

Memorandum



Date: February 5, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(A)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of an Aircraft Noise Monitoring Equipment License Agreement with Florida International University

RECOMMENDATION

It is recommended that the Board approve the attached Aircraft Noise Monitoring Equipment License Agreement between Miami-Dade County and the Florida International University (FIU) for the installation, operation, and maintenance of certain aircraft noise operating equipment on FIU property for a term of ten (10) years; and, to authorize the Mayor or the County Manager to execute the agreement attached hereto and to exercise any termination provisions therein.

SCOPE

Miami International Airport is located within Commission District Six; however, the impact of this agenda item is countywide as MIA is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

The term of the License Agreement with FIU is for ten (10) years with zero (\$0) rental cost to Miami-Dade County for use of the location. The Aviation Department will install this equipment at a cost of \$5,500.00. Operating and maintenance cost for the term of the agreement (10 years) is \$24,010.00. The funding source for this equipment is Aviation operating funds.

PROJECT MONITOR

This agreement will be monitored by Mr. Jeffrey A. Bunting, Division Director of General Aviation Airports, Aircraft Noise and Environmental Planning.

BACKGROUND

In response to community concern over aircraft noise and aircraft operations at Miami International Airport (MIA), the Miami Dade Aviation Department (MDAD) is proposing to install a permanent aircraft noise monitor (microphone) in the environ communities of MIA, at the FIU Engineering Center. The purpose of the monitor is to determine existing noise levels and to continuously monitor the area to insure cumulative noise levels do not rise. This monitor is part of MIA's \$1.6 million Aircraft Noise and Operations Monitoring System (ANOMS) which utilizes both radar and noise monitors to track aircraft throughout Miami-Dade County. The radar portion of the system is currently in place leaving only the noise monitor to be installed.

After identifying that the FIU site was a good candidate for a permanent noise monitor, MDAD contacted FIU.

Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners
Page 2

The officials with authority at FIU believes that the noise monitor is worthwhile and has agreed to grant Miami-Dade County, at its sole expense, the right to install, operate and maintain the equipment on the chosen location. In order to facilitate the installation of the noise monitor on FIU property, FIU and MDAD have prepared a License Agreement substantially in the form attached hereto. The term of the License Agreement is for ten (10) years with zero (\$0) rental cost to Miami-Dade County for use of the location.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 5, 2008

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

- _____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- _____ 6 weeks required between first reading and public hearing
- _____ 4 weeks notification to municipal officials required prior to public hearing
- _____ Decreases revenues or increases expenditures without balancing budget
- _____ Budget required
- _____ Statement of fiscal impact required
- _____ Bid waiver requiring County Manager's written recommendation
- _____ Ordinance creating a new board requires detailed County Manager's report for public hearing
- _____ Housekeeping item (no policy decision required)
- _____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(A)
02-05-08

RESOLUTION NO. _____

RESOLUTION APPROVING AIRCRAFT NOISE MONITORING EQUIPMENT LICENSE AGREEMENT WITH FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES FOR A TERM OF TEN (10) YEARS WITH NO RENTAL COSTS TO BE PAID BY MIAMI-DADE COUNTY; AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE SAME AND TO EXERCISE ANY TERMINATION OR CANCELLATION PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves an Aircraft Noise Monitoring Equipment License Agreement between Miami-Dade County and the Florida International University Board of Trustees for the installation, operation, and maintenance of certain noise monitoring equipment to be located on property owned by Florida International University for a term of ten (10) years with no rental costs to be paid by Miami-Dade County as described in the accompanying memorandum; and authorizes the Mayor or designee to execute the agreement between Miami-Dade County and the Florida International University Board of Trustees in substantially the form attached hereto and to exercise any termination or cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

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Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of February, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. CAL

Cynji Lee

AIRCRAFT NOISE MONITORING EQUIPMENT LICENSE AGREEMENT

THIS LICENSE AGREEMENT, (“the Agreement”) is made this _____ day of _____ 2007, (the “Effective Day”) between The Florida International University Board of Trustees, a Florida public body corporate on behalf of Florida International University, a public university of the State of Florida, (“OWNER”) and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, having an address at 111 NW 1st Street, Miami, Florida 33128, (“LICENSEE”);

RECITALS

WHEREAS, the OWNER holds fee simple title to the real property as more particularly described in **Exhibit 1** attached hereto and by this reference made a part hereof (the “OWNER Parcel”); and

WHEREAS, the OWNER has agreed to grant LICENSEE a license to use a portion of the OWNER parcel for installation, operation, and maintenance of certain noise monitoring equipment to monitor aircraft noise being generated from operations at Miami-International Airport (“MIA”), all as specifically described herein; and

WHEREAS, the parties desire to cooperate and work jointly to monitor off airport noise impacts,

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated herein by reference.
2. **Purpose and Intent.** The parties acknowledge and agree that the purpose and intent of this Agreement is to provide a license to LICENSEE for the use of a portion of the OWNER Parcel in connection with the installation, operation and maintenance of certain noise monitoring equipment designated for the specific purpose of detecting and measuring noise levels on the ground generated at MIA and in the vicinity of Florida International University, Engineering Center.
3. **Grant of License.** Subject to the terms and conditions hereof and LICENSEE’s fulfillment of its obligations hereunder, OWNER hereby grants to LICENSEE, for the Term (as defined below) the right, license and privilege to use that certain portion the OWNER Parcel as more particularly shown on Exhibit 2 attached hereto and by this reference made part hereof (the “License Parcel”) solely for the purpose of installing, operating and maintaining thereon certain noise monitoring equipment as listed on Exhibit 3 attached hereto and by this reference made part hereof (the “Equipment”) designated for the specific purpose of detecting and measuring noise levels on the ground generated by aircraft at MIA and in the vicinity of the Florida International University, Engineering Center (collectively, the “Permitted Purpose”). LICENSEE shall not use the License Parcel for any purpose or use other than the Permitted Purpose. LICENSEE’s use of the License Parcel for the Permitted Purpose shall be non-exclusive in nature.

4. **Term.** The term of this License Agreement shall be for ten (10) years, commencing on the date of full execution of this License Agreement (such date being the "Commencement Date"), and may be renewed upon mutual agreement of the parties as evidenced by a written amendment to this Agreement, if additional monitoring is required to benefit the residents of the area.

5. **License Fees.** The LICENSEE shall not pay the OWNER any monetary consideration in the form of a license fee, it being mutually agreed that the monitoring equipment is for the mutual benefit of the parties and the area residents of Miami, Florida.

6. **Equipment; Utilities; Access.**

6.1 The Equipment shall be located at the Engineering Center of OWNER located at the northeast corner of Flagler Street and 107 Avenue, Miami, Florida and as depicted in the drawing attached hereto as Exhibit "2". The monitor shall be installed at a time mutually agreed upon by the parties, at a specific location within the Engineering Center mutually agreed upon by the parties.

6.2 LICENSEE shall further have the right to install, maintain and operate within the OWNER Parcel such utilities (including, without limitation, electricity) necessary to serve the Equipment, all at LICENSEE's sole cost and expense. From and after the Commencement Date, LICENSEE shall pay when due all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations permitted by this agreement. LICENSEE shall arrange for all bills for such utility service to be in the name of LICENSEE and LICENSEE shall pay for such utility service directly to the utility provider. LICENSEE shall pay all fees or charges relative to the foregoing promptly and, in any case, prior to delinquency.

6.3 At all times during the Term of this Agreement, LICENSEE, at its sole cost and expense, shall maintain, repair, replace and operate its equipment in a first class manner. LICENSEE's Equipment shall remain the exclusive property of LICENSEE; provided, however, upon the expiration or earlier termination of this Agreement, LICENSEE shall remove the Equipment and any structures constructed in relation to the equipment at LICENSEE's sole cost and expense and shall return the OWNER Parcel to as similar a condition as reasonably possible as the property existed prior to the installation of the Equipment. LICENSEE will reimburse OWNER for any damage caused due to the installation, operation or removal of the equipment. The provisions of this section 6.3 shall survive the expiration or earlier termination of this Agreement.

6.4 In order to exercise its rights hereunder, LICENSEE shall have access to License Parcel through the OWNER Parcel on a twenty-four (24) hour per day, seven (7) day per week basis. If LICENSEE desires to allow any third party contractor access to the License Parcel and/or OWNER Parcel, LICENSEE shall provide the OWNER with prior written notice requesting such access and such third party contractors shall have access to the License Parcel and/or OWNER Parcel only after OWNER has provided written authorization and only upon any reasonable conditions imposed by OWNER for such access.

6.5 Both parties agree that in the process of installing and maintaining the monitoring equipment, LICENSEE may be required to trim bushes or trees to prevent damage to the Equipment. Every effort shall be made by LICENSEE to minimize trimming and all trimming will be done only after written approval of the same by OWNER. All trimming will be done at the sole cost and expense of LICENSEE and shall be done at times mutually agreed upon by the parties and in the manner mutually agreed upon by the parties. All landscape maintenance required for the proper operation or security of the equipment shall be performed by LICENSEE at LICENSEE's sole cost and expense and only after OWNER's written approval of the proposed landscape maintenance, including without limitation, additional tree or bush trimming or other landscape maintenance work. Any and all construction required for the installation, operation or maintenance of the Equipment, including without limitation any construction of fencing or concrete slabs to support the equipment, shall be constructed at the sole cost and expense of LICENSEE and only after OWNER's written agreement to the construction contemplated. Such construction shall be done by LICENSEE at times mutually agreed upon by the parties.

6.6 LICENSEE shall obtain and maintain during the term of this Agreement, at LICENSEE's sole cost and expense, any and all permits, consents and approvals from local, state or federal government authorities as required by LICENSEE to install, operate and maintain the Equipment and improvements to the OWNER Parcel. Should LICENSEE fail to obtain or maintain any required permit, consent or approval, OWNER may terminate this Agreement with no liability whatsoever and LICENSEE shall, at LICENSEE's sole cost and expense, remove the EQUIPMENT and all related structures, including without limitation, any fencing or concrete slabs, promptly upon OWNER's request at a time mutually agreed upon by the parties, or if no time can be mutually agreed upon by the parties, at the time designated by OWNER.

7. **Termination.** This License Agreement may be terminated, effective after the expiration of the various notice periods described hereafter, as follows:

7.1 Without cause, either party may terminate this Agreement upon ninety (90) days prior written notice to the other party; or

7.2 For cause, either party may terminate this Agreement, if the other party defaults and fails to cure such default within fifteen (15) days after written notice of such default is delivered to the defaulting party from the non-defaulting party; provided, however, that if such default is capable of being cured, but not within fifteen (15) day period, this Agreement may not be terminated so long as the defaulting party commences appropriate curative action within such fifteen (15) day period and thereafter diligently prosecutes such cure to completion as promptly as possible but in no event more than forty-five (45) days.

8. **Casualty.** If any part of the OWNER Parcel and/or License Parcel (including the improvements thereto) is damaged by fire, act of god, hurricane or other inclement weather, or other casualty (collectively, a "Casualty"), either party may immediately terminate this Agreement upon written notice to the other party.

9. **Damage to Property; Indemnification; Insurance.**

9.1 LICENSEE shall not, by its use or occupancy of the License Parcel or installation, operation and maintenance of the Equipment or otherwise, cause by its acts or omissions damage to the OWNER Parcel and/or License Parcel. LICENSEE shall be responsible for, and promptly repair to the reasonable satisfaction of the OWNER, any and all damage to the OWNER Parcel and License Parcel caused by the acts or omissions of LICENSEE, its employees, third party contractors and agents. LICENSEE further agrees that the Equipment placed upon the License Parcel shall be placed on the License Parcel at the risk of the LICENSEE.

9.2 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, LICENSEE shall indemnify and hold harmless the State of Florida, the Florida Board of Governors, Florida International University, the OWNER and its elected officials, employees, contractors, and agents from and against any and all claims, costs, losses, and damages arising from any acts or omissions of LICENSEE, its employees, contractors, or agents arising out of this Agreement including, but not limited to, the installation, operation and maintenance of the Equipment and the utilities used in connection therewith. However, nothing herein shall be deemed to indemnify the OWNER from any liability or claim arising out of the negligent performance or failure of performance of OWNER or any unrelated third party.

9.3 LICENSEE has an on-going self-insurance program for General Liability, Automobile Liability and Workers' Compensation coverage. In compliance with and subject to limitations of Florida Statutes, Section 768.28, LICENSEE has made provisions to process any claims that may arise out of this Agreement and the same protection will be afforded as would be provided by a policy of insurance.

9.4 LICENSEE shall require that any contractor that is not covered by LICENSEE's self-insurance and that LICENSEE requests to do work on FIU property pursuant to this Agreement provide and keep in full force and effect during the term of this agreement, at the contractor's own cost and expense, the following insurance policies for the joint benefit of LICENSEE and OWNER, with an insurer reasonably acceptable to OWNER:

<u>Commercial General Liability</u>	\$2,000,000 Aggregate	<i>(minimum)</i>
(a) Bodily Injury & Property Damage	\$1,000,000	
(b) Products Completed	\$1,000,000	
(c) Advertising & Personal Injury	\$1,000,000	
(d) Contractual Liability	\$1,000,000	<i>(Provisional)*</i>
(e) Medical Payments	Optional	

<u>Automobile Liability</u> <i>(owned/non-owned/leased)</i>	\$ 500,000	<i>(minimum)</i>
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<u>Workers' Compensation</u>	Statutory Limits
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LICENSEE shall deliver to OWNER's Purchasing Department, at 11200 SW 8th Street, Miami, Florida 33199, true and correct copies of certificates of such insurance prior to the contractor commencing work on FIU property.

Each such policy shall name *The Florida International University Board of Trustees, Florida International University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents*, as additional insured and/or loss payee as appropriate to the type policy. The contractor's policy shall be primary and any insurance carried by OWNER shall be noncontributing with respect thereto.

Each policy shall provide for thirty (30) days **prior** written notice to OWNER in the event of cancellation or reduction in coverage or amount. If the LICENSEE fails to secure and maintain insurance policies complying with the provisions of this agreement, OWNER may terminate this agreement.

The LICENSEE shall require that the contractor immediately notify OWNER if the contractor's Commercial General Liability insurance contains any restrictive endorsements other than those restrictive endorsements normally included on standard ISO Commercial General Liability occurrence or claims made forms.

The absence of a demand for any type of insurance certificates or policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of the obligations to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Agreement. OWNER does not represent that coverage and the limits specified herein will necessarily be adequate to cover LICENSEE liability.

OWNER reserves the right to cancel this Agreement if the above insurance is not maintained.

10. **Notices.** Any notice required or permitted by this Agreement shall be delivered by Certified Mail, return receipt requested, by facsimile transmission, or in person to the following persons:

As to LICENSEE to:

Jeffrey R. Bunting, Division Director
Miami-Dade County Aviation Dept.
Aircraft Noise & Environmental
Planning, & GAA
P.O. Box 025504, Miami Fl. 33102-5504
Email: jbunting@miami-airport.com

As to OWNER to:

George Philippidis
Florida International University
Applied Research Center
10555 West Flagler Street, EC 2100
Miami, FL 33174
Email: George.Philippidis@arc.fiu.edu

With a copy to:

Norman Hegedus
Aviation Environmental Planner
Aircraft Noise & Environmental Planning
Miami-Dade Aviation Department
P.O. Box 025504, Miami Fl. 33102-5504
Email: NHegedus@miami-Airport.com

With a copy to:

Daniel Paan
Project Manager
Facilities, Planning and Construction
Florida International University
11200 SW 8 St., CSC 214
Miami, FL 33199
Email: Daniel.Paan@fiu.edu

And with a copy to:

Vivian Sanchez
Chief Financial Officer &
Senior Vice President
Division of Business and Finance
Florida International University
11200 SW 8 St., PC 523
Miami, FL 33199
Email: Vivian.Sanchez@fiu.edu

11. **Entire Agreement.** This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified or terminated except by written amendment by the parties. If any portion herein is invalid, it shall be considered deleted and shall not invalidate the remaining provisions.

12. **Miscellaneous.**

12.1 This Agreement shall be interpreted and construed in accordance with and governed by laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami-Dade County, Florida.

12.2 Failure by either Party to insist upon strict performance of any of the provisions of this Agreement, or either Party's failure or delay in exercising any rights or remedies provided herein or by law, shall not be deemed a waiver of any rights of either Party to insist upon strict performance hereof or of any of either Party's rights or remedies under this contract or law, and shall not operate as a waiver of any of the provisions hereof or as a modification of the terms of the Agreement.

12.3 Both Parties have substantially contributed to the drafting and negotiations of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be

construed more severely against one of its parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

12.4 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the date shown above.

WITNESSES:

LICENSEE:

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

Harvey Ruvin, Clerk

By: _____

Approved as to legal sufficiency by the
office of the County Attorney:

By: _____
Assistant County Attorney

OWNER:

THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES, a
public body corporate of the State of Florida

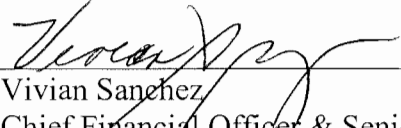
By:  
Vivian Sanchez
Chief Financial Officer & Senior Vice President
Division of Business and Finance

EXHIBIT "1"

EXHIBIT "1"

miamidade.gov

MIAMI-DADE

Property Information Map



Digital Orthophotography - 2006

0 — 235 ft

This map was created on 6/1/2007 2:56:03 PM for reference purposes only

Web Site © 2002 Miami-Dade County. All rights reserved

Summary Details:

Folio No:	00-4065-001-0230
Property:	10575 W FLAGLER ST
Assessing Address:	TRS II FUND 3900 COMMONWEALTH BLVD MAIL STATION 115 TALLAHASSEE FL 32399-

Property Information:

Primary Zone:	9500 OFFICE PARK DISTRICT
CLUC:	0066 TRUSTEE INTERNAL IMPROVEMENT FUND
Beds/Baths:	0/0
Floors:	3
Living Units:	0
Adj Sq Footage:	314,219
Lot Size:	1,594,296 SQ FT
Year Built:	1980
Legal Description:	S-54-40 36.60 AC M/L RICHARDSON KELLETT LAND COS SUB TRACTS 8 & 9 LESS 1/85FT & LESS 550FT THEREOF & TRACTS 10 & 11 LESS 550FT BR K 2 LOT SIZE 1594296 SQ FT

Sale Information:

Sale OR:	17198-3088
Sale Date:	8/1996
Sale Amount:	\$24,310,000

Assessment Information:

Year:	2006	2005
Land Value:	\$5,727,843	\$5,727,843
Building Value:	\$6,306,668	\$6,306,668
Market Value:	\$17,034,711	\$17,034,711
Assessed Value:	\$17,034,711	\$17,034,711
Total Exemptions:	\$17,034,711	\$17,034,711
Taxable Value:	\$0	\$0

EXHIBIT “2”

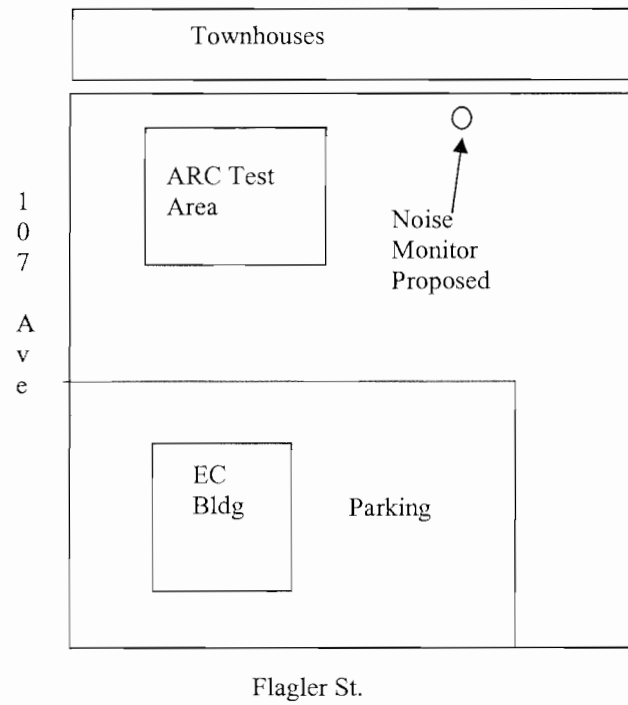
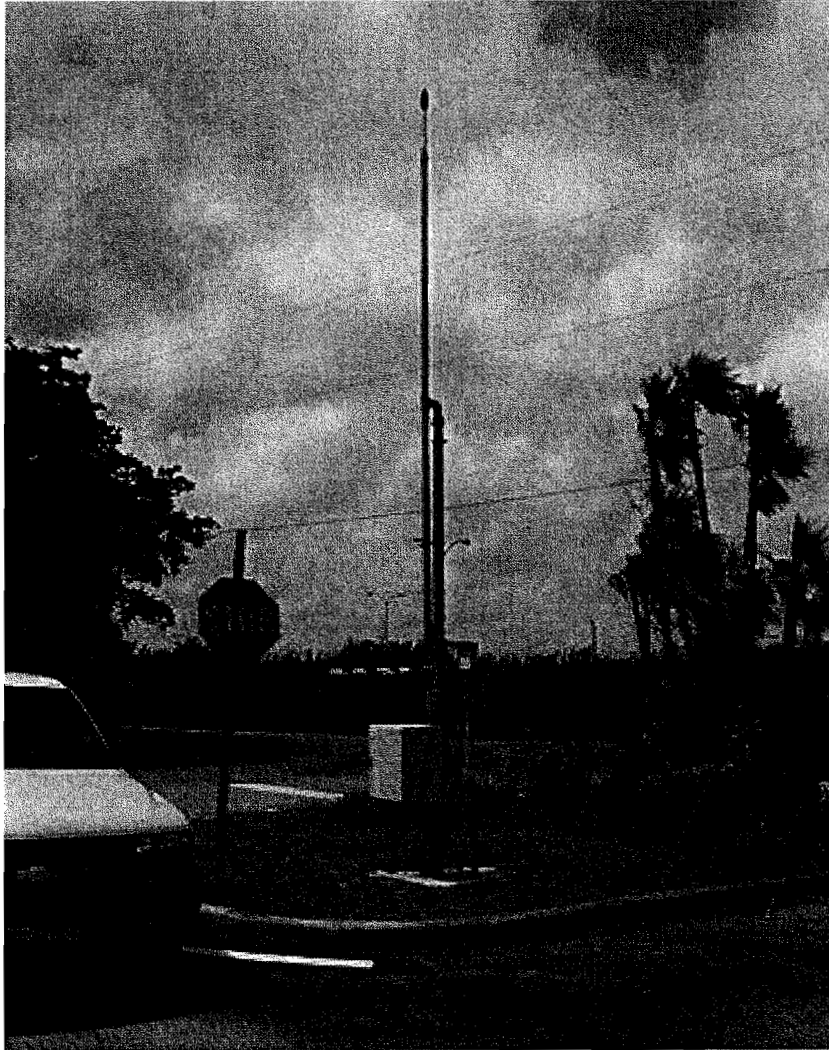


Fig. 2: Proposed location for the noise monitor in the Engineering Center grounds of FIU

EXHIBIT "3"



Photograph of a noise monitor