Memorandum

MIAMI-DADE COUNTY

Date: September 16, 2008

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

Agenda Item No. 14(A)(6)

From: George M. Burgess, County Manager

Subject: Resolution Authorizing the Execution of a License Agreement between Miami-Dade County and Florida Power and Light Company

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the Mayor or Designee to execute a License Agreement ("Agreement") between Miami-Dade County ("County") and Florida Power and Light Company ("FPL"), for the purpose of installing Homeland Security equipment as part of the Port of Miami's ("Port") Waterside Surveillance System.

SCOPE

The Port of Miami (the Port) is located within District 5 – Chairman Bruno A. Barreiro. The impact of this agenda item is countywide as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The rental cost will be $1,800.00 per month which includes electrical consumption (as estimated by FPL), insurance and a licensing fee that FPL has significantly reduced. That amount will be paid using Seaport revenues.

TRACK RECORD/MONITOR

The Port staff members responsible for monitoring the waterside surveillance program are Hector Pesquera, Assistant Director for Safety and Security, from the security perspective and Louis Noriega, Chief, Seaport Information Systems, on IT-related aspects.

BACKGROUND

In September of 2003, the Port received a Port Security Grant of $657,000 from the Office for Domestic Preparedness for the first phase of a Waterside Surveillance System for the Port. The Waterside Surveillance System will provide real-time situational awareness of the Port's waterside access points.

The proposed Agreement is similar to one passed on July 1, 2008, by the Board (Resolution No. R-760-08), authorizing the execution of a Lease Agreement between the County and Three Tequesta Point Condominium Association, Inc. for this same purpose. At this time, the Port has negotiated the proposed Agreement in order to move forward with the implementation of the subsequent phase of the waterside surveillance system. The proposed Agreement will allow the Port to use the existing FPL facility located 150 MacArthur Causeway for the installation and maintenance of security equipment.

The term of this Agreement is for five (5) years commencing upon its execution, with no renewal options. Either party may terminate this Agreement at any time without cause by giving each other at least ninety (90) days written notice of such termination. Although the Agreement lists an effective date of August 29th, it is solely for the purposes of having FPL's signature; no equipment has been installed.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution which include the authority for the County Mayor or County Mayor's designee to execute the agreement and to exercise termination provisions.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: September 16, 2008

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

SUBJECT: Agenda Item No. 14(A)(6)

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. 14(A)(6)
9-16-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT COMPANY FOR THE PURPOSE OF INSTALLING HOMELAND SECURITY SURVEILLANCE EQUIPMENT; AND AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE TERMINATION RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves the execution of a License Agreement between Miami-Dade County and Florida Power & Light Company, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the Mayor or designee to execute the License Agreement after review and approval by the County Attorney's Office; and to exercise termination rights conferred 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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of September, 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. JMM

Jess M. McCarty

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, hereinafter also referred to as "License" and/or "Agreement", is made upon this 29th day of August, 2008 between FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is PO Box 14000, Juno Beach, Florida 33408, Attn. Corporate Real Estate Department, hereinafter referred to as "Company" and Miami-Dade County, a political subdivision of the State of Florida, whose mailing address is Seaport Department, 1015 N. America Way, Office of Information Systems, 2nd Floor, Miami, Florida 33132, hereinafter referred to as "Licensee".

WITNESSETH

WHEREAS, Company is the owner of title in fee simple to real property in Miami-Dade County, Florida, hereinafter referred to as "Land" and described as follows:

A parcel of real property located Section 4, Township 54 South, Range 42 East in Miami-Dade County, Florida whose address is 150 MacArthur Causeway, Miami Beach, Florida 33139, Miami-Dade County, Florida.

AND, WHEREAS, Licensee desires to occupy and use the Land as stated herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Company hereby grants to Licensee and Licensee hereby accepts from Company, this License to use and occupy the Land upon the following terms, conditions and provisions:

TERMS, CONDITIONS AND PROVISIONS

1. **Use**: The Land shall be used by Licensee for the sole purpose of installing and maintaining a security camera and radar system as described and shown upon **"Exhibit B"**, attached hereto and incorporated herein by this reference. Licensee shall obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Land and shall provide to Company, copies of all permits that Licensee obtains for the use of the Land. Licensee shall pay for all utility and other services furnished to or for Licensee upon the Land or in connection with its use, except that the cost of electrical service associated directly with the use of the Land described herein shall be furnished by Company to Licensee as part of the cost of the annual fee set forth in this Agreement.

2. **Term**: This License is for a term of Five (5) years, unless earlier terminated as provided herein, beginning upon the 29th day of August, 2008, and ending upon the 31st day of August, 2013.

3. **Rental**: Licensee hereby covenants and agrees with Company, that during the initial term of this License, Licensee shall pay to the Company the total amount of Eighteen Hundred Dollars and Zero Cents ($1,800.00) each month, payable in advance and upon the first day of each month, plus sales tax if applicable, commencing upon the first day of the term of this License. All payments shall be made to Company at the following address:

FPL
Corporate Real Estate Dept.
Attn. Jeff Long
700 Universe Blvd.
Juno Beach, FL 33408

4. **Company's Rights**: Licensee hereby acknowledges that Company is the owner of fee simple title to the Land described herein and Licensee agrees to never claim any interest or estate of any kind or extent whatsoever in the Land by virtue of this License or the occupancy or use hereunder. Licensee's use of the Land shall always be subordinate to Company's rights in the Land. Company reserves the right to enter upon the Land at any time for its purposes and Licensee shall notify its employees, agents, contractors, vendors, invitees, and licensees accordingly. Company and its employees, agents, contractors, vendors, lessees, licensees and invitees will not be responsible or liable for damage or loss to Licensee resulting from Company's use of the Land. Company may at its sole discretion and at any and all times, install or permit others to install upon the Land, other and additional overhead or underground facilities.

5. **Condition of Land**: Company makes no warranty, guarantee, promise or indication of any type whatsoever to Licensee or to any other entity, party or individual regarding the condition, suitability, fitness, safety or usefulness of the Land for any type of use, operation, installation or maintenance. The Land is used, operated and maintained by Company solely for the installation and operation of an office building, warehouse and electric utility services and is not used, operated or maintained by Company for installation, operation or maintenance of security systems or any other use. Licensee hereby accepts permission to use the Land in an "As Is" condition for installation, operation, use and maintenance of a security camera and radar system. Licensee is solely responsible to determine if the Land is suitable for the use for which this License is granted, including, but not limited to, the right and responsibility of Licensee to inspect the Land prior to and during the Term(s) granted herein, and determine if Licensee's use of the Land can be carried out in a safe and effective manner. Licensee is solely responsible for installing and/or providing all equipment and devices, including, but not limited to, lighting, security, signage and other facilities to ensure the safety of Licensee's employees, agents, contractors, vendors, invitees and facilities.

6. **Restrictions on Use**: Licensee shall not use the Land in any manner which, in the sole opinion of Company, may tend to interfere with Company's use of the Land or may tend to cause a hazardous condition to exist. Licensee shall not cause or permit any waste of the Land, including the removal of soil, addition of fill or altering of existing grade, without the written permission of Company. Licensee shall not erect, build, construct or install any type of fixture, fence, shelter, attachment, or other improvement, whether the same be permanent or temporary, without prior written permission from Company. Any and all work to be performed by Licensee while upon the Land shall be in accordance with detailed plans and specifications to be prepared by Licensee and submitted to Company for written approval thereof. It is expressly agreed that Licensee shall not commence any such work until said plans and specifications have been so approved by Company. Licensee understands and acknowledges that electrical equipment and appurtenances, including overhead and underground wires installed or to be installed on the Land by Company are conductors of high-voltage electricity and that disturbance of any of these facilities may cause a hazardous condition. Licensee shall exercise extraordinary precautions so as to prevent damage or injury to property or persons in the vicinity of such facilities. Licensee shall notify its employees, agents, contractors, vendors, invitees and licensees of the existence of said high-voltage facilities and other installations. At no time or for any reason, including an emergency, shall Licensee bring upon the Land, any type of equipment, machinery or vehicle that is capable of extending greater than fourteen feet (14') above grade, unless and until Licensee has obtain from Company, express written permission to do so, prior to bringing such equipment upon the Land. Licensee understands and acknowledges that the Land and facilities thereon are highly secure with access restricted to Company's employees, agents and contractors as designated by Company's Corporate Security Department and that access by Licensee's employees, agents, contractors, and vendors shall be strictly controlled by Company and permitted to enter upon the Land at only those times which Company, in its sole discretion, shall deem appropriate. Licensee shall contact Company's Corporate Real Estate Department via postal service, email or telephone in advance to schedule access to enter upon the Land.

7

7. **Company's Right to Cure**: During the term of this License, Company, at its sole discretion, has the right to remove or cause to be removed by it or its agents, contractors, or vendors, all objects, materials, debris, or structures that create or that could create a hazardous condition to Company's facilities or interfere with Company's use of its facilities. All costs expended by Company pursuant to this paragraph are and shall be the sole obligation of Licensee and will be reimbursed to Company by Licensee immediately upon Company's demand. If Licensee's use, installation, operations, maintenance, or activity upon the Land results in electrical outage(s), all costs incurred by Company to restore power and repair facilities are and shall be the sole responsibility of Licensee and will be reimbursed to Company by Licensee immediately upon Company's demand.

8. **Environmental**: Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across, or stored on the Land, which restricts, impairs, interferes with, or hinders the use of the Land by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Land and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

9. **Compliance with Laws**: Licensee shall, at its sole cost and expense, comply with all laws, rules, and regulations of any and all governmental authority(ies) having jurisdiction over the Land, or use of the Land, and to employ practices standard in the County in which the Land is located for the purpose for which this License is granted and for the protection of the Land.

10. **Termination**: Either party may terminate this License at any time without cause by giving the other party at least Ninety (90) days written notice of such termination. In the event of such termination without cause, Company shall refund any unexpired prorated portion of Licensee's advanced rental payment. Company may, at its election, terminate this License forthwith at any time if Licensee fails to comply with or abide by each and all of the terms, conditions and provisions hereof or keep all and singular Licensee's promises and agreements herein, and any advance payments which may have been paid by Licensee to Company hereunder shall be retained by Company as and for liquidated damages, it being understood and agreed that the damages to be incurred by Company in the event of Licensee's failure to perform hereunder are not capable of being ascertained with mathematical precision as of the date of execution and delivery hereof.

11. **Surrender**. Licensee shall vacate, surrender and deliver the Land to Company in as good a condition as existed prior to the date of commencement hereof and within Five (5) business days of such expiration, revocation or termination of this License. Licensee shall remove all personal property placed by it upon the Land and shall repair and restore and save Company harmless from all damage caused by such removal. If such property is not so removed by Licensee, Company shall have the right to take possession of and appropriate to itself, without any payment or offset thereof, any property of Licensee or anyone claiming under Licensee then remaining on the Land. Company shall have the right to make such removal at Licensee's sole cost and expense, the amount of which Licensee agrees to pay to Company upon demand.

12. **Holding Over**: If Licensee remains in possession of the Land, or any part thereof, after termination, revocation or expiration of this License, then no tenancy or interest in the Land shall result therefrom, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Licensee shall upon demand by Company, pay to Company, as liquidated damages, a sum equal to double the rental as set forth in Section 3 for and during any period which Licensee shall hold and fail to vacate the Land after the Term has been terminated, revoked, or expired.

13. **Taxes & Assessments**: Licensee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements made by Licensee, alterations, changes and additions made by Licensee, merchandise and personal property of any kind owned, installed or used by Licensee in, on or upon the Land.

14. **No Encumbrances**: Licensee expressly covenants and agrees that the Land shall not be subject to any encumbrance by any mortgage or lien nor shall the Land be liable to satisfy any indebtedness that may result from Licensee's occupation, use and/or operation.

15. **No Transfer**: Licensee shall not, without the prior written consent of Company, transfer, assign, sublet, enter into any license or concession agreement, or mortgage or hypothecate this License.

16. **Indemnity**: Notwithstanding any other provision in this Lease to the contrary, Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (hereinafter referred to as "FPL Entities") shall not be liable for any injury to person(s) or damage to property arising out of or in connection with Licensee's occupancy and use of the Land unless caused by the intentional actions of FPL Entities: nor shall FPL Entities be liable in any way for operations carried on by Licensee or any public, quasi-public or private companies, or governmental agencies or affiliated entities, or for loss of property by theft. Licensee shall assume all risk of loss of or damage to its own property and that of its patrons, agents, contractors or independent contractors, however occurring, except as may otherwise be specially provided under the terms of this License. Licensee further agrees to indemnify and hold harmless FPL Entities from and against all claims, damages, losses and expenses, including attorney's fees at both the trial and appellate level, arising out of, resulting from or in any way related to, the occupancy and/or use by Licensee of the Land or Licensee's performance of the terms, conditions and provisions set forth in this License, subject to the provisions of, and limitations set forth in, Section 768.28, Florida Statutes. This paragraph shall survive the expiration or earlier termination of this Lease, or any renewal term thereof.

17. **Insurance**: Licensee shall at all times during the entire term of this License, maintain a self-insurance program in compliance with all applicable laws, including, but not limited to Section 768.28 Florida Statutes and such coverage shall extend to and provide protection for any and all claims arising out of or in connection with Licensee's occupancy and use of Company's Land. In addition to the aforementioned coverage, Company also maintains at its own expense, general liability insurance coverage for personal injury and property damage arising out of or in connection with Licensee's occupancy and use of Company's Land; however, such additional coverage shall not be deemed to relinquish Licensee from its duty and obligation to comply with any and all terms, conditions or provisions as set forth in Section 14, and all other parts of this License.

18. **Notices**: All notices under this License shall be deemed served when deposited in the United States mail, registered or certified mail or prepaid overnight courier and addressed to the parties at the addresses first written above. Either party may, at any time, designate in writing a substitute address for the address first written above, and thereafter notices shall be directed to such substituted address.

19. **Time & Entire Agreement**: Time is of the essence, and no extension of time shall be deemed granted unless made in writing and executed by both Company and Licensee. This instrument constitutes the entire agreement between the parties relative to the License hereby granted, and any agreement or representation which is not expressly set forth herein and covered hereby is null and void. Any amendment, modification, or supplement of or to this License must be in writing and executed by both Company and Licensee. Waiver by Company of any breach of any term or provision hereof shall not be deemed or construed as a waiver of subsequent breach of the same or any other term or provision hereof.

20. **Conflict of Law**: If any provision of this License is determined by a court of competent jurisdiction as illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. If any litigation arises out of enforcement of this License, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

21. **Waiver of Jury Trial**: **Licensee knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this License, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of Licensee.**

22. **Headings**: The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. All terms used herein shall be construed as embracing such number and gender as the character of the party or parties require(s).

23. **Radon**: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in the State the Land is located. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed the day and year first above written.

Witnesses for Company:

Signature: _____
Print Name: Jeff Long

Signature: _____
Print Name: WILLIAM MUNFT

COMPANY:
FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____
Name: DINA L CLUNTON
Its: DIR. CORP REAL ESTATE

Witnesses for Licensee:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

LICENSEE:
Miami-Dade County,
a political subdivision of the State of Florida,
by resolution of its Board of County Commissioners

By: _____
Name: George M. Burgess
Its: County Manager

Attest:
By: _____
Name: _____
Its: Deputy Clerk

Approved by County Attorney as to from and legal sufficiency:
By: _____
Name: _____
Its: County Attorney

Form 3737 Rev. 4/1/2004

Property Information

Search By:

Select Item

Text only

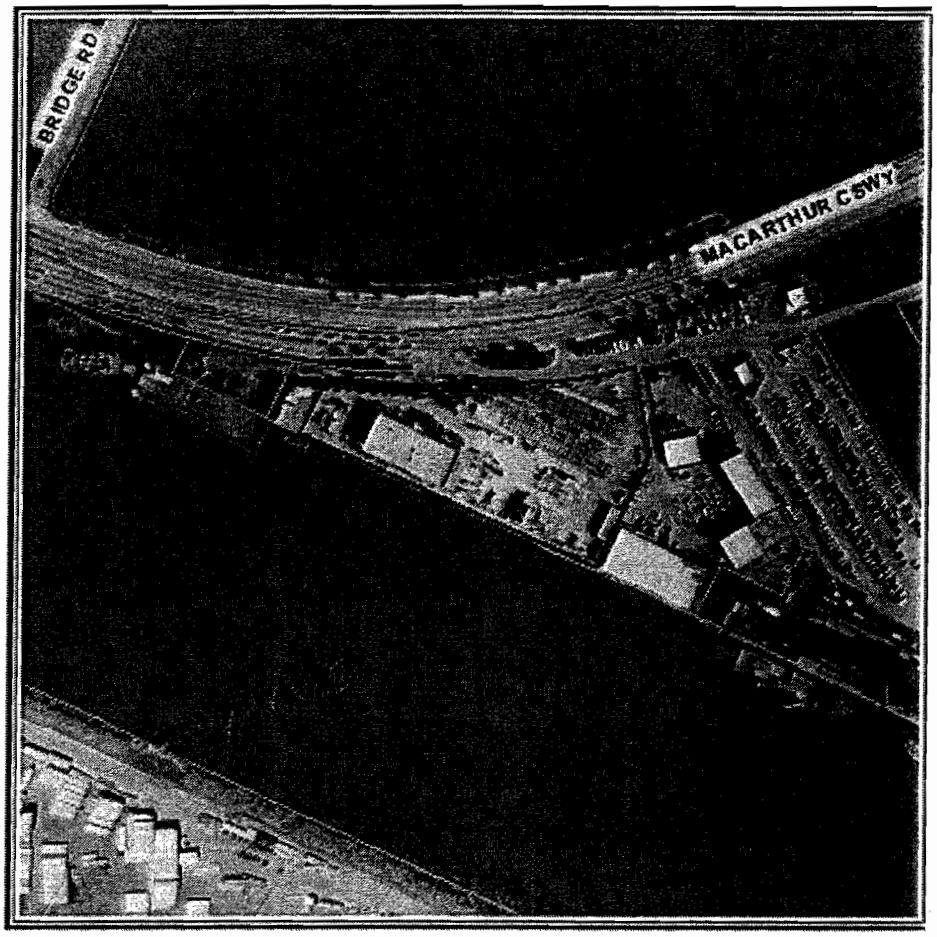
Property Appraiser Tax Estimator

Summary Details:

Folio No.:	02-4204-000-0070
Property:	150 MACARTHUR CSWY
Mailing Address:	FLORIDA POWER & LIGHT CO ATTN PROPERTY TAX DEPT PO BOX 14000 JUNO BEACH FL 33408-

Property Information:

Primary Zone:	7000 INDUSTRIAL
CLUC:	0063 UTILITY
Beds/Baths:	0/0
Floors:	1
Living Units:	0
Adj Sq Footage:	11,063
Lot Size:	136,402 SQ FT
Year Built:	1999
Legal Description:	4 54 42 3.13 AC BEG AT PT 1560FTN & 2015FTW OF SE COR SEC BEING X OF C/L RDWAY OF ORIGINAL CO CSWY VIA & FACE OR W BRIDGE ABUTHT S 67 DEG W58.7FT S 31DEG E64.75FT TH SWLY



Digital Orthophotography - 2007 0 163 ft

My Home | Property Information | Property Taxes | My Neighborhood | Property Appraiser

Home | Using Our Site | About | Phone Directory | Privacy Disclaimer

Exhibit B

FPL building facility located at 150 MacArthur Causeway, Miami Beach, Florida 33139

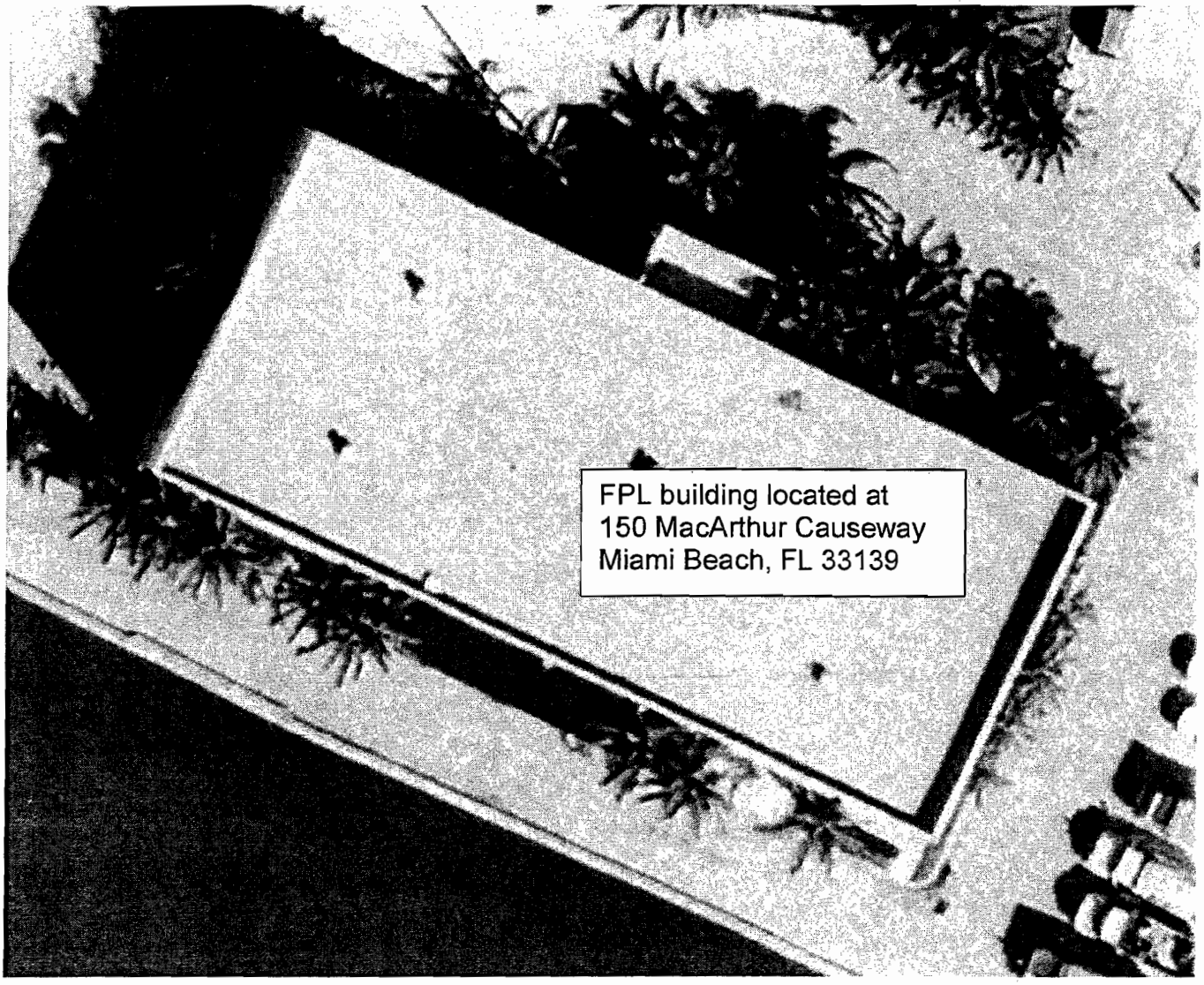

FPL building located at
150 MacArthur Causeway
Miami Beach, FL 33139

Exhibit B