OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

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

Date: September 1, 2009

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

From: George M. Burgess
County Manager

Resolution No. R-1070-09

Subject: License Agreement by and among Miami-Dade County, Florida East Coast Railway, L.L.C. and Basketball Properties, Ltd. concerning the installation and maintenance of a pedestrian walkway adjacent to the American Airlines Arena

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RECOMMENDATION

It is recommended that the Board of County Commissioners approves the attached resolution authorizing execution of a License Agreement ("Agreement") by and among Miami-Dade County ("County"), Florida East Coast Railway, L.L.C. ("Railway"), and Basketball Properties, Ltd. ("BPL") that authorizes the Railway to grant to the County and BPL the right and privilege to construct, install and maintain a concrete pedestrian walkway across the Railway right-of-way including across the actual railroad track.

SCOPE

The Arena is located at 601 Biscayne Boulevard, within Commission District 3. The pedestrian walkway is located immediately south of the Arena at Port Boulevard and runs across and along the Dodge Island Railroad Track also located immediately south of the American Airlines Arena ("Arena"). The attached Agreement will replace the original License Agreement signed by the same three parties in 1999 (Attachment "A"). The County, as owner of the Arena and under the Management Agreement and all its Composite Amendments between the County and BPL, is required to approve various agreements made by BPL which will affect their operating budget.

FINANCIAL IMPACT/FUNDING SOURCE

No County funds are used to pay for this license and easement. The annual payment of $100,000 to the Railway is presently being paid entirely by BPL as part of their annual operating budget.

BACKGROUND

On July 27, 1999, The Board of County Commissioners, by Resolution R-917-99 approved a License Agreement by and among the County, the Railway and BPL. The License Agreement signed in 1999 is very similar to the one being proposed. At that time, the pedestrian walkway was not yet constructed and the License Agreement included the conditions of construction of the walkway; specified the annual payments to be paid by BPL to the Railway for the use of that walkway; and the conditions for maintaining the tracks and the pavers. BPL agreed in the License Agreement to pay the Railway $91,000 per year for the right to use the walkway across the railroad tracks and for the Railway's maintenance of those tracks. In addition, the County agreed to pay the

annual fee in the event BPL no longer operated the Arena. The License Agreement's annual payment increased yearly based on the Consumer Price Index (CPI) and, at the present time, is approximately $120,000.

BPL has now negotiated a new Agreement with the Railway for the next ten (10) years with continuing automatic renewals for additional ten (10) year periods unless the Agreement is cancelled by BPL with ninety (90) days prior written notice. The new Agreement reduces the annual fee to $100,000 and deletes all of construction conditions of the pedestrian track and walkway. In addition, the new Agreement continues to give the County and BPL the right of pedestrian access across the railroad tracks.

The County will continue to be obligated to make payments to the Railway in the event BPL is no longer the operator of the Arena. The new Agreement also has a clause giving the County and BPL the right to terminate this Agreement for any reason with ninety (90) days notice given to the Railway.

TRACK RECORD/MONITOR

The Agreement will be monitored by the Robert Warren, Real Estate Advisor.

DELEGATED AUTHORITY

This resolution authorizes the County Mayor or the County Mayor's designee to execute the attached Agreement with Florida East Coast Railway, L.L.C. and Basketball Properties, Ltd. and further authorizes the County Mayor or the County Mayor's Designee to exercise any and all rights conferred therein.

Wendi J. Norris, Director
General Services Administration

MEMORANDUM

(Revised)

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

DATE: September 1, 2009

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

SUBJECT: Agenda Item No. 8(F)(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 Mayor'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**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(A)
9-1-09

RESOLUTION NO. **R-1070-09**

RESOLUTION APPROVING THE FORM AND TERMS AND AUTHORIZING THE EXECUTION BY THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE OF THE LICENSE AGREEMENT BY AND AMONG MIAMI-DADE COUNTY, FLORIDA EAST COAST RAILWAY, L.L.C. AND BASKETBALL PROPERTIES, LTD. RELATED TO THE INSTALLATION AND MAINTENANCE OF A PEDESTRIAN WALKWAY ADJACENT TO THE AMERICAN AIRLINES ARENA; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND 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,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the form and terms and authorizes the execution by the County Mayor or the County Mayor's Designee of the License Agreement by and among Miami-Dade County, Florida East Coast Railway, L.L.C. and Basketball Properties, Ltd. related to the installation and maintenance of a pedestrian walkway adjacent to the American Airlines Arena in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or the County Mayor's Designee to exercise any and all right therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of September, 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), is made and entered into as of the 1st day of January, 2008 (the "Effective Date") by and among FLORIDA EAST COAST RAILWAY, L.L.C., a Florida limited liability company ("Railway"), BASKETBALL PROPERTIES, LTD., a Florida limited partnership ("BPL"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County"), (collectively, the "Parties").

WITNESSETH:

In consideration of the mutual promises herein contained, the annual sum of ONE HUNDRED THOUSAND AND NO/lOO DOLLARS ($100,000.00), plus Florida sales and use tax (the "Annual Use Fee"), and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Grant. Railway grants to BPL and the County (hereinafter sometimes collectively referred to herein as the "Licensee") the right and privilege to construct, install and maintain a cast concrete panel pedestrian walkway, having a finished grade elevation level with the top of rail of Railway's Dodge Island Lead Track, the specifications of which are attached as Exhibit "A" (the "Pedestrian Track") across the Railway right-of-way beginning at a point on the eastern boundary line of Biscayne Boulevard and continuing easterly along said track to the northern boundary line of Port Boulevard, a distance of 354' ±, the right-of-way having a constant width of 30 feet, being 15 feet on either side of the centerline of track (the "Licensed Area"). It is understood that the Pedestrian Track consists of the concrete panel over the actual railway track (the "Star Track"), as well as the additional paving and sod to be installed in the Licensed Area contiguous to and on both sides of the Star Track (the "Pavers") as depicted in Exhibit "A".

2. Pedestrian Track Installation

A. "Intentionally Deleted"

B. "Intentionally Deleted"

C. "Intentionally Deleted"

D. "Intentionally Deleted"

E. BPL shall obtain all necessary permits, licenses, franchises and approvals Required by law for the installation, maintenance and continued use of the Pavers for the duration of this Agreement. Upon the expiration or termination of the Management Agreement dated April 29, 1997 between BPL and the County (the "Management Agreement"), as amended, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

F. During the course of the installation or maintenance of the Pavers, BPL shall not interfere in any way with the construction, maintenance, or operation of any lines or wires of any licensed communication utility in the Licensed Area and shall adopt, use and maintain the best known

and most effective methods to protect the aforesaid communication lines from physical hazard and inductive interference. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

G. The installation and maintenance of the Pavers shall not at any time interfere with or endanger the track, roadbed, or other property of Railway in the Licensed Area, or the operations, maintenance or improvements of Railway within the Licensed Area and BPL shall, at its sole cost and expense, on notice from Railway, change, improve or repair the Pavers as prescribed by Railway. Upon expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

H. Prior to the installation of the Pavers, BPL shall provide notice to Railway when BPL or its contractor or anyone claiming under BPL, proposes to enter upon or cross the tracks, roadbed or other property of the Railway within the Licensed Area with such appliances or fixtures or for excavations therefor, in order that proper protection may be provided for trains. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

3. **Maintenance of Star Track and Pavers.**

A. Railway shall, at BPL's sole cost and expense, maintain the Star Track. Prior to performing maintenance on the Star Track, the Railway shall provide BPL with an estimate of the cost of such maintenance or repair. The Railway shall endeavor to provide such notice at least sixty (60) days in advance of such maintenance work, except in the case of an emergency in which event telephone notice will be provided. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

B. BPL shall maintain the Pavers, in a safe and workmanlike manner, at its sole cost and expense. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

4. **Reservations and Exclusivity.**

A. It is understood between the Parties that Railway reserves unto itself, its successors, permittees, licensees or other persons, the right to operate trains, both passenger and freight on the Star Track as Railway shall at its sole discretion determine, the right to construct, maintain or remove other facilities, including but not limited to pipelines and/or communication cables (the "Other Facilities"), over, under or adjacent to the Licensed Area. Further the County and BPL agree to take no measures to interfere with the operation of Railway's trains, construction, maintenance or removal of the Other Facilities. The County and BPL agree to permit Railway to relocate, rearrange or modify the Star Track hereby licensed to accommodate the Other Facilities at

Railway's cost and expense and the County and BPL shall relocate, rearrange or modify the Pavers, in the event such relocation, rearrangement or modification is reasonably necessary and so long as Railway notifies the County and BPL in writing a minimum of forty-five (45) days prior to the date that such relocation, rearrangement or modification is required. Railway agrees to select only those modifications or relocation that minimizes impact on the Star Track and Pavers in order to reduce the cost of the removal and future annual maintenance costs.

B. The County and BPL agree that the Star Track and Pavers shall be the only facility or fixture constructed on behalf of Licensee within the Licensed Area. Licensee shall not locate any additional facilities within the Licensed Area without Railway's prior written consent.

C. The County agrees that no assessment or other charges or any nature whatsoever shall be levied or made against the Railway on account of the installation or existence of the Star Track or Pavers in the Licensed Area.

5. **Term and Termination.**

A. The term of this Agreement shall be ten (10) years from the Effective Date of this Agreement (Initial Term). Thereafter, subject to the adjustment in the Annual Use Fee as set forth in Paragraph 6, it shall be automatically renewed for successive ten (10) year terms (each a "Renewal Term") unless BPL gives prior written notice of termination ninety days prior to the expiration of the Initial Term or any Renewal Term thereafter.

B. Notwithstanding anything to the contrary in this Agreement, Railway, the County and BPL reserve the right to terminate this Agreement, for any reason, upon ninety (90) days' written notice to the other Parties.

C. In the event this Agreement is terminated by Railway, Railway shall commence removal of the Star Track and BPL shall commence removal of the Pavers, at Railway's sole cost and expense, within thirty (30) days of the effective date of the termination. Both parties will complete removal of said facilities in an expeditious and workmanlike manner and restore the Licensed Area to its former good condition. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

D. In the event this Agreement is terminated by either the County or BPL, Railway shall commence removal of the Star Track at BPL's sole cost and expense and BPL shall commence removal of the Pavers, at BPL's sole cost and expense within thirty (30) days of the effective date of the termination. Both parties will complete removal of said facilities in an expeditious and workmanlike manner and restore the Licensed Area to its former good condition. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

E. Notwithstanding the term of this Agreement, nor the advance payment of the Annual Use Fee hereunder, the County and BPL acknowledge Railway's rights to terminate this Agreement as outlined in Paragraph 5B above and acknowledge that the County and BPL have no

expectation of the continuation nor renewal of the term of this Agreement regardless of the length of time the Star Track and Pavers have been installed in the Licensed Area.

F. The duties and obligations of the Railway and the County under this Agreement shall survive the termination of the Management Agreement. Upon the termination of the Management Agreement BPL shall have no further rights, duties and obligations under this Agreement and the County shall succeed to all of the rights, duties and obligations of BPL under this Agreement, provided, however, that the license granted to BPL under this Agreement shall continue in full force and effect for the benefit of the County.

6. **Annual Use Fee.**

A. BPL shall, for each year of the Initial Term, pay Railway the Annual Use Fee specified above. If this license is renewed for an additional ten year term, the Annual Use Fee will be adjusted by 100% of the increase in the Consumer Price Index ("CPI") during the Initial Term calculated as follows. The CPI for October 2007 shall be the denominator and the numerator will be the difference between the CPI for October 2016 and the CPI for October 2007. The Annual Use Fee will be increased effective January _1__, 2018 by the percentage increase in the CPI as calculated above for and shall be payable each year of the first Renewal Term (i.e. 2018 through 2027), but in no event will the Annual Use Fee be less than $100,000 per year. If this license is renewed thereafter, the Annual Use Fee shall be adjusted annually based on the change in the CPI, using the CPI for September, 2027 as the denominator and the CPI for each anniversary of the Effective Date of this Agreement as the numerator and multiplying such fraction by the original amount of the Annual Use Fee. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection. Notwithstanding anything to the contrary herein, if this Agreement is terminated by either of the Parties, Railway shall remit to the payer of the Annual Use Fee for such year the prorata portion of the remaining Annual Use Fee.

B. It is expressly agreed by and between the Parties that any undisputed obligations of BPL or the County, as the case may be, under the terms of this Agreement, which are not paid within thirty (30) days of presentation of bills for same by the Railway, shall bear interest at the rate of twelve percent (12%) per annum from the date of presentation of the bill until same shall be paid.

7. **Indemnities and Insurance.**

A. BPL agrees to and shall at all times, directly, or through the procurement of the appropriate insurance, indemnify, defend, protect and save harmless the Railway from and against all cost or expense resulting from any and losses, damages, detriments, suits, claims, demands, costs and charges which Railway may directly or indirectly suffer, sustain or be subjected to by reason or on account of the installation, presence, use, maintenance, repair, renewal replacement of the Star Track or Pavers, or by reason of failure on the part of BPL to perform any of the obligations and conditions of this Agreement whether such losses and damages be suffered or sustained by Railway directly or its employees, patrons or licensees, or be suffered or sustained by

patrons of the American Airlines Arena, other persons or corporations, who may seek to hold Railway liable and WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF RAIL WAY OR OTHERWISE, EXCEPT IF SUCH COST OR EXPENSE ARISES FROM THE WILLFUL OR INTENTIONAL MISCONDUCT OF RAIL WAY. BPL shall pay all claims, suits or actions of any kind or nature in the name of the Railway, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. BPL expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by BPL shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Railway or its officers, employees, agents and instrumentalities as herein provided. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and at such time the County shall indemnify and hold harmless Railway to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by anyone person which exceeds the sum of $1 00,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of$200,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify Railway from any liability or claim arising out of the willful or intentional misconduct of Railway or its officers, employees or agents. In furtherance of its obligation to indemnify, defend and save harmless Railway, BPL shall procure and maintain in effect a policy of comprehensive general liability insurance with limits of least $5 million per occurrence with an assumed liability endorsement naming Railway as an additional insured. Such policy shall provide no less than sixty (60) days notice prior to its nonrenewal or cancellation. Said policy shall be placed with an insurance company carrying at least an A+ AM Best rating. Evidence of such insurance policy shall be provided to Railway prior to the completion of the Star Track and Pavers. If BPL fails to maintain the required liability insurance Railway may terminate this license agreement upon ten (10) days prior written notice.

B. BPL shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by BPL or its employees, agents, servants, partners, principals or subcontractors. BPL shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. BPL expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by BPL shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

C. BPL agrees to pay Railway all costs of supervision, labor and material incurred by Railway in supervising, protecting and restoring the property of the Railway by reason of operations of Licensee. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

D. It is mutually understood and agreed by and between the Parties hereto that BPL will not perform any work on the Licensed Area without having a railroad watchman present at all times work hereunder is being performed, if one is deemed to be necessary by Railway's Chief Engineer or other designated company official; further, that BPL covenants that it will include in any contract which it lets for the whole or any part of the said work to be performed hereunder by or for the Licensee, each and every one of the following terms and conditions of Exhibit "B" attached hereto and made a part hereof entitled, "INDEMNITY OF FLORIDA EAST COAST RAIL WAY COMPANY AND INSURANCE REQUIREMENTS." Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

8. **Miscellaneous.**

A. This Agreement shall be binding upon the successors or the heirs and assigns of the Parties hereto and none of the covenants or agreements herein contained shall be waived or modified except by the Parties hereto in writing and no alleged verbal waiver or modification shall be binding under any circumstances.

B. Licensee waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages; severance damages, removal costs or loss of business profits resulting from its loss of occupancy of the Licensed Area, whether such property is taken by eminent domain proceedings or sold under the threat thereof.

C. This Agreement shall be construed in accordance with the laws of the State of Florida. The Parties hereto specifically agree to venue in Miami-Dade County, Florida.

D. This Agreement shall constitute the entire understanding of the Parties on the subject matter hereof and each acknowledges and affirms that no promises, agreements, representations, terms or conditions other than contained and set forth in this Agreement, either express or implied, have been made or relied upon.

E. The Parties hereby knowingly, voluntarily and intentionally waive the right that they may have to a trial by jury in respect to any litigation based on this Agreement, or arising out of, under or in connection with this Agreement. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee.

IN WITNESS WHEREOF, the Parties hereto have cased these presents to be duly executed in duplicate the day and year first herein written.

****

Signed, sealed and delivered
in the presence of:

Witnesses to Railway

FLORIDA EAST COAST RAILWAY, L.L.C., a Florida limited liability company

By:
Title:

Attest:
Assistant Secretary

Date of Execution: 2/11/08

Signed, sealed and delivered
in the presence of:

Witnesses to Railway

BASKETBALL PROPERTIES, LTD., a Florida limited partnership

By:
Title: VP of Basketball Properties, Inc., its general partner

Attest:
Secretary

Date of Execution: 1/31/08

Signed, sealed and delivered
in the presence of:

Witnesses to Railway

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

By:
Title:

Attest:
Assistant Secretary

Date of Execution:

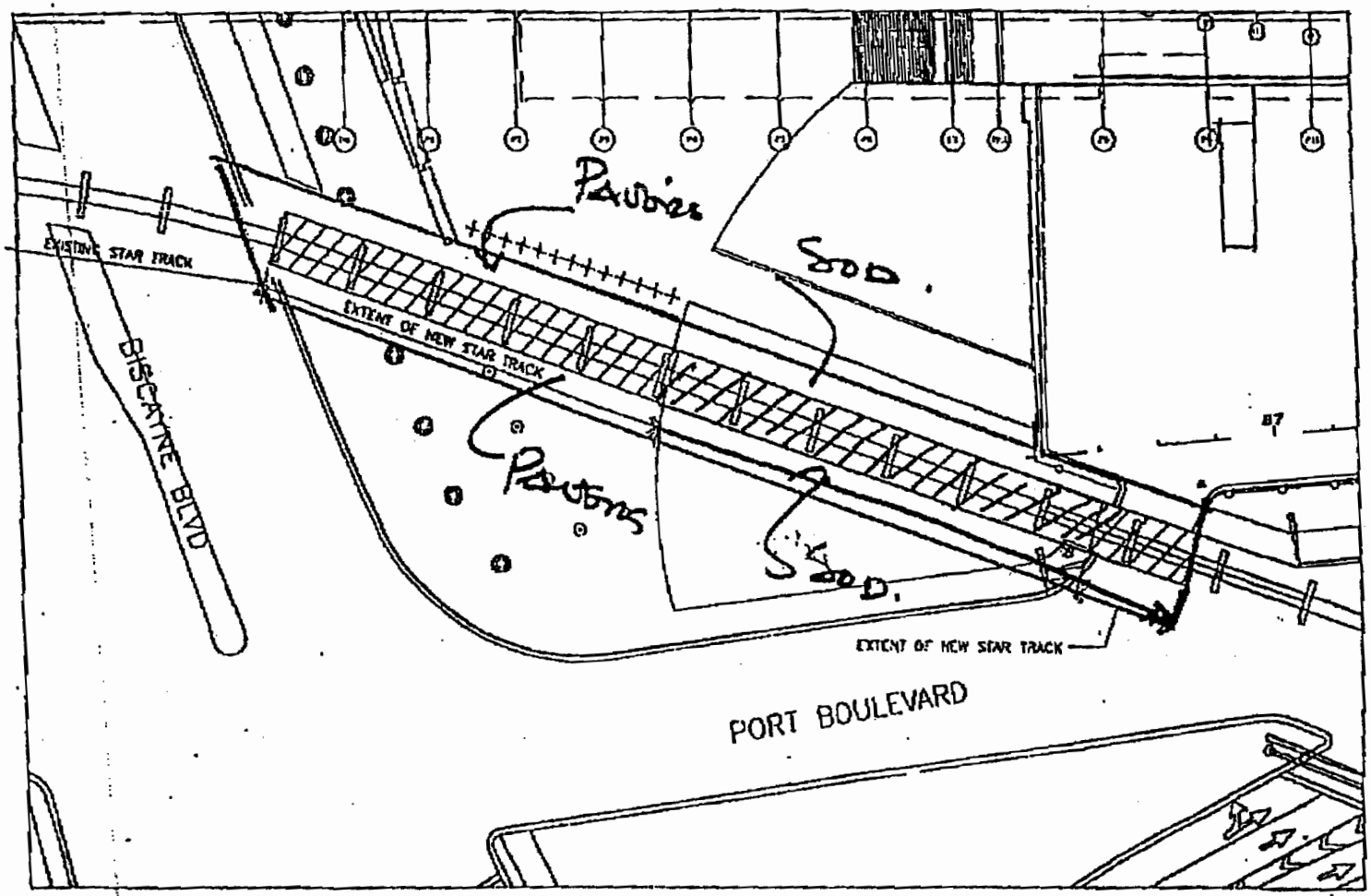

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EXHIBIT "A"

PROPOSED NEW INSTALLATION OF STAR TRACK

AMERICAN AIRLINES ARENA

CURTIS + ROGERS DESIGN STUDIO

12-04-98

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EXHIBIT "B"

INDEMNITY OF FLORIDA EAST COAST RAILWAY COMPANY AND INSURANCE REQUIREMENTS

The Contractor by execution and delivery hereof, agrees that it shall and will at all times hereafter indemnify, defend and save harmless the Florida East Coast Railway Company from and against all judgments, and all loss, claims, damages, costs, charges, and expenses ("Costs") which it may suffer, sustain, or in anywise be subjected to on account of or occasioned by the operations of the Contractor, or any of the subcontractors, or both, whether directly or indirectly under, or pursuant to, this construction contract, including any such Costs arising from the death, bodily injury or personal injury of, as follows:

Of any person, including without limitation upon the generality of the foregoing description, employees and officers of Florida East Coast Railway Company, employees and officers of materialmen, employees and officers of the Contractor, employees and officers of all subcontractors, and from loss damage, injury and loss of use of any real or personal property (a) in which Florida East Coast Railway Company has any ownership interest, and (b) personal property in the custody of Florida East Coast Railway Company under any transportation contracts; including without limitation upon the generality of the two foregoing enumerations, all railroad equipment commonly described as rolling stock and the contents of the same.

In furtherance of its obligation to indemnify, defend and save harmless, Contractor shall procure and keep in effect comprehensive general liability insurance in the limits of $2,000,000.00 each occurrence for bodily injury or death and $2,000,000.00 property damage each occurrence, covering all obligations of Contractor to indemnify the Railway by Contractual Assumed Liability Endorsement. Alternatively, Contractor may procure and keep in effect during the life of this construction contract, as aforesaid, Railroad Protective Liability Policies insuring the Railway directly as insured against losses and damages with the limits specified in this paragraph.

In addition to the above, Contractor shall, at its cost and expenses, maintain a Workman's Compensation Insurance Policy as required in the State of Florida.

All such insurance, directly or indirectly for the benefit of the Railway, shall be in a form satisfactory to Railway's Manager of Insurance and issued by a casualty company/insurance company authorized to do business in the State of Florida that has a "Best's" rating of A or A+ and a financial category size of Class XII or higher.

Attachment A

MEMORANDUM
OFFICE OF THE COUNTY MANAGER
Agenda Item No. 10(A)(4)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 27, 1999

SUBJECT: License Agreement

FROM: M.R. Stierheim
County Manager

RECOMMENDATION

It is recommended that the Board approve the attached License Agreement between Miami-Dade County, Florida, The Florida East Coast Railway Company (FEC) and Basketball Properties, Ltd., (BPL) for the construction, installation and maintenance of a pedestrian path (Track) across the FEC railroad track for the new American Airlines Arena.

BACKGROUND

The American Airlines Arena is scheduled to open in late December 1999. As the Board is aware, this multi-sports and entertainment complex is being developed by BPL in accordance with a series of agreements approved in April 1997, and as amended by Composite Amendments One and Two.

The attached License Agreement with FEC and BPL provides for the construction, installation and maintenance of a pedestrian path across the FEC Railroad track on the southwest side of the new arena. This license, which is granted jointly to both BPL and the County, requires that FEC install the Track and that BPL shall pay the estimated $210,000 cost for this improvement. BPL, at its sole cost and expense, shall install all necessary pavers adjacent to the Track.

The agreement also provides that FEC will maintain the Track and pavers at BPL's sole cost and expense. BPL has agreed to pay an annual use fee to FEC for use of the property. The fee for the first year is $91,000 and will be adjusted annually based on the Consumer Price Index (CPI).

The County, FEC, and/or BPL may terminate this agreement for any reason upon ninety (90) days written notice. In the event of an expiration or termination of the Management Agreement between BPL and the County, the County shall assume the majority of BPL's obligations under the Agreement. If that should occur, the County would provide an indemnification to FEC. This indemnification would be in accordance with Section 768.28 of the Florida Statute. The attached agreement does, however, provide an indemnification by BPL in favor of the County.

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 10(A)(4)
7-27-99

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-917-99

RESOLUTION APPROVING FORM, TERMS OF AND EXECUTION BY COUNTY MANAGER OF LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, FLORIDA EAST COAST RAILWAY COMPANY AND BASKETBALL PROPERTIES, LTD. RELATED TO DEVELOPMENT OF AMERICAN AIRLINES ARENA

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:

Section 1. The matters contained in the foregoing recitals are incorporated in this resolution by reference.

Section 2. The Board hereby approves the form, terms of and execution by the County Manager of the License Agreement between Miami-Dade County, Florida, Florida East Coast Railway Company, and Basketball Properties, Ltd. in substantially the form attached as Exhibit "A" to this resolution and incorporated herein by this reference.

The foregoing resolution was offered by Commissioner Dr. Barbara M. Carey-Shuler, who moved its adoption. The motion was seconded by Commissioner Gwen Margolis and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara M. Carey-Shuler	aye	Miguel Díaz de la Portilla	absent
Betty T. Ferguson	aye	Gwen Margolis	aye
Natacha Seijas Millán	aye	Jimmy L. Morales	aye
Dennis C. Moss	aye	Pedro Reboredo	absent
Dorrin D. Rolle	aye	Katy Sorenson	aye
Javier D. Souto	absent		

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The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of July, 1999. 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: KAY SULLIVAN
Deputy Clerk

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

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), is made and entered into this _____ day of _____ A.D., 1999 (the "Effective Date") by and among **FLORIDA EAST COAST RAILWAY COMPANY** ("Railway"), **BASKETBALL PROPERTIES, LTD.**, a Florida limited partnership ("BPL"), and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the "County"), (collectively, the "Parties").

WITNESSETH:

In consideration of the mutual promises herein contained, the annual sum of NINETY ONE THOUSAND AND NO/100 DOLLARS ($91,000.00), plus Florida sales and use tax (the "Annual Use Fee"), and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Grant.** Railway grants to BPL and the County (hereinafter sometimes collectively referred to herein as the "Licensee") the right and privilege to construct, install and maintain a cast concrete panel pedestrian walkway, having a finished grade elevation level with the top of rail of Railway's Dodge Island Lead Track, the specifications of which are attached as Exhibit "A" (the "Pedestrian Track") across the Railway right-of-way beginning at a point on the eastern boundary line of Biscayne Boulevard and continuing easterly along said track to the northern boundary line of Port Boulevard, a distance of 354'±, the right-of-way having a constant width of 30 feet, being 15 feet on either side of the centerline of track (the "Licensed Area"). It is understood that the Pedestrian Track consists of the concrete panel over the actual railway track (the "Star Track"), as well as the additional paving and sod to be installed in the Licensed Area contiguous to and on both sides of the Star Track (the "Pavers") as depicted in Exhibit "A".

2. **Pedestrian Track Installation.**

A. Railway shall, at BPL's sole cost and expense, install the Star Track in the Licensed Area on or before August 15, 1999. The initial installation of the Star Track is estimated to cost Two Hundred and Ten Thousand Dollars ($210,000.00). BPL agrees to pay the actual cost of the initial installation of the Star Track.

B. Railway agrees that the Star Track shall be constructed in conformance with the specifications, as approved by BPL, and shall be installed in a safe and workmanlike manner. Within thirty (30) days after installation, BPL shall certify to Railway in writing that the Star Track has been installed in substantial conformance to the plan attached to this Agreement as Exhibit "A".

C. BPL shall, at BPL's sole cost and expense, install the Pavers in the Licensed Area in conformance with the plan attached as Exhibit "A" on or before December 1, 1999.

D. Railway shall obtain all necessary permits, licenses and franchises and approvals required by law for the installation of the Star Track.

E. BPL shall obtain all necessary permits, licenses, franchises and approvals required by law for the installation, maintenance and continued use of the Pavers for the duration of this Agreement. Upon the expiration or termination of the Management Agreement dated April 29, 1997 between BPL and the County (the "Management Agreement"), as amended, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

F. During the course of the installation or maintenance of the Pavers, BPL shall not interfere in any way with the construction, maintenance, or operation of any lines or wires of any licensed communication utility in the Licensed Area and shall adopt, use and maintain the best known and most effective methods to protect the aforesaid communication lines from physical hazard and inductive interference. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

G. The installation and maintenance of the Pavers shall not at any time interfere with or endanger the track, roadbed, or other property of Railway in the Licensed Area, or the operations, maintenance or improvements of Railway within the Licensed Area and BPL shall, at its sole cost and expense, on notice from Railway, change, improve or repair the Pavers as prescribed by Railway. Upon expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

H. Prior to the installation of the Pavers, BPL shall provide notice to Railway when BPL or its contractor or anyone claiming under BPL, proposes to enter upon or cross the tracks, roadbed or other property of the Railway within the Licensed Area with such appliances or fixtures or for excavations therefor, in order that proper protection may be provided for trains. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

3. **Maintenance of Star Track and Pavers.**

A. Railway shall, at BPL's sole cost and expense, maintain the Star Track. Prior to performing maintenance on the Star Track, the Railway shall provide BPL with an estimate of the cost of such maintenance or repair. The Railway shall endeavor to provide such notice at least sixty (60) days in advance of such maintenance work, except in the case of an emergency in which event telephone notice will be provided. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

B. BPL shall maintain the Pavers, in a safe and workmanlike manner, at its sole cost and expense. Upon the expiration or termination of the Management Agreement, BPL shall

have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

4. **Reservations and Exclusivity.**

A. It is understood between the Parties that Railway reserves unto itself, its successors, permittees, licensees or other persons, the right to operate trains, both passenger and freight on the Star Track as Railway shall at its sole discretion determine, the right to construct, maintain or remove other facilities, including but not limited to pipelines and/or communication cables (the "Other Facilities"), over, under or adjacent to the Licensed Area. Further the County and BPL agree to take no measures to interfere with the operation of Railway's trains, construction, maintenance or removal of the Other Facilities. The County and BPL agree to permit Railway to relocate, rearrange or modify the Star Track hereby licensed to accommodate the Other Facilities at Railway's cost and expense and the County and BPL shall relocate, rearrange or modify the Pavers, in the event such relocation, rearrangement or modification is reasonably necessary and so long as Railway notifies the County and BPL in writing a minimum of forty-five (45) days prior to the date that such relocation, rearrangement or modification is required. Railway agrees to select only those modifications or relocation that minimizes impact on the Star Track and Pavers in order to reduce the cost of the removal and future annual maintenance costs.

B. The County and BPL agree that the Star Track and Pavers shall be the only facility or fixture constructed on behalf of Licensee within the Licensed Area. Licensee shall not locate any additional facilities within the Licensed Area without Railway's prior written consent.

C. The County agrees that no assessment or other charges or any nature whatsoever shall be levied or made against the Railway on account of the installation or existence of the Star Track or Pavers in the Licensed Area.

5. **Term and Termination.**

A. The term of this Agreement shall be thirty (30) years from the Effective Date of this Agreement. Thereafter, it shall be automatically renewed for successive ten (10) year terms.

B. Notwithstanding anything to the contrary in this Agreement, Railway, the County and BPL reserve the right to terminate this Agreement, for any reason, upon ninety (90) days' written notice to the other Parties.

C. In the event this Agreement is terminated by Railway, Railway shall commence removal of the Star Track and BPL shall commence removal of the Pavers, at Railway's sole cost and expense, within thirty (30) days of the effective date of the termination. Both parties will complete removal of said facilities in an expeditious and workmanlike manner and restore the Licensed Area to its former good condition. Upon the expiration or termination of the Management

Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

D. In the event this Agreement is terminated by either the County or BPL, Railway shall commence removal of the Star Track and BPL shall commence removal of the Pavers, at BPL's sole cost and expense within thirty (30) days of the effective date of the termination. Both parties will complete removal of said facilities in an expeditious and workmanlike manner and restore the Licensed Area to its former good condition. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

E. Notwithstanding the term of this Agreement, nor the advance payment of the Annual Use Fee hereunder, the County and BPL acknowledge Railway's rights to terminate this Agreement as outlined in Paragraph 5B above and acknowledge that the County and BPL have no expectation of the continuation nor renewal of the term of this Agreement regardless of the length of time the Star Track and Pavers have been installed in the Licensed Area.

F. The duties and obligations of the Railway and the County under this Agreement shall survive the termination of the Management Agreement. Upon the termination of the Management Agreement BPL shall have no further rights, duties and obligations under this Agreement and the County shall succeed to all of the rights, duties and obligations of BPL under this Agreement, provided, however, that the license granted to BPL under this Agreement shall continue in full force and effect for the benefit of the County.

6. **Annual Use Fee.**

A. BPL shall pay Railway the Annual Use Fee specified in Paragraph 1 above. BPL further agrees to pay unto Railway said sum in advance for each year for which this Agreement may remain in effect, adjusted annually based on the change in the Consumer Price Index (the "CPI"), using the CPI for September, 1999 as the denominator and the CPI for each anniversary of the Effective Date of this Agreement as the denominator and multiplying such fraction by the original amount of the Annual Use Fee. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection. Notwithstanding anything to the contrary herein, if this Agreement is terminated by either of the Parties, Railway shall remit to the payer of the Annual Use Fee for such year the prorata portion of the remaining Annual Use Fee.

B. It is expressly agreed by and between the Parties that any undisputed obligations of BPL or the County, as the case may be, under the terms of this Agreement, which are not paid within thirty (30) days of presentation of bills for same by the Railway, shall bear interest at the rate of twelve percent (12%) per annum from the date of presentation of the bill until same shall be paid.

7. **Indemnities and Insurance.**

A. BPL agrees to and shall at all times, directly, or through the procurement of the appropriate insurance, indemnify, defend, protect and save harmless the Railway from and against all cost or expense resulting from any and losses, damages, detriments, suits, claims, demands, costs and charges which Railway may directly or indirectly suffer, sustain or be subjected to by reason or on account of the installation, presence, use, maintenance, repair, renewal replacement of the Star Track or Pavers, or by reason of failure on the part of BPL to perform any of the obligations and conditions of this Agreement whether such losses and damages be suffered or sustained by Railway directly or its employees, patrons or licensees, or be suffered or sustained by patrons of the American Airlines Arena, other persons or corporations, who may seek to hold Railway liable and WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF RAILWAY OR OTHERWISE, EXCEPT IF SUCH COST OR EXPENSE ARISES FROM THE WILLFUL OR INTENTIONAL MISCONDUCT OF RAILWAY. BPL shall pay all claims, suits or actions of any kind or nature in the name of the Railway, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. BPL expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by BPL shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Railway or its officers, employees, agents and instrumentalities as herein provided. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and at such time the County shall indemnify and hold harmless Railway to the extent and within the limitations of Section 768.28 Fla Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify Railway from any liability or claim arising out of the willful or intentional misconduct of Railway or its officers, employees or agents. In furtherance of its obligation to indemnify, defend and save harmless Railway, BPL shall procure and maintain in effect a policy of comprehensive general liability insurance with limits of least $5 million per occurrence with an assumed liability endorsement naming Railway as an additional insured. Such policy shall provide no less than sixty (60) days notice prior to its nonrenewal or cancellation. Said policy shall be placed with an insurance company carrying at least an A+AM Best rating. Evidence of such insurance policy shall be provided to Railway prior to the completion of the Star Track and Pavers. If BPL fails to maintain the required liability insurance Railway may terminate this license agreement upon ten (10) days prior written notice.

B. BPL shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement

by BPL or its employees, agents, servants, partners, principals or subcontractors. BPL shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. BPL expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by BPL shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

C. BPL agrees to pay Railway all costs of supervision, labor and material incurred by Railway in supervising, protecting and restoring the property of the Railway by reason of operations of Licensee. Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

D. It is mutually understood and agreed by and between the Parties hereto that BPL will not perform any work on the Licensed Area without having a railroad watchman present at all times work hereunder is being performed, if one is deemed to be necessary by Railway's Chief Engineer or other designated company official; further, that BPL covenants that it will include in any contract which it lets for the whole or any part of the said work to be performed hereunder by or for the Licensee, each and every one of the following terms and conditions of Exhibit "B" attached hereto and made a part hereof entitled, "INDEMNITY OF FLORIDA EAST COAST RAILWAY COMPANY AND INSURANCE REQUIREMENTS." Upon the expiration or termination of the Management Agreement, BPL shall have no further obligations under this subsection and the County shall assume BPL's obligations under this subsection.

8. **Miscellaneous**.

A. This Agreement shall be binding upon the successors or the heirs and assigns of the Parties hereto and none of the covenants or agreements herein contained shall be waived or modified except by the Parties hereto in writing and no alleged verbal waiver or modification shall be binding under any circumstances.

B. Licensee waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages; severance damages, removal costs or loss of business profits resulting from its loss of occupancy of the Licensed Area, whether such property is taken by eminent domain proceedings or sold under the threat thereof.

C. This Agreement shall be construed in accordance with the laws of the State of Florida. The Parties hereto specifically agree to venue in Miami-Dade County, Florida.

D. This Agreement shall constitute the entire understanding of the Parties on the subject matter hereof and each acknowledges and affirms that no promises, agreements, representations, terms or conditions other than contained and set forth in this Agreement, either express or implied, have been made or relied upon.

E. The Parties hereby knowingly, voluntarily and intentionally waive the right that they may have to a trial by jury in respect to any litigation based on this Agreement, or arising out of, under or in connection with this Agreement. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed in duplicate the day and year first herein written.

Signed, sealed and delivered
in the presence of:

Theresa W. Layno

Witnesses as to Railway.

FLORIDA EAST COAST RAILWAY COMPANY, a Florida corporation,

By: _____ (seal)
Executive Vice President

Attest: M. C. Mueller
Assistant Secretary

Date of Execution: 8-24-99

Signed, sealed and delivered
in the presence of:

Witnesses as to BPL.

BASKETBALL PROPERTIES, LTD.,
a Florida limited partnership,

By: _____ (seal)
Sr. VP. Design & Const. (Title)

Attest: _____
Sr VP, Bus Ops (Title)

Date of Execution: August 20, 1999

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF COUNTY COMMISSIONERS

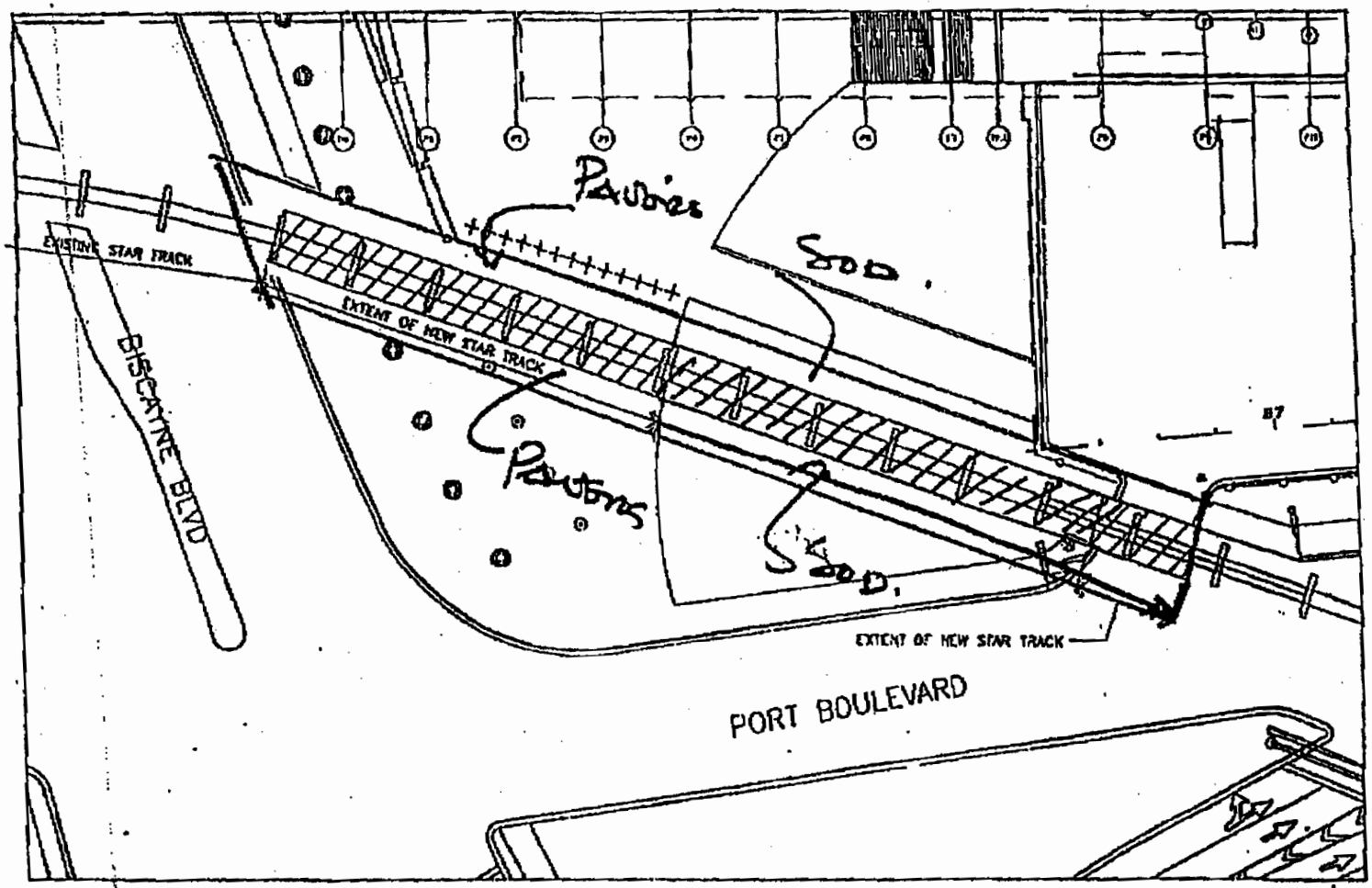
HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

By: _____
Mayor

The foregoing was authorized and approved by Resolution No. R-917-99 of the Board of County Commissioners of Miami-Dade County, Florida, on the 27th day of July, 1999.

EXHIBIT "A"



1'=50'

PROPOSED NEW INSTALLATION OF STAR TRACK

AMERICAN AIRLINES ARENA

CURTIS + ROGERS DESIGN STUDIO

12-04-98

20

EXHIBIT "B"

INDEMNITY OF FLORIDA EAST COAST RAILWAY COMPANY AND INSURANCE REQUIREMENTS

The Contractor by execution and delivery hereof, agrees that it shall and will at all times hereafter indemnify, defend and save harmless the Florida East Coast Railway Company from and against all judgments, and all loss, claims, damages, costs, charges, and expenses ("Costs") which it may suffer, sustain, or in anywise be subjected to on account of or occasioned by the operations of the Contractor, or any of the subcontractors, or both, whether directly or indirectly under, or pursuant to, this construction contract, including any such Costs arising from the death, bodily injury or personal injury of, as follows:

Of any person, including without limitation upon the generality of the foregoing description, employees and officers of Florida East Coast Railway Company, employees and officers of materialmen, employees and officers of the Contractor, employees and officers of all subcontractors, and from loss damage, injury and loss of use of any real or personal property (a) in which Florida East Coast Railway Company has any ownership interest, and (b) personal property in the custody of Florida East Coast Railway Company under any transportation contracts; including without limitation upon the generality of the two foregoing enumerations, all railroad equipment commonly described as rolling stock and the contents of the same.

In furtherance of its obligation to indemnify, defend and save harmless, Contractor shall procure and keep in effect comprehensive general liability insurance in the limits of $2,000,000.00 each occurrence for bodily injury or death and $2,000,000.00 property damage each occurrence, covering all obligations of Contractor to indemnify the Railway by Contractual Assumed Liability Endorsement. Alternatively, Contractor may procure and keep in effect during the life of this construction contract, as aforesaid, Railroad Protective Liability Policies insuring the Railway directly as insured against losses and damages with the limits specified in this paragraph.

In addition to the above, Contractor shall, at its cost and expenses, maintain a Workman's Compensation Insurance Policy as required in the State of Florida.

All such insurance, directly or indirectly for the benefit of the Railway, shall be in a form satisfactory to Railway's Manager of Insurance and issued by a casualty company/insurance company authorized to do business in the State of Florida that has a "Best's" rating of A or A+ and a financial category size of Class XII or higher.