45 seconds East along the Southerly boundary of the said Engle Subdivision, being also the Northerly right of way line of Main Highway for 2.65 feet to a point of curvature of a circular curve concave to the South and having a radius of 745 feet; thence Easterly along said curve through a central angle of 0 degrees 17 minutes 00 seconds for 3.68 feet to the center line of the aforementioned alley; thence North 45 degrees 01 minutes 30 seconds West along the center line of said alley for 124.21 feet to the intersection of said center line with the Northwesterly boundary line of Tract B of said Engle Subdivision; thence South 44 degrees 58 minutes 30 seconds West for 7.06 feet to a point on the southwesterly boundary of Lot 2 of said Engle Subdivision; thence North 45 degrees 01 minutes 30 seconds West along the said Southwesterly boundary of said Lot 2 for 101.05 feet to a point on the arc of a circle having a radius of 25 feet and a central angle of 40 degrees 23 minutes 20 seconds and having a center which bears North 40 degrees 44 minutes 00 seconds West from said point; thence Southwesterly along said arc for 17.62 feet; thence south 89 degrees 39 minutes 20 seconds West for 5.20 feet; thence South along the agreed Westerly boundary of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 21 Township 54 South, range 41 East for 235.78 feet to the Point of Beginning, lying and being in Dade County, Florida.

PARCEL III: The East One Hundred Forty (140) feet of the North One Hundred Seventeen (117) feet and the East Fifty-two and One-Half (52.5') of Block twenty-Nine (29), Less the North One Hundred Seventeen (117) feet of Frow Homestead according to the Plat thereof recorded in Plat Book B at Page 106 of the Public Records of Dade County, Florida.

Also Described As:

The North 117 feet of the East 140 feet AND the East 52.5 feet, LESS the North 117 feet thereof, of those certain un-numbered Lots in Block 29 as the same is shown on the amended Plat of Frow Homestead according to the Plat thereof recorded in Plat Book B at Page 106 of the Public Records of Dade County, Florida.

PARCEL IV:

That part of Lots 75, 76 and 77 DeHedouville's Subdivision according to the Plat thereof, recorded in Plat Book B, Page 150 of the Public Records of Miami-Dade County, Florida; described as follows: Beginning at the most Southerly corner of the aforesaid Lot 0705; thence run Northeasterly along the Southeasterly boundary line of said

Form CF6 Exhibit A (rev. 12/10)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
COMMITMENT

Fund File Number:
01-2012-016250A

Agent's File Reference:
BOT, COCONUT

Lot 75, 43.36 feet; thence run Northeasterly parallel to the Southwesterly boundary lines of the aforesaid Lots 75, 76 and 77 to a point in the Northwesterly boundary line of said Lot 77; thence Southwesterly to the Southwest corner of said Lot 77; thence along Southwesterly line of said Lot 77, 76 and 75, to the Point of Beginning, less a portion of said Lot 75, released for Public Highway purposes and all that part of the alley adjacent to Lot 75, 76 and 77 as shown on Plat of Dehedouville's Subdivision as recorded in Plat Book B at Page 150 of the Public Records of Miami-Dade County, Florida.

Being the same land as conveyed by Official Records Book 9843, Page 896, and Deed Book 1566, Page 190, as recorded in the Public Records of Miami-Dade County, Florida, and in Official Records Book 10909, Page 2755, of the Public Records of Miami-Dade County, Florida.