Memorandum

MIAMI-DADE COUNTY

Date: November 3, 2009

To: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

Agenda Item No. 8(Q)(1)(B)

From: George M. Burgess
County Manager

Subject: Resolution Ratifying the Actions of the Mayor or Designee and Authorizing the Execution of a Lease Agreement between Miami-Dade County and Bayview at Fisher Island Condominium Association No. Two

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RECOMMENDATION

It is recommended that the Board approve the accompanying resolution ratifying the action of the Mayor or Designee in executing a Lease Agreement ("Agreement") between Miami-Dade County ("County") and Bayview at Fisher Island Condominium Association No. Two ("Bayview") for the purpose of installing Homeland Security surveillance equipment as part of the Port of Miami's ("Port") Waterside Surveillance System.

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

The rental cost will be $1,200 per month for the duration of the lease. According to FPL, this is the estimated electrical consumption resulting from the operation of the equipment. That amount will be paid using Seaport operating 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 October of 2006, the Port received a Port Security Grant of $2,250,000 from the Office for Domestic Preparedness for the second phase of a Waterside Surveillance System. The Waterside Surveillance System provides real-time situational awareness of the Port's waterside access points. As the grant expires on September 30, 2009, and required that the surveillance system be fully installed by that date for reimbursement, the Port is submitting this item for placement on the ratification agenda.

The proposed Agreement provides for the installation of security surveillance equipment on Fisher Island for coverage of the Southeastern portion of the Port. This item is similar to one passed by the Board on July 1, 2008, (Resolution No. R-760-08), authorizing the execution of a

building as a base for the security equipment, as well as space in a storage and electrical room for the installation and maintenance of additional equipment. 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 term of this lease agreement is for two (2) years commencing on the effective date with the County holding four (4) additional one-year options to renew. Either party may terminate this Agreement at any time without cause by giving each other at least thirty (30) days written notice of such termination.

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 that specified in the resolution which include the authority for the Mayor or his designee to execute the Agreement, exercise the additional four (4) one year options to renew and to exercise the cancellation provision.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: November 3, 2009

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

SUBJECT: Agenda Item No. 8(Q)(1)(B)

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(Q)(1)(B)

11-3-09

RESOLUTION NO. _____

RESOLUTION RATIFYING THE ACTION OF THE MAYOR OR DESIGNEE OF EXECUTING A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BAYVIEW AT FISHER ISLAND CONDOMINIUM ASSOCIATION NO. TWO FOR TWO YEARS AT THE RENTAL RATE OF $1,200.00 PER MONTH AND FOR THE PURPOSE OF INSTALLING HOMELAND SECURITY SURVEILLANCE EQUIPMENT AS PART OF THE PORT OF MIAMI'S WATERSIDE SURVEILLANCE SYSTEM; AND TO EXERCISE ALL 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; and

WHEREAS, this Board has adopted Resolution No. R-900-09, authorizing the County Mayor or Designee to administer County business during the Board of County Commissioners' 2009 summer recess as provided therein, and has directed that all actions taken pursuant to such authority be submitted to this Board for ratification at its October 6, 2009 meeting,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board ratifies the action of the Mayor or Designee of executing a Lease Agreement between Miami-Dade County and Bayview at Fisher Island Condominium Association No. Two, in substantially in the form attached hereto and made part hereof; and to exercise all 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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2009. 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.

Richard Seavey

LEASE AGREEMENT

THIS LEASE AGREEMENT is made on the 21 day of AUGUST, 2009 by and between Bayview at Fisher Island Condominium Association No. Two., a Florida not-for-profit corporation, hereinafter called the "LANDLORD," and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "TENANT," for the purpose of installing Homeland Security Surveillance Equipment on the roof of the Bayview at Fisher Island Condominium Association No. Two

WITNESSETH:

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the demised premises described as follows:

> **1. Access to and rooftop space by TENANT and TENANT's contractors for installation and maintenance of the following: 4 foot pole and pole-mounted location for the purpose of mounting radar and security camera(s);**
>
> **2. Access to and space in a storage and electrical room by TENANT and TENANT's contractors for installation and maintenance of additional equipment;**
>
> **All located at Bayview at Fisher Island Condominium Association No. Two; 6 Fisher Island Drive; Fisher Island, Florida 33109**

TO HAVE AND TO HOLD unto the said TENANT for a term of two (2) years commencing on the effective date of the resolution of the Board of County Commissioners approving this lease agreement (the "Commencement Date"), subject to the renewal terms contained herein and solely for the purposes described herein. TENANT shall pay rent to LANDLORD in the amount of $ $1,200.00 per month during the term of this lease. Rent shall be paid monthly, due on the first of the month, and payment shall be made payable to the LANDLORD, unless this lease is terminated for any reason by either TENANT or LANDLORD

prior to its expiration, in which case the obligation to pay rent shall cease on the effective date of such termination. As additional consideration for the rental of the aforementioned demised premises, TENANT agrees to pay up to $2,000.00 for attorney fees incurred by LANDLORD in the negotiation, revision and finalization of this Lease.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

ARTICLE I
USE OF DEMISED PREMISES

The area of the demised premises shall be used by TENANT and/or TENANT's contractor solely for the purposes of installing and maintaining a Homeland Security Surveillance Site, including installation and maintenance of Homeland Security Camera System and related equipment. LANDLORD hereby further confers onto TENANT the following privileges related to the Premises:

1. The right to extend and connect lines for signal carriage between TENANT's radios and cameras, subject to approval by LANDLORD.
2. The right to extend and connect lines for electric utility service in the control cabinet, and storage and electrical room. The Homeland Security Camera System, and its related equipment, including any lines installed for signal carriage between TENANT's radios and cameras, as well as lines for electric utility service in the control cabinet and storage and electrical room, shall hereinafter be collectively referred to as "Equipment". The installation of a submeter to rate the electricity used by the system.
3. Extent of Operation. TENANT recognizes that the demised premises are located within the boundaries of a residential condominium known as

Bayview at Fisher Island Condominium Association No. Two (the "Condominium"), and that the unit owners and residents of the Condominium, and their guests and invitees, as well as the LANDLORD's employees are entitled to use the demised premises. TENANT will at all times keep the demised premises in good, neat and clean condition and will conduct its operation and use thereof in a manner which will not result in an interference, annoyance or hindrance to such unit owners, residents and their guests and invitees, as well as LANDLORD's employees, knowing that the proper operation of the facilities within the demised premises is an essential and integral consideration without which the LANDLORD would not have entered into this Lease; and the TENANT covenants and agrees with the LANDLORD that the TENANT will exercise due diligence and the utmost good faith to do all things to operate its Equipment. TENANT further acknowledges, agrees and warrants that its Equipment and its use of the demised premises will not interfere with the Condominium or any component thereof, including the roof systems, fire alarm system, security alarm or access systems, and that the operation and use of the Equipment and the demised premises by TENANT in accordance with this Lease will not result in a violation of any warranties regarding such Condominium building components. Should TENANT's use and operation of the Equipment and the demised premises result in an interference of the use of the Condominium by the LANDLORD's employees or Condominium unit owners, tenants, residents, or their families and guests, or should same result in the interference of the proper function of a

Condominium building component or a breach, default, or violation of an existing warranty of a Condominium building component, including the components listed above, then the TENANT agrees to indemnify the LANDLORD in accordance with the provisions of Article XVII of this Lease, subject to the provisions of, and limitations seth forth in, Section 768.28, Florida Statutes whereby the TENANT shall not be held liable to pay a personal injury or property injury or property damage claim or judgment by any person which exceeds the sum of $100,000 or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT, its agents or its employees. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

4. Requirements of law. TENANT will operate the facilities at the demised premises in full compliance with all relevant laws, orders, ordinances and regulations of all governmental authorities having jurisdiction over the demised premises, and shall not use the demised premises in violation of the certificate of occupancy for the buildings, nor shall TENANT bring or permit to be brought or kept in or on the demised premises any inflammable, combustible or explosive fluids, materials, chemicals or substances other than those necessary for the proper operation, maintenance and upkeep of the facilities; nor shall TENANT do or permit any act on the demised premises which might subject LANDLORD to any liability or responsibility for injury

to any person or damage to any property by reason of TENANT's use or operation of the demised premises. TENANT shall comply with all rules, orders or requirements of the National Board of Fire Underwriters or any other similar body, and shall not do, permit or keep anything in the demised premises which shall increase the rate of fire insurance on the buildings of which the demised premises are a part or on the property kept therein over that in effect at the commencement of the term of this Lease, and should TENANT fail to comply with the provisions of this section, this Lease shall automatically terminate upon ten (10) days written notice from LANDLORD and TENANT shall vacate the demised Premises and remove TENANT'S Equipment within thirty (30) days the date of termination. TENANT's failure to comply with all provisions of this paragraph shall be deemed a default of this Lease by TENANT.

5. TENANT shall have the privilege of determining its own mode of operation, provided such is not inconsistent with any of the provisions of this Lease nor a violation of any applicable law, order, ordinance, governmental regulation or Condominium document; subject to the following provisos: TENANT will ensure that its employees and any contractors, subcontractors, and agents entering and working at the demised premises will comply with all applicable State of Florida or Federal laws with respect to such employment, including but not limited to, carrying adequate Worker's Compensation Insurance, if required.

6. Licenses. TENANT warrants and represents that it shall obtain at its sole cost and expense all necessary licenses, permits and approvals from all relevant federal, state, county and municipal authorities, in order for it to conduct its operation and use of the demised premises and the Equipment thereon in accordance with the terms of the Lease. The failure to obtain any necessary permits, licenses and approvals which may be required by any governing authority in order for TENANT to use the demised premises and conduct its operation from the demised premises, shall operate to nullify this Lease. TENANT shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations set forth herein. In the event TENANT fails to comply with the provisions of this paragraph, LANDLORD shall be entitled to elect one of the following remedies: (1) automatically terminate this Lease upon ten (10) days written notice from LANDLORD to TENANT, in which case TENANT shall vacate the demised Premises and remove the Equipment within thirty (30) days the date of termination; or (2) TENANT may agree to defend and indemnify the LANDLORD, as to any attorney's fees or other expenses such as court costs or administrative fines and, penalties, incurred by the LANDLORD in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process, in accordance with the provisions of Article XVII of this Lease, subject to the provisions of, and limitations seth forth in, Section 768.28, Florida Statutes whereby the TENANT shall not be held liable to pay a personal injury or property injury or property damage claim or judgment by

any person which exceeds the sum of $100,000 or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT, its agents or its employees. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

ARTICLE II
CONDITION OF DEMISED PREMISES

TENANT hereby accepts the demised premises to be in a state of good repair and suitable for usage by TENANT at the commencement of this Lease Agreement.

ARTICLE III
UTILITIES

LANDLORD, during the term hereof, shall pay all charges for electricity used by TENANT, unless LANDLORD elects, by providing thirty (30) days' written notice to TENANT, of its election to have TENANT pay for all charges for electricity used by TENANT as additional rent. In the event LANDLORD elects for TENANT to pay for all charges for electricity used by TENANT, then TENANT shall have the right to request evidence of electricity charges incurred by LANDLORD, and the TENANT shall be entitled to reduce its monthly rent payment each month in the exact amount of the amount of the monthly electricity charges each month. In addition to the foregoing, the TENANT shall be required to pay as additional rent, any sale or use tax, occupancy tax, excise tax or any similar tax assessed or levied with respect to any rental received by LANDLORD, or with other service or services provided by LANDLORD under this Lease or otherwise, as may now or hereafter be authorized by the laws of any governmental authority having jurisdiction in the matter. Failure to pay such

taxes as provided herein shall be deemed a default of this Lease by TENANT. Additionally, TENANT shall be required to pay as additional rent, all tangible property taxes which may be levied on the personal property situated on the demised premises; the amount of such taxes to be paid by TENANT shall be determined by prorating the entire tax bill so that TENANT is responsible for 100% of the applicable taxes attributable to all of the personal property on the demised premises used or owned by TENANT on the demised premises. TENANT, upon receiving an invoice therefore, shall pay the amount of such taxes to LANDLORD within ten (10) days following delivery to TENANT of such invoice. Failure to pay such taxes as provided herein shall be deemed a default of this Lease by TENANT.

ARTICLE IV
MAINTENANCE

LANDLORD agrees to provide, repair or replace, as necessary, and maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the exterior of the building, to the extent required by the Declaration of Condominium Bayview at Fisher Island Condominium Association No. Two, as recorded in Official Records Book ????? at Page ???, of the Public Records of Miami-Dade County, Florida ("Declaration"). TENANT agrees to keep and maintain the demised premises, and the Equipment located thereon, in as good repair, order and condition as at the commencement of this Lease, and TENANT shall maintain and cause repairs to be made of specific malfunctions in the demised premises provided such malfunction is not caused or attributable to the fault or neglect of LANDLORD or its agents or employees. Additionally, TENANT agrees to secure at its own costs and expense all of its personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT in the event that a hurricane or

tropical storm threatens the condominium where the demised premises is located. Subject to applicable federal, state and local law, LANDLORD shall have the right and option to secure TENANT's personal property, Equipment apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT if TENANT should fail to properly secure same. At the expiration or termination of this lease, TENANT shall redeliver the demised premises to LANDLORD in as good repair, order and condition as the commencement of this Lease, normal wear and tear excepted. If TENANT fails to maintain and redeliver the demised premises to LANDLORD according to the terms set forth herein, LANDLORD shall be entitled to make such repairs as are necessary, in the sole discretion of LANDLORD, and to be reimbursed by TENANT for any expense incurred by LANDLORD for making such repairs. Any reimbursement from TENANT arising pursuant to this Section shall be treated as additional rent and shall be due and payable to LANDLORD on demand. Failure to pay such sums as provided herein shall be deemed a default of this Lease by TENANT. TENANT shall not prohibit or in any way interfere with LANDLORD's reasonable access to the demised premises to inspect and view same and the personal property thereon to determine whether TENANT is fully complying with its obligations with respect to such premises and personal property.

ARTICLE V
ALTERATIONS BY TENANT

This Lease envisions TENANT making certain construction, alterations, upgrades, modifications, additions, or improvements in or to the demised premises (hereinafter collectively the "Alterations"). TENANT shall attain the prior written consent of LANDLORD and comply with applicable building codes in making such Alterations. If LANDLORD does not approve the necessary Alterations and/or such Alterations do not receive approval under applicable

building codes, then this Lease Agreement immediately shall be terminated upon written request of the TENANT. Any personal property, Equipment, apparatus, fittings, fixtures, trade fixtures, or other improvements installed or stored by TENANT on the demised premises shall remain TENANT's property and must be removed by TENANT upon the expiration, or earlier termination of the Lease Agreement or any renewal or cancellation thereof, within thirty (30) days from the expiration of the Lease, and at TENANT's sole cost and expense. In the event TENANT should fail to remove such personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT within the prescribed period of time, then the LANDLORD may have such personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT, removed from the demised premises, and the costs and expenses incurred as a result thereof, including attorneys' fees and costs, shall be paid by TENANT within ten (10) days from LANDLORD's written request for payment. Upon removal of the TENANT's personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT, TENANT shall further be responsible to ensure that the LANDLORD's property, whether real or personal, damaged or otherwise affected as a result of the installation, storage or attachment of TENANT's personal property, Equipment, apparatus, fittings, fixtures, trade fixtures or other improvements installed or stored by TENANT, is repaired and properly restored to substantially the same condition as such property was in prior to the parties executing this Lease. If any construction lien is filed against any portion of the Condominium, including the demised premises, for work claimed to have been done for, or materials claimed to have been furnished to, TENANT, same shall be discharged by TENANT upon written notice from LANDLORD within ten (10) days thereafter at TENANT's expense by bond or other manner

required by law. If any claims other than a construction lien should be asserted or any suit brought against the LANDLORD by any reasons or the TENANT's failure to pay its bills or otherwise to keep and perform all of the terms, conditions, covenants, and agreements on the part of TENANT to be kept and performed hereunder, then TENANT shall pay, discharge or otherwise relieve the LANDLORD from any liability in connection with such claim or suit within ten (10) days after LANDLORD shall have given TENANT written notice requiring the TENANT to do so and shall further defend, indemnify and hold LANDLORD harmless from and against any attorneys' fees and costs, at both the trial and appellate level, losses, claims, expenses or damages resulting from a violation of the terms of this paragraph.

ARTICLE VI
DESTRUCTION OR CONDEMNATION OF DEMISED PREMISES

In the event the demised premises should be destroyed or so damaged by fire, windstorm, or other casualty, either party may cancel this Lease Agreement for its convenience by giving written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation, and TENANT shall only be liable to LANDLORD for such rents as may be due as of the date of such fire, windstorm, or other casualty.

If neither party shall exercise the foregoing right of cancellation, LANDLORD shall cause the building and demised premises to be repaired and placed in good condition within one hundred twenty (120) days following the date of casualty, provided such repairs may be accomplished within such time period through the use of commercially reasonable means. If repairs of the damages sustained by the demised premises cannot be repaired within the above-established one hundred twenty (120) day period, then LANDLORD shall be permitted to

complete such repairs during whatever period of time it may take for LANDLORD to have such repairs accomplished by use of diligent and commercially reasonable means. If the demised premises sustained damages such that repairs cannot be completed within one hundred twenty (120) days, TENANT shall be entitled to cancel the Lease Agreement by the giving of written notice to LANDLORD at any time, notwithstanding the commencement of any repairs by LANDLORD. TENANT shall not be liable for rent during such period of time as the demised premises be untenantable by reason of fire, windstorm or other casualty.

In the event of partial destruction or damages to the demised premises which do not render the demised premises untenantable, the rents shall be proportionately abated in accordance with the extent to which TENANT is deprived of use, occupancy or full enjoyment of the premises. In the event that damage or destruction to the demised premises and/or the Equipment or personal property thereon is caused by, arises out of, or is in any way attributable to, in whole or in part, the negligence or other fault of TENANT, or its agents, employees or invitees, LANDLORD shall have no duty to cause the demised premises to be repaired and/or rebuilt and TENANT shall not be entitled to the abatement of any rent or other payment obligations which would otherwise have been applicable. If the whole or any substantial part of the demised premises shall be condemned by eminent domain for any public or quasi-public purpose, this Lease shall terminate on the date of the vesting of title, and TENANT shall have no claim against LANDLORD for the value of any unexpired portion of the term of this Lease, nor shall TENANT be entitled to any part of the condemnation award. If less than a substantial part of the demised premises is condemned, this lease shall not terminate but rent shall abate in proportion to the portion of the demised premises condemned.

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ARTICLE VII
ACCESS

TENANT shall have access to the Premises at all hours of the day and night, subject to reasonable rules and regulations as LANDLORD may impose.

ARTICLE VIII
NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the demised premises above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct of LANDLORD, LANDLORD's agents or employees.

ARTICLE IX
SUBLEASING

TENANT shall not sublet the Premises or any portion thereof.

ARTICLE X
LANDLORD'S RIGHT OF ENTRY

LANDLORD or any of its agents shall have the right to enter said demised premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior notice, unless an emergency exists, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said building.

ARTICLE XI
LIABILITY FOR DAMAGE OR INJURY

TENANT shall not be liable for any damage or injury which may be sustained by any party or person on the demised premises other than the damage or injury caused solely or

partially by the negligence of TENANT, subject to all limitations of Section 768.28, Florida Statutes whereby the TENANT shall not be held liable to pay a personal injury or property injury or property damage claim or judgment by any person which exceeds the sum of $100,000 or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT, its agents or its employees. Nothing herein shall be deemed to indemnify the LANDLORD from any liability or claim arising out of the negligence, intentional act, omission, negligent performance or failure of performance of the LANDLORD, its agents or its employees, or any other unrelated third party..

ARTICLE XII
PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the demised premises above described, without hindrance or molestation by LANDLORD, subject to the terms of this Lease.

ARTICLE XIII
SURRENDER OF DEMISED PREMISES

TENANT agrees to surrender to LANDLORD at the end of the term of this Lease Agreement, or any extension thereof, said demised premises in as good condition as said demised premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted. No agreement to accept a surrender of the demised premises shall be valid unless in writing signed by LANDLORD. The delivery of keys to any employee of LANDLORD or of LANDLORD's agents shall not operate as a termination of the Lease or a surrender of the demised premises.

ARTICLE XIV
TENANT'S PERSONAL PROPERTY

LANDLORD hereby agrees that all personal property, Equipment, apparatus, fittings, fixtures, and trade fixtures installed or stored on the demised premises by TENANT constitute personal property, not real property, and shall continue to be the personal and exclusive property of the TENANT, including without limitation, all security equipment, cables, wiring and associated equipment or personal property placed on the demised premises by the TENANT. All such personal property shall remain TENANT's personal property, free from any lien of LANDLORD, and that same shall never be considered fixtures to the building. Notwithstanding the foregoing, TENANT shall remove the above-described personal property from the demised premises in accordance with Article V of this Lease.

ARTICLE XV
SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE XVI
ASSIGNMENT BY LANDLORD

If the interests of LANDLORD under this Lease Agreement shall be transferred voluntarily or by reason of foreclosure or other proceedings for enforcement of any mortgage on the demised premises, TENANT shall be bound to such transferee (herein sometimes called the "Purchaser") for the balance of the term hereof remaining, and any extension or renewals thereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the LANDLORD under this Lease Agreement, and TENANT

does hereby agree to attorn to the Purchaser, including the Mortgagee under any such mortgage if it be the Purchaser, as its LANDLORD, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the LANDLORD under this Lease Agreement. The respective rights and obligations of TENANT and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this Lease Agreement and any such extensions and renewals, shall be and are the same as those set forth herein. In the event of such transfer of LANDLORD's interests, LANDLORD shall be released and relieved from all liabilities and responsibility to TENANT thereafter accruing under this Lease Agreement or otherwise and LANDLORD's successor by acceptance of rent from TENANT hereunder shall become liable and responsible to TENANT in respect to all obligations of the LANDLORD under this Lease Agreement. Notwithstanding any law to the contrary, LANDLORD and TENANT agree that the rights created by this Lease Agreement shall be subordinate to any other instruments affecting the demised premises, such as mortgages, subsequent purchase agreements, or encumbrances, whether presently in existence or later created or filed.

ARTICLE XVII
INDEMNIFICATION

Notwithstanding any other provision in this Lease to the contrary, LANDLORD and its agents shall not be liable for any injury to persons or damage to property arising in connection with the TENANT's use of the demised premises or the Equipment or TENANT's personal property locate thereon, or from any other cause unless caused by the intentional actions of LANDLORD or its agents; nor shall LANDLORD and its agents be liable in any way for operations carried on by any public or quasi-public companies, or governmental agencies or affiliated entities, or for loss of property by theft. TENANT shall assume all risk of loss of or

damage to its own property, including its Equipment, and that of its patrons, agents, contractors or independent contractors, however occurring, except as may otherwise be specifically provided under the terms of this Lease. TENANT further agrees to indemnify and hold harmless LANDLORD, its officers, directors, members, agents and employees 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 or use by TENANT of the demised premises or TENANT's performance of the terms and conditions set forth in this Lease subject to the provisions of, and limitations set forth in, Section 768.28, Florida Statutes whereby the TENANT shall not be held liable to pay a personal injury or property injury or property damage claim or judgment by any person which exceeds the sum of $100,000 or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT, its agents or its employees. Nothing herein shall be deemed to indemnify the LANDLORD from any liability or claim arising out of the negligence, intentional act, omission, negligent performance or failure of performance of the LANDLORD, its agents or its employees, or any other unrelated third party.. This paragraph shall survive the expiration or earlier termination of this Lease, or any renewal term thereof.

ARTICLE XVIII
OPTION TO RENEW

Provided this Lease Agreement is not otherwise in default, TENANT through its County Manager or his designee, is hereby granted the option to extend this Lease Agreement for four (4) additional one-year renewal option periods, upon the same terms and conditions, by giving LANDLORD notice in writing at least thirty (30) days prior to the expiration of this Lease Agreement or any extension thereof. Should TENANT neglect to exercise any extension option

by the date specified above, TENANT's right to exercise shall not expire until thirty (30) business days after notice from LANDLORD of TENANT's failure to exercise the option.

ARTICLE XIX
CANCELLATION

TENANT, through its County Manager or his designee, shall have the right to cancel this Lease Agreement at any time by giving LANDLORD at least thirty (30) days' written notice prior to its effective date.

ARTICLE XX
INSURANCE

TENANT hereby represents that it is self-insured as to Workers Compensation, Public Liability and Automobile Liability coverage, protecting employees and officials of TENANT, in compliance with and subject to the limitations of Section 768.28, Florida Statutes whereby the TENANT shall not be held liable to pay a personal injury or property injury or property damage claim or judgment by any person which exceeds the sum of $100,000 or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the TENANT, its agents or its employees

ARTICLE XXI
NOTICES

It is understood and agreed between the parties hereto that written notice addressed and sent by United States Postal Service certified or registered mail, return receipt requested and addressed as follows:

LANDLORD:
Bayview at Fisher Island Condominium Association No. Two.
6 Fisher Island Drive Fisher Island, Florida 33109

TENANT:
Port Director
Miami-Dade County Seaport Department
Administrative Offices
1015 N. America Way
2nd Floor
Miami, FL 33132

Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law. The date on which any notice is deposited in the United States Post Office, if sent in the manner required above,. shall be the date of the giving of such notice. Any bill, statement or communication, other than notice provided for in this Lease, which LANDLORD may give TENANT, shall be sufficiently given if delivered to the Port Director at the address above. at the address of the County Attorney; and that date of such service or deposit in the mail shall be deemed the date of the rendition of any such bill, statement or communication.

ARTICLE XXII
Left intentionally blank.

ARTICLE XXIII
WAIVER OF LANDLORD'S LIEN

LANDLORD, for itself and its successors and assigns, does hereby waive all rights to levy liens and all lien rights accrued and accruing as to all personal property, machinery, fixtures, and equipment, affixed or otherwise, now or hereafter belonging to or in the possession of

TENANT. Further, TENANT may at its discretion remove from time to time all or part of its personal property, machinery, trade fixtures, and equipment.

ARTICLE XXIV
FORCE MAJEURE

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

ARTICLE XXV
LANDLORD'S DEFAULT

It shall constitute a default of this Lease Agreement by LANDLORD if, except as otherwise provided in this Lease Agreement, LANDLORD fails to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by LANDLORD, where such failure shall continue for a period of thirty (30) days after written notice thereof from TENANT to LANDLORD; provided, however, that if the nature of LANDLORD's non-compliance is such that more than thirty (30) days are reasonably required for its cure, then LANDLORD shall not be deemed to be in default if LANDLORD commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. In the event of any such default by LANDLORD, TENANT may at any time terminate this Lease Agreement within seven (7) days written notice to LANDLORD or bring an action for damages, or injunctive relief (it being recognized that in such event TENANT is

irreparably harmed for which there is no adequate remedy at law). No remedy of TENANT provided for in the Lease Agreement shall be considered to exclude or suspend any other remedy provided for herein, but the same shall be cumulative and in addition to TENANT's remedies at law or in equity. Upon the termination of this Lease pursuant to this Article, TENANT shall be required to remove its Equipment and any personal property from the demised premises in accordance with Article V hereof.

ARTICLE XXVI
WAIVER

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD's or TENANT's rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach hereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement, without regard to representations made or included onto or with the form of such payment. No reentry by LANDLORD and no acceptance

by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

ARTICLE XXVII
DEFAULT OF TENANT

(1) If (a) TENANT defaults in the payment of any rent or other additional sums which may be due under this Lease and such default continues for thirty (30) days from the date of service of notice, or (b) TENANT defaults in fulfilling any of the covenants or agreements of this Lease on its part to be kept or performed, and such default is not corrected to LANDLORD's satisfaction within thirty (30) days after written notice from LANDLORD or its agent, or within such additional time as TENANT may be prevented from correcting the default as is caused by delays attributed to strikes, labor trouble, acts of God, governmental prohibitions and similar causes beyond TENANT's control, or (c) if this Lease be transferred to any person or corporation other than TENANT, then and in any such events, LANDLORD, at its option, may terminate this Lease, and TENANT shall then quit and surrender the demised premises to LANDLORD and TENANT shall remain liable as herein provided.

(2) If TENANT shall default in the performance of any provisions, covenants or condition on its part to be performed under this Lease, LANDLORD may, at its option, automatically terminate this Lease upon ten (10) days written notice to TENANT, in which case TENANT shall vacate the demised Premises and remove the Equipment within thirty (30) days the date of termination.

ARTICLE XXVIII
GOVERNING LAW

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE XXIX
HOLDOVER

If TENANT, with LANDLORD's consent, remains in possession of the demised premises after expiration of the term and if LANDLORD and TENANT have not executed an expressed written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental for the first month, after expiration of the term, equivalent to the monthly rental in effect immediately prior to expiration, such payments to be made as herein provided. In the event of such holding over, all of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

ARTICLE XXX

ENTIRE AGREEMENT

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners and the Board of Directors of LANDLORD.

IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

WITNESS

WITNESS

Bayview at Fisher Island
Condominium Association No. Two., a
Florida not-for-profit Corporation

By: _____ (LANDLORD)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

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

By: _____
George M. Burgess (TENANT)
County Manager

Approved by the County Attorney as
To form and legal sufficiency. _____

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MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**8(Q)1(B)**
File Number:	**092438**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**10/13/09**
Type of Item:	**Lease Agreement Ratification**

Summary

The Seaport Department seeks ratification of a lease agreement with the Bayview at Fisher Island Condominium Association No. Two, to use the Bayview at Fisher Island Condominium No. Two building as a base for security equipment needed for a Waterside Surveillance System.

The lease allows the Seaport to install homeland security surveillance equipment on the top of the condo building, located at 6 Fisher Island Drive, on Fisher Island, and will provide the Port space in a storage and electrical room in the building for the installation of additional equipment. This lease agreement was made on August 21, 2009, by the County Manager during the Board of County Commissioners' summer recess pursuant to Resolution R-900-09; therefore, ratification of this lease is required.

The term of this agreement is for two-years with four additional 1-year options-to-renew.

This Waterside Surveillance System was initially funded in 2003 through a $657,000 grant from the Office of Domestic Preparedness. The second phase of the system was funded through a $2,250,000 grant awarded to the County in 2006 from the Office of Domestic Preparedness. The project will provide the Seaport with real-time video to allow the Port to detect unauthorized boats and intruders approaching restricted Port areas.

Background and Relevant Legislation

On July 1, 2008, the Board of County Commissioners approved Resolution R-760-08 which authorized a lease agreement with Three Tequesta Point Condominium Association, Inc., to install surveillance equipment for the first phase of the Seaport's waterside surveillance system.

This entire project consists of the installation of surveillance equipment on the rooftop of the Three Tequesta Point Condominium for coverage of the Southwestern portion of the Island, installation of

concrete poles with surveillance equipment on MacArthur Causeway for coverage of the North portion of the island and the installation of surveillance equipment on Bayview at Fisher Island building for coverage of the Southeastern portion of the island.

According to the Administration, the surveillance equipment installed as part of this project will be remotely monitored 24/7 from the Port of Miami's command center. The monitoring system uses radar to issue alerts regarding unauthorized vessels approaching the Port. Upon the issuance of an alert, a security officer will be dispatched to intercept the unauthorized vehicle. According to the Administration, the penalties or warnings for intercepted vehicles will vary depending on the nature of the violation.

Policy Change and Implication

This lease agreement is consistent with the previous lease agreement approved by the Board of County Commissioners regarding the Seaport's Waterside Surveillance System.

Budgetary Impact

Rental rate: $1,200 per month, which is the estimated electricity bill according to FPL. These funds will be paid from the Seaport's operating revenue.

Prepared By: Jason Smith