

**Robert B. Ledoux**  
Senior Vice President and  
General Counsel

January 6, 2017

Larry M. Spring, Jr.  
City Manager  
City of North Miami  
776 NE 125 Street  
North Miami, Fl. 33161

Re: Agreement between Florida East Coast Railway, L.L.C. ("FECR"), City of North Miami (the "Licensee") and All Aboard Florida - Operations LLC ("AAF") with regard to the document listed on Exhibit A hereto (as amended and assigned to date, the "Crossing Agreement") relating to the crossings referenced therein (the "Crossing")

Dear Mr. Spring:

This letter shall serve to memorialize the agreement reached between Licensee, FECR and AAF relating to the Crossing Agreement in existence that governs the Crossing (as such Crossings are more particularly defined in the Crossing Agreement) and terms relating to the construction, maintenance and safety of the Crossing. Specifically, and without modification to any other term, obligation or condition set forth in the Crossing Agreement, Licensee, FECR and AAF hereby agree to the following terms and conditions, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties:

- AAF is developing an intercity passenger rail service from Miami to Orlando (the "Project").
- AAF shall incur the necessary and reasonable capital investments to complete the initial installation of crossing improvements at the Crossing to the extent required for the Project to comply with currently applicable laws regarding safety at public crossings and commence passenger rail service (the "Initial Development Cost"). It is acknowledged and agreed, however, that the AAF's commitment to cover the Initial Development Cost for the installation of crossings improvements at the Crossings for the Project shall not encompass the cost of any other improvements to the Crossings, including any improvements required or desired by Licensee such as those related to the establishment of quiet zones. The Initial Development Cost expressly excludes any and all costs related to such other improvements.

In consideration of the foregoing, Licensee confirms the following:

- The Crossings, as improved for the Project, shall continue to be governed by the Crossing Agreements.
- The Licensee shall not be responsible for the Initial Development Cost, but shall be liable for any and all other costs due under the Crossing Agreements with respect to the Crossings as improved, provided, however, that Licensee shall be entitled to receive an estimate of any and all costs or expenses to be paid by Licensee pursuant to the Crossing Agreement at least ninety (90) days in

advance of the date by which payment shall be due.


- AAF is an intended third-party beneficiary of the Crossing Agreements, with the right to enforce the terms and conditions thereof.
- Except as expressly provided herein with regard to the planned improvements to the Crossing, the Initial Development Cost and AAF's beneficiary status, all of the terms, conditions, covenants, agreements and understandings contained in the Crossing Agreements shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Licensee. This includes, without limitation, the Licensee's continuing obligations related to construction, maintenance, safety, future changes and upgrades to the Crossing and the reimbursement of costs, all of which would continue to be governed by the Crossing Agreement, provided, however, that Licensee shall be entitled to receive an estimate of any and all costs or expenses to be paid by Licensee pursuant to the Crossing Agreement at least ninety (90) days in advance of the date by which payment shall be due.

If these terms are acceptable, please sign this letter in the space provided at the end of this signature page and return that signed document to us. To facilitate this process, it is agreed that this letter will be executed in counterparts, each of which will be deemed to be an original copy of this letter and all of which, when taken together, will be deemed to constitute one and the same agreement. It is also agreed that signed counterparts may be transmitted electronically (as an Adobe PDF file) or by facsimile, and that delivery in that way shall have the same force and effect as the delivery of original signatures. Also, this letter will be construed in accordance with the laws of the State of Florida, without regard to conflict of laws principles. Please understand, however, that the terms of this letter and any offer presented herein will expire and shall be null and void on the date that is 60 days of the date hereof if it has not been executed and returned to us by then. Further, if the improvements at the Crossings for the Project are not completed by December 31, 2018, the terms of this letter and any offer presented herein will expire and will be null and void.

As a corollary matter, FECR and AAF recognize the City's need for timely estimates for annual maintenance costs and will use commercially reasonable efforts to provide such estimates for a given fiscal year to the City in May of the preceding fiscal year so that the City may include such line item in their budget. We do hope to hear from you soon and look forward to working together. If you should have any questions, please contact our team at your convenience.

Sincerely,

Florida East Coast Railway, L.L.C.

By: 

Print Name: Robert Ledoux

Print Title: Senior Vice President

City of North Miami \_\_\_\_\_  
January 6, 2017  
Page 3

**AGREED, ACKNOWLEDGED AND CONFIRMED:**

All Aboard Florida Operations LLC

By: 

Print Name: Kolleen Cobb

Print Title: Vice President

City of North Miami

By: 

Print Name: Larry M. Spring, Jr.

Print Title: City Manager

ATTEST:

By: 

Michael A. Etienne  
City Clerk

APPROVED AS TO FORM AND  
Legal sufficiency:

By: 

Jeff P. H. Cazeau  
City Attorney

City of North Miami \_\_\_\_\_  
January 6, 2017  
Page 4

EXHIBIT A

CROSSING AGREEMENT

NE 141<sup>ST</sup> STREET

141 BT  
7

THIS AGREEMENT, Made in duplicate this 6<sup>th</sup> day of Jan.  
A.D. 1983, by and between ROOBY W. LOFTIN and JOHN V. MARTIN, as Trustees  
of the property of Florida East Coast Railway Company, and not individually,  
hereinafter called Trustees, said Florida East Coast Railway Company or  
its property in the hands of the Trustees being hereinafter called  
"Railway", and the ~~City~~ <sup>City</sup> OF NORTH MIAMI, a municipal corporation under the  
laws of Florida (Address: North Miami, Florida), hereinafter called the  
Town,

**WITNESSETH:**

That the said Trustees, for and in consideration of the covenants  
and agreements herein contained to be performed and kept by the ~~Town~~ <sup>City</sup>, do  
heraby give and license unto the said ~~Town~~ <sup>City</sup> the right and privilege to use  
as a crossing for public road crossing purposes only, that part of the  
right of way and property of said Railway in North Miami, Dade County,  
Florida, at the location described as follows:

A parcel of land with uniform width of 50.0 feet  
northerly and southerly extending easterly and westerly  
across the right of way and tracks of the Florida East  
Coast Railway Company at 321st Street in North Miami,  
Florida, with longitudinal center line located 681 feet  
more or less easterly from the Railway's Mile Post  
No. 355 from Jacksonville, Florida, said right of way  
of the Railway having a total width of 100.0 feet at  
this location, being 50.0 feet in width on each side of  
the center line of the Railway's northbound main track.

All as shown colored yellow upon blueprint of part  
of the Railway's plan Y3-630a, dated 2-26-52  
~~1952~~, attached hereto and made a part hereof.

TO HAVE AND TO USE the said rights, privileges and licenses solely  
unto the Town for the term of one year from date hereof, subject to renewal  
as provided in paragraph 7 hereof, or until terminated as hereinafter pro-  
vided.

In consideration of the rights, privileges and licenses hereby  
given by the Trustees unto the ~~Town~~ <sup>City</sup>, the Town covenants and agrees with

the Trackage as follows:

1. That said crossing shall be used for public road crossing purposes only across the Railway's said right of way and tracks, and no pipe, wire, rail or other line or structure shall be placed in or on said right of way or crossing without the previous consent in writing of said Railway Trustees.

2. The Railway, at the expense of the Town, shall prepare its road bed, ballast, ties, rails and other railroad appliances (but not including wires and pole lines) in good condition to receive the permanent paving between the concrete headers on the outer sides of the outer rails (or where there is no header between the outer ends of ties of the outer rails). The Railway will also furnish, at the expense of the <sup>City</sup> ~~Town~~ supervision for all work to be performed by the <sup>City</sup> ~~Town~~ between the headers or ends of ties as aforesaid. The <sup>City</sup> ~~Town~~ shall furnish all labor and materials required for curbs, grading, paving, and all other work required for the crossing (except as hereinabove stated), from right of way line to right of way line of the Railway. The <sup>City</sup> ~~Town~~ will bear the expense of raising or relocation of all pole or wire lines on the right of way of the Railway at the crossing, which may be required for clearance at the crossing. Where change of elevation or change of alignment is required for any one or more of the rails at the crossing, such work shall be performed by the Railway, and the Town will bear and pay the reasonable cost thereof to the Railway.

3. After construction maintenance of the crossing from right of way line to right of way line shall be at the sole cost and expense of the Railway.

4. The Railway reserves the right to make any necessary or desired changes at any time in its existing tracks or other facilities, or to install, maintain and operate any additional track or tracks or other

facilities on its right of way at said road crossing. In such event all required changes in the road crossing structure or works shall be considered new construction and expenses borne by the parties as provided in paragraph 5.

5. The <sup>City</sup> Town shall not take any action that will prevent or tend to prevent the operation of trains over said crossing. The <sup>City</sup> Town hereby grants unto Florida East Coast Railway Company and its Trustees all necessary permits for the installation, construction, erection, repair and maintenance of any of the facilities, work or fixtures mentioned or contemplated in and by this agreement, and Florida East Coast Railway Company or its Trustees shall give the Town forty-eight (48) hours' notice of intention to perform any such installation, construction, repair, erection and maintenance.

6. The provisions and stipulations of this agreement are a part of the consideration of the licensing of the above privileges and crossing, and in the event the said <sup>City</sup> Town shall fail to comply with any of the covenants and conditions, then this license shall be void and said described crossing shall terminate, with full right on the part of the Trustees and Railway to re-enter and repossess the same if they shall elect to do so.

7. It is further mutually agreed by and between the parties hereto that as this agreement is for the term of one year, if said <sup>City</sup> Town holds over and remains in possession of the hereby licensed privileges after the expiration of such term, or of any renewals thereof, this agreement shall be considered as renewed, unless thirty (30) days' written notice of the termination of the same has been or is given by said Trustees, and shall continue in effect from year to year, subject to the same terms and conditions as herein contained, until terminated by said Trustees by giving thirty (30) days' notice in writing to the <sup>City</sup> Town of their intention to terminate the same as herein provided, or as provided in paragraph 5 hereof.

9. That this agreement is terminable (without prior notice to the Town) by the Trustees or their successors, including Receivers in Equity, or the Assigns of the Estate, at their option, upon the discharge of the Trustees as such, or upon the discharge of any succeeding Receiver or Receivers in Equity, any fixed period of time or any other thing herein to the contrary notwithstanding, and in the absence of such cancellation, all rights of said Trustees hereunder shall inure to the benefit of their successors or the assigns of the Estate.

9. It is further mutually understood and agreed by and between the parties hereto that at the termination or the cancellation of this agreement; for any cause, or upon termination of the Town's use of the crossing herein licensed, the Town shall remove, at its entire cost and expense, all improvements placed by it upon the said Railway's right of way and return the ground to its original condition.

10. It is mutually understood and agreed that the Railway's standard crossing protection device with bell, flashing light and gates shall be installed by the Railway in connection with said crossing, and that the <sup>City</sup> ~~Town~~ shall pay the Railway one-half of the total cost of such device and one-half the cost of installation thereof by the Railway. After construction said crossing protection device shall be maintained by and at the expense of the Railway.

11. The <sup>City</sup> ~~Town~~ has paid or caused to be paid to the Trustees \$9,500.00, which sum represents the estimated total cost of constructing the crossing herein provided for, and one-half the cost of the crossing protection device, receipt of said total sum of \$9,500.00 being hereby acknowledged by Trustees.

IN WITNESS WHEREOF, the parties hereto have caused these pres-



same to be duly executed in duplicate, each the day and year first above written.

Signed, sealed and delivered in the presence of:

William J. LaSalle  
L. M. Jones  
As to Trustee

Alvin  
As to the Town

*City Seal*

ROBT. M. LOSTIN and JOHN V. MARTIN,  
as Trustees of the property of  
Florida East Coast Railway Company (REAL)

By Robert M. Lostin  
Trustee

City  
~~Trustee~~ OF NORTH MIAMI, FLORIDA (REAL)

By J. J. Luchick  
Mayor

Attest: E. May Amiel  
~~Trustee~~  
City

RESOLUTION NO. 34-A

Upon motion duly made and seconded, the following resolution was unanimously adopted:

BE IT RESOLVED by the <sup>city</sup> Town Council of the <sup>city</sup> Town of North Miami, Florida, a Florida municipal corporation, as follows:

1. That the <sup>city</sup> Town of North Miami, a Florida municipal corporation, does hereby contract and agree to enter into an agreement with <sup>city</sup> South M. Leftin and John V. Martin, as trustees of the property of Florida East Coast Railway Company, and not individually, wherein and whereby the said <sup>city</sup> Town of North Miami is given the right and privilege to use as a crossing for public road crossing purposes only, that part of the right of way and property of said Railway in North Miami, Dade County, Florida, at the location described as follows:

A parcel of land with uniform width of 60.0 feet northerly and southerly extending easterly and westerly across the right of way and tracks of the Florida East Coast Railway Company at 22 141st Street in North Miami, Florida, with longitudinal center line located 681 feet more or less southeasterly from the Railway's Mile Post No. 354 from Jacksonville, Florida, said right of way of the Railway having a total width of 100.0 feet at this location, being 50.0 feet in width on each side of the center line of the Railway's northbound main track.

All as shown colored yellow upon blueprint of part of the Railway's plan Y8-230c, dated 9-26, 1952, attached to said agreement and made a part thereof;

all as more fully described and under the further terms and conditions, each and every in copy of proposed agreement now on file with the <sup>city</sup> Town Council of the <sup>city</sup> Town of North Miami, Florida, and by reference thereto made a part hereof.

2. That the Mayor, with the attestation of the <sup>city</sup> Town Clerk, do, and they are hereby authorized and directed to execute said agreement for and on behalf of the <sup>city</sup> Town of North Miami, Florida, a Florida municipal corporation.

3. That this resolution shall take effect immediately upon its passage.

STATE OF FLORIDA }  
COUNTY OF DADE }  
TOWN OF NORTH MIAMI }

<sup>city</sup> I, E. May Aivil, <sup>city</sup> Town Clerk of the <sup>city</sup> Town of North Miami, Florida, a Florida municipal corporation, do hereby certify that the foregoing is a true and correct copy of original resolution of the <sup>city</sup> Town Council of the <sup>city</sup> Town of North Miami, Florida, passed at a <sup>city</sup> public meeting of the said <sup>city</sup> Town Council held on the 6 day of Jan, 1953, as the same appears in Book       , page        of the records of said <sup>city</sup> Town of North Miami, Florida, in my official custody.

<sup>city</sup> WITNESSED MY HAND, I have hereunto set my hand and the official seal of said <sup>city</sup> Town of North Miami, Florida, in the State, County and Town aforesaid, this 7 day of Jan, 1953.



E. May Aivil  
Town Clerk, Town of North Miami, Florida

RESOLUTION NO. 2017-R-14

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF A LETTER AGREEMENT, IN THE ATTACHED FORM, AMONGST THE FLORIDA EAST COAST RAILWAY, LLC, ALL ABOARD FLORIDA-OPERATIONS, LLC, AND THE CITY OF NORTH MIAMI TO AMEND THE CITY'S EXISTING FEC CROSSING AGREEMENT TO PROVIDE FOR INTERCITY PASSENGER RAIL ON THE RAILWAY AND TO ADD ALL ABOARD FLORIDA - OPERATIONS, LLC AS A PARTY TO THE SAID AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, The Florida East Coast Railway ("FECR") operates a rail corridor located within the boundaries of the City of North Miami ("City"); and

**WHEREAS**, FECR entered into a license agreement with the City on January 7, 1953 under Resolution number 34-A whereby the City was given license privileges to utilize the FECR crossing for public right of way crossing purposes; and

**WHEREAS**, the City's licensee status benefits City residents and businesses as a result of the access from Biscayne Blvd to adjacent properties provided by the crossing; and

**WHEREAS**, All Aboard Florida ("AAF") is making and paying for certain upgrades at railroad crossings in order to meet minimum requirements to operate passenger trains on the Florida East Coast Railway tracks between Miami and Orlando (the "Project"); and

**WHEREAS**, in order to accommodate the Project, changes in the track alignment and alteration of the NE 141st Crossing will be required; and

**WHEREAS**, through the funding support of the Miami Dade Metropolitan Planning Organization, AAF is also implementing crossing upgrades in support of a quiet zone; and

**WHEREAS**, the Letter Agreement provides that AAF will pay all initial development costs and that the City, as Licensee, will continue to be obligated under the existing FEC Crossing Agreement for any costs associated with the improvements.

**WHEREAS**, the Mayor and City Council believe that executing a Letter Agreement for this purpose will benefit the residents of the City and should be entered into with FEC and AAF.

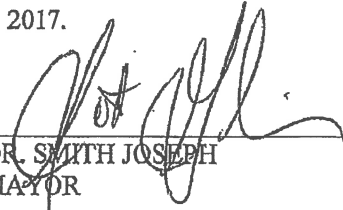
NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA THAT:

**Section 1. Approval of Letter Agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the Letter Agreement between the City of North Miami, Florida East Coast Railway, LLC and All Aboard Florida – Operations, LLC attached as “Exhibit 1.”

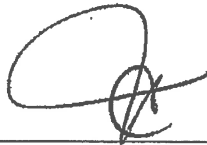
**Section 2. Authority of City Manager.** The City Manager is authorized to execute the Letter Agreement attached as “Exhibit 1”.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 4-0 \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this 14<sup>th</sup> day of February \_\_\_\_\_, 2017.


For   
DR. SMITH JOSEPH  
MAYOR

ATTEST:



\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Keys

Seconded by: Bien-Aime

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.  
Vice Mayor Scott Galvin  
Councilwoman Carol Keys, Esq.  
Councilman Philippe Bien-Aime  
Councilman Alix Desulme

	(Yes)	(No)	Absent
<u>X</u>	(Yes)	(No)	
<u>X</u>	(Yes)	(No)	
<u>X</u>	(Yes)	(No)	
<u>X</u>	(Yes)	(No)	

