

6.14.0

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA EAST COAST RAILWAY COMPANY FOR THE LEASE OF FIVE PARCELS OF LAND LYING WITHIN SECTION 35, TOWNSHIP 48 SOUTH, RANGE 42 EAST; PROVIDING AN EFFECTIVE DATE.

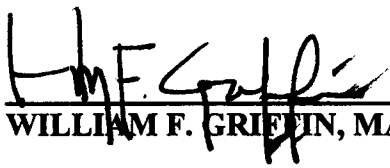
BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1: That a Lease Agreement between the City of Pompano Beach and Florida East Cost Railway Company, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

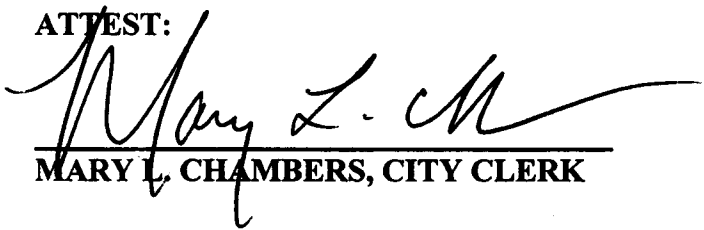
SECTION 2: That the proper City officials are hereby authorized to execute said Lease Agreement between the City of Pompano Beach and Florida East Coast Railway Company.

SECTION 3: This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 8th day of January, 2002.



WILLIAM F. GRIFFIN, MAYOR

ATTEST:


MARY L. CHAMBERS, CITY CLERK

Handwritten notes:
K. J. ...
City of Pompano Beach
P. ...

REAL ESTATE LEASE

Florida East Coast Railway, L.L.C.; a limited liability company existing under the laws of the State of Florida and having an address of One Malaga Street, St. Augustine, Florida 32084 (hereinafter "Lessor" or "Railway") hereby leases to **CITY OF POMPAÑO BEACH**, a Municipal corporation existing under the laws of the State of Florida and whose business address is Public Works Department, 1201 N. E. 5th Avenue, Pompano Beach, Florida 33060, (hereinafter "Lessee"), the following described property:

Leased Premises:

Five parcels of land lying within Section 35, Township 48 South, Range 42 East, Broward County, Pompano Beach, Florida; being more particularly described as follows:

PARCEL 1 (Parking Area): A parallelogram shaped parcel of land being 560 feet northerly and southerly, and 21 feet easterly and westerly, having its west line being parallel with and 29 feet east of Railway's main track and the northwest corner being 5,156 feet southerly of Mile Post No. 332, the northerly and southerly lines of said parcel being parallel with the centerline of N. E. 1st Street.

PARCEL 2 (Parking Area): A parallelogram shaped parcel of land being 48 feet northerly and southerly, and 20 feet easterly and westerly, having its west line being parallel with and 100 feet east of Railway's main track and the northwest corner being 490 feet southerly of Mile Post No. 333, the northerly and southerly lines of said parcel being parallel with the centerline on N. E. 1st Street.

PARCEL 3 (Beautification Only): That portion of Railway's right of way lying a minimum of 25 feet east of Railway's main track between the south line of N. E. 3rd Street and the north line of Atlantic Boulevard, less and except those areas covered by Parcel Nos. 1, 2 and 5 herein described.

PARCEL 4 (Beautification Only): That portion of Railway's right of way lying a minimum of 25 feet west of Railway's main track between the south line of N. E. 3rd Street and the north line of Atlantic Boulevard.

PARCEL 5 (Paved Area Only): Begin at the point of intersection of the south line of N. E. 6th Street and Railway's east right of way line (Mile Post 332 + 4102'); thence southerly along Railway's east right of way line for a distance of 486.3 feet; thence easterly along said right of way line for a distance of 10.4 feet; thence southerly along Railway's east right of way line for a distance of 144.5 feet to a point on the north line of N. E. 4th Street; thence westerly along the north line of N. E. 4th Street for a distance of 10.4 feet; thence southerly along Railway's east right of way line for a distance of 1,054 feet to a point on the westerly extension of the south line of N. E. 1st Street; thence westerly along said westerly extension of the south line of

N. E. 1st Street for a distance of 51.7 feet to a point 50 feet east of Railway's main track; thence northerly parallel with and 63.9 feet east of Railway's main track for a distance of 303 feet to a point; thence easterly 16.7 feet to a point 80.6 feet east of Railway's main track; thence northerly parallel with and 80.6 feet east of Railway's main track; thence northerly parallel with and 74 feet east of Railway's main track for a distance of 298.6 feet to a point on the south line of N. E. 6th Street; thence easterly along the south line of N. E. 6th Street for a distance of 27 feet to the Point of Beginning.

All as shown on Railway's Drawing No. C-110, dated March 28, 1989, last revised April 9, 1991, attached hereto and made a part hereof and collectively referred to as Leased Premises.

6401

County: Broward

Contract Type: 41

File: 333-2-1

1. Term

The term of this lease shall date from January 23, 2002 and until January 22, 2003 provided that Lessee shall have the option to extend the lease after the expiration of the term specified in this lease, or any renewals of such terms, by furnishing Lessor advance written notice of its intent, subject to same terms and conditions as herein contained in this lease. Lessee shall have no expectation of renewal and that the term of this lease is only for the time specified herein, subject always to the termination provisions and regardless of the length of time that lessee has occupied the leased Premises, or the construction by Lessee of any buildings, structures, works, paving, barricades or personal property placed on the leased premises.

2. Rent

(1) Annual Rent

During the term of this lease, the Lessee shall pay to the Lessor an annual rental in advance on or before the 1st day of each year in the amount of **\$1,250.00**, plus Florida Sales and Use Tax. Annual rental shall be paid to FEC's office at One Malaga Street, St. Augustine, Florida 32084 or as otherwise indicated on invoices.

(2) Late Charge

If any annual Rent or other payment due under this Lease is not received by Lessor within ten (10) days of the due date of such payment, Lessee shall pay, in addition to such payment a late charge equal to the greater of 5% of the payment which is past due or Two Hundred Fifty and No/100 Dollars (\$250.00). If any payment due from Lessee shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen (18%) percent per annum or the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Lessor.

3. Utility Charges, Taxes, Document Stamps

(a) Utility Charges

All charges on the premises for all utilities, including but not limited to water, electricity, gas, heat and sewers and for taxes on Lessee's improvements shall be paid by the Lessee within thirty (30) days after date of invoice.

(b) Ad Valorem Taxes

Lessee agrees to pay, within thirty (30) days after presentation unto Lessee by Railway, bills for all special assessments, ad valorem taxes and any other taxes of whatsoever kind or nature levied by the United States of America, State of Florida, any county, municipality or special taxing district organized and existing under the laws of the State of Florida, upon any of the property

herein leased on a pro-rated basis. All taxes and special assessments, payable on an annual basis, are to be pro-rated by the parties hereto for the year during which this lease is made, as well as the year in which the same may be terminated.

(c) Document Stamps

Lessee shall pay any necessary documentary stamp taxes required to be affixed to this lease under the laws of the United States of America, the State of Florida, or both.

(d) Sales and Use Tax, Personal Property Tax

Lessee will pay the Florida Sales and Use Taxes levied under Chapter 212.02(6)F.S., as amended, or other applicable statutes, and shall pay all personal property taxes that may be levied or assessed against the personal property of the Lessee.

4. As Is, Maintenance

The Lessor MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, EXPRESSED or implied, to the condition of the Leased Premises for the proposed use and the Lessee, at its sole cost and expense, hereby agrees to put said premises in such condition for its proposed use and to maintain them in their entirety. The property is leased as it currently exists in an AS IS condition and the Lessee, who has inspected the premises prior to entering into this Lease Agreement, accepts the premises as is and shall henceforth be responsible for any and all repairs and maintenance to the Land, Buildings, facilities and improvements located thereon. Lessee shall perform all work required for the preparation of the Leased Premises for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the Leased Premises as now being in fit and Leasable condition for all purposes of Lessee.

Lessee will keep the leased property or premises free and clear of any and all trash, brush and debris of any kind, so as to prevent the trash, brush and debris from becoming dangerous, inflammable or objectionable. Railway shall have no duty to inspect or maintain any the Leased Premises during the term of this lease.

Lessee shall have no claim of any kind or description for damages to goods, wares or merchandise on the Leased Premises from any cause whatsoever, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, NEGLIGENCE OF LESSOR UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF LESSOR.

5. Lessee's Compliance With Law

(3) Zoning and Use Regulation

Lessee will release Railway from any loss, claim or damage which Lessee may sustain arising directly or indirectly by reason of either existing or future zoning or other regulations promulgated by any governmental agency which may adversely affect use by Lessee of the lands hereinabove described. Lessee shall assume all responsibility for procuring or complying with any

ordinance, resolution, order, permit, consent or other such regulation, promulgated by any governmental agency whatsoever, for building or otherwise, required for the use of the leased property hereinabove described or for the construction of any facilities upon such leased property, and shall indemnify and hold harmless Railway from any loss, claim or damage suffered by Railway for Lessee's failure to properly and completely perform this responsibility,

(b) Other Regulation

The Lessee shall comply with all federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity or steam on the premises, and shall indemnify the Lessor against all fines, penalties, expense, damages and costs for violation thereof. Lessee is solely responsible for obtaining any and all federal, state and local licenses, permits, or other authority for its use of the premises and shall indemnify and hold harmless Lessor against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations.

6. Hazardous Materials

Lessee will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises except that Hazardous Materials may be used in the Leased Premises as necessary for the customary maintenance of the Leased Premises provided that same are used, stored and disposed of in strict compliance with applicable laws. For purposes of this provision, the term "Hazardous Materials" will mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any federal, state or local laws.

If Lessee's activities at the Leased Premises or Lessee's use of the Leased Premises (a) results in a release of Hazardous Materials that is not in compliance with Applicable Laws or permits issued thereunder; (b) gives rise to any claim or requires a response under common law or Applicable Laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (I) immediately provide verbal notice thereof to Lessor as well as notice to Lessor in the manner required by this Lease, which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (ii) promptly take all action in response to such situation required by Applicable Laws, provided that Lessee shall first obtain Lessor's approval of the non-emergency remediation plan to be undertaken.

7. Inspection by Lessor

Lessor shall have the right, at reasonable times and upon reasonable prior notice to Lessee, to enter the Leased Premises, the Land or the Buildings for the purpose of examining and inspecting the condition of the Leased Premises, Land or Buildings and to evaluate Lessee's compliance with the terms and conditions of this Lease.

8. Signs

Lessee shall not place any signs on the Leased Premises, Land or Buildings except with the prior written consent of the Lessor, including consent as to location and design, which may be withheld in Lessor's sole discretion. Any and all such approved signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all Applicable Laws. Lessee shall be responsible to Lessor for the installation, use, or maintenance of said signs and any damage caused thereby. Lessee agrees to remove said sign prior to termination of the Lease and upon such removal to repair all damage incident to such removal.

9. INDEMNIFICATION OF THE PARTIES

A. Indemnification

Lessee hereby agrees to indemnify, defend and hold harmless Lessor to the extent provided by law from and against any and all liability for any loss, bodily injury or property damage, including, without limitation, damage to the Leased Premises or to Lessee's property, consequential damage, all costs, expenses, court costs and reasonable attorneys' fees, imposed on Lessor by any person whomsoever that occurs as (I) ON THE LEASED PREMISES OR (ii) ANYWHERE, INCLUDING BUT NOT LIMITED TO THE LAND, BUILDINGS, ACCESS AREAS, AS A RESULT OF THE ACTS, OMISSION OR NEGLIGENCE OF LESSEE, ITS EMPLOYEES, AGENTS OR CONTRACTORS OR AS A RESULT OF OR ARISING FROM ANY FAILURE OF LESSEE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LEASE REGARDLESS OF THE CAUSE AND REGARDLESS OF WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF LESSOR. The commercial liability insurance that Lessee is required to carry pursuant to Section 9.B 1(a) of this Lease shall include coverage of the foregoing contractual indemnity. Lessor hereby indemnifies Lessee from, and agrees to hold Lessee harmless against, any and all liability for any loss, injury or damage, including, without limitation, all costs, expenses, court costs and reasonable attorneys' fees, imposed on Lessee by any person whomsoever, that occurs on the Leased Premises that is caused by or results from the willful or intentional misconduct of Lessor or its employees or agents. The provisions of this paragraph shall survive the expiration or any termination of this Lease.

B. Lessee's Insurance

Lessee will throughout the Term (and any other period when Lessee is in possession of the Leased Premises) carry and maintain, at its sole cost and expense, the following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Leased Premises, in the amounts specified with deductible amounts reasonably satisfactory to Lessor:

9.B1(a) Commercial General Liability Insurance. Commercial general liability ("CGL") insurance covering claims arising from personal injury, death and property damage with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate and insuring against legal liability of the insured with respect to the Leased Premises or arising out of the maintenance,

use or occupancy thereof. The CGL policy shall include contractual liability coverage of all such liabilities arising pursuant to the Lease.

9.B1(b) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance with a limit of not less than \$1,000,000.00 per occurrence for bodily injury, \$500,000.00 per person and \$100,000.00 property damage or a combined single limit of \$1,000,000 for both owned and non-owned vehicles.

9.B1(c) Excess Liability Insurance. Lessee shall also carry and maintain umbrella liability insurance with a limit of not less than \$2,000,000.00 per occurrence.

9.B1(d) Property Insurance. Extended or broad form coverage property insurance including plate glass coverage on a replacement cost basis, with coverage equal to not less than ninety percent (90%) of the full replacement value of all personal property, decorations, trade fixtures, furnishings, equipment, alterations, leasehold improvements and betterments made by Lessee, and all other contents located or placed in the premises. In the event any casualty occurs, Lessee agrees to pay the difference between the insurance coverage required to be maintained by this subparagraph 9.B1(b) and 9.B1(d) and an insurance policy offering coverage of one hundred percent (100%) of the full replacement value of the property described in this subparagraph.

9.B1(e) Workers' Compensation and Employees' Liability Insurance. Workers' Compensation Insurance covering all employees of Lessee, as required by the laws of the State of Florida and Employers' Liability coverage subject to a limit of no less than \$100,000 each employee, \$100,000 each accident, and \$1,000,000 policy limit.

9.B.2 Policy Form. All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida having an A.M Best's rating of A-, Class IX, or otherwise approved in advance by Lessor; (ii) name Lessor and Lessor's property manager as additional insureds; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the Lessor or any mortgagee of Lessor; and (iv) contain an obligation of the insurers to notify the Lessor by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination of any such policy. Certificates of insurance on the Lessor's standard form or, if required by a mortgagee, copies of such insurance policies certified by an authorized officer of Lessee's insurer as being complete and current, shall be delivered to the Lessor promptly upon request. If (a) the Lessee fails to take out or to keep in force any insurance referred to in this Section 9.B.2, or should any such insurance not be approved by either the Lessor or any mortgagee, and (b) the Lessee does not commence and continue to diligently cure such default within forty-eight (48) hours after written notice by the Lessor to Lessee specifying the nature of such default, then the Lessor has the right, without assuming any obligation in connection therewith, to procure such insurance at the sole cost of the Lessee, and all outlays by the Lessor shall be paid by the Lessee to the Lessor without prejudice to any other rights or remedies of the Lessor under this Lease. The Lessee shall not keep or use in the Premises any article that may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises or the Building.

C. Claims Handling

If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

10. Purpose of Lease

The premises shall be used only for the purpose of **Parking, Beautification and Paved Area.**

11. No Interference with Railway Operations, Reservation of Rights

The Lessee's use and/or maintenance of the Leased Premises shall not in any way, or at any time, interfere with or obstruct the use of the Leased Premises or of the remaining land of the Lessor by the Lessor, its agents, employees, patrons or assigns. The Lessee will not discharge surface water upon the remaining property and railroad tracks of the Lessor and Lessee hereby expressly releases the Lessor from liability for any surface water flowing naturally from the remaining property herein leased. Lessee further agrees not to alter the leased premises so as to cause water to drain or flow onto Lessor's property nor so as to cause an undermining of the adjacent property owned by Lessor.

Lessee shall not have or assert any claim or demand whatsoever for compensation or damages to the Leased Premises or to any improvements now or hereafter erected or property located thereon which may be caused by the operation, maintenance, repair, relocation, or removal of Lessor's railroad or which may be caused by vibration resulting from the operation of said railroad and Lessee releases Lessor from any liability for any such damage.

No right of way, expressed or implied, over remaining property of Lessor for the benefit of the lease premises is granted by this lease agreement other than as set forth above in the definition of the Leased Premises.

It is understood between the parties hereto that Railway reserves unto itself, its successors, permittees, licensees, or other persons, the right to construct and maintain other facilities, including but not limited to pipelines and/or communication cables, over and across the Leased Premises, and further, that Lessee shall take no measures to interfere with the construction or maintenance of said facilities and shall at all times allow ingress and egress to the Leased Premises by said successors, permittees, licensees or other persons provided that such shall not unreasonably interfere with Lessee's use of the Leased Premises.

Lessee acknowledges the fact that the herein leased property may contain fiber optic communication systems, Railway signal and train control cables and other utilities. Prior to any digging or subgrade work on the leased premises, you must call SUNSHINE for utility locations at 1-800-432-4770 and the Railway Signal Department at 904-826-2428 for signal and train control cable locations. Proper notification is required for cable locations and field inspections to protect against damages.

12. Termination

Either party may, in its discretion, for any reason whatsoever, terminate this lease at any time by the giving of 30 days notice to the other party as hereinafter provided.

13. Condition of Premises on Termination

The Lessee shall not mutilate, damage, misuse, or alter, the Leased Premises, but shall keep the same in good condition and repair, and upon the termination hereof deliver them up, in as good condition as they now are in, or may be put in by the Lessor, ordinary wear and tear, and damages by the elements without concurring fault on the part of the Lessee, excepted: any and all repairs, alterations or improvements made on the premises by the Lessor at Lessee's request shall be at Lessee's expense unless otherwise expressly agreed in writing.

Upon the termination or expiration of the Lease, Lessee shall surrender the Leased Premises to Lessor, broom clean and in the same condition as received except for ordinary wear and tear which Lessee was not otherwise obligated to remedy under any provision of this Lease. Lessee shall remove all equipment, materials, works, and personal property ("Lessee's Property") prior to termination or expiration of this Lease. Lessee shall repair, at Lessee's expense, any damage to the Premises or Building caused by the removal of any of Lessee's personal property, including but not limited to furniture, machinery and equipment. In no event, however, shall Lessee remove any of the following materials or equipment without Lessor's prior written consent: any power wiring or power panels; lighting or lighting fixtures; millwork and cabinetry; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners, or any other heating or air conditioning equipment; fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment and decorations. If Lessee fails to remove Lessee's Property, at Lessor's option such Lessee's Property will become the property of Lessor or at Lessor's option, may cause removal of the same from the hereby leased property or premises and/or storage thereof, and storage of any of Lessee's property and property of others placed by or with Lessee's permission or sufferance on the hereby leased property or premises. The reasonable cost or expense of removal and/or storage of any equipment, materials, works or personal property shall be paid by Lessee to Lessor forthwith upon demand for same.

14. Lessee Improvements

Lessee agrees not to erect or cause to be erected any building or other structure, or any material addition to existing buildings or structures on the leased premises or any other improvements without first obtaining the approval in writing by Railway of the location, material and construction of the same, such approval by Railway not to be unreasonably withheld.

Lessee will not make or allow to be made any alterations in or to the Leased Premises without first obtaining the written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion. Lessor may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Lessor. All Lessee alterations will be accomplished in a good and workmanlike manner at Lessee's sole expense, in conformity will all Applicable Laws by a licensed and bonded contractor approved in advance by Lessor, such approval of contractor not to be unreasonably withheld or delayed. All contractor's performing alterations in the Leased Premises shall carry workers' compensation insurance, commercial general liability

insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to Lessor and shall deliver a certificate of insurance evidencing such coverages to Lessor prior to commencing work in the Leased Premises. Upon completion of any such work, Lessee shall provide Lessor with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. Any Lessee alterations to the Leased Premises made by or installed by either party hereto will remain upon and be surrendered with the Leased Premises and become the property of Lessor upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove any additions and/or repair any alterations to restore the Leased Premises to the condition existing at the time Lessee took possession, with all costs of removal, repair, restoration, or alterations to be borne by Lessee. This clause will not apply to moveable equipment, furniture or moveable trade fixtures owned by Lessee, which may be removed by Lessee at the end of the Lease Term if Lessee is not then in default and if such equipment and furniture are not then subject to any other rights, liens and interests of Lessor.

Lessee will have no authority or power, express or implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against the Leased Premises or any portion thereof or any Railway property. Lessee will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Lessor, and will indemnify Lessor against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN THE PREMISES. LESSEE WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY LESSEE PROVIDING LABOR, SERVICES OR MATERIAL TO THE PREMISES.

15. Assignment

Lessee will not assign this Lease, in whole or in part, or sublease the Leased Premises, in whole or in part, without the prior written consent of Lessor, which consent will not be unreasonably withheld, subject to Lessor's right of recapture set forth below, and in no event will Lessee be released from any obligation or liability under this Lease following any such assignment or sublease. No sublessee of the Leased Premises or any portion thereof, may further assign or sublease its interest in the Leased Premises or any portion thereof. All legal fees and expenses incurred by Lessor in connection with the review by Lessor of Lessee's requested assignment or sublease pursuant to this Section, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as additional rent. If the rent due and payable by any assignee or sublessee under any permitted assignment or sublease exceeds the Rent payable under this Lease for such space, Lessee will pay to Lessor all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee.

Within fifteen (15) days after Lessor's receipt of Lessee's request for Lessor's consent to a proposed assignment or sublease, excluding any assignment or sublease to an affiliate of Lessee, Lessor shall have the right to require Lessee to reconvey to Lessor that portion of the Premises which Lessee is seeking to assign or sublet. Lessee shall reconvey that portion of the Premises in

consideration of Lessor's release of Lessee from all future Rent and other obligations, which would not otherwise survive termination of the Lease, with respect to the portion of the Premises so reconveyed. Any such reconveyance shall be evidenced by an agreement reasonably acceptable to Lessor and Lessee in form and substance.

16. Care Around Tracks

Lessee shall adopt, monitor and enforce reasonable rules and regulations for the conduct of Lessee's employees, patrons, agents and contractors (including employees thereof) or any other persons using said premises to protect them from injury while on, about or near any track on or adjoining the Leased Premises.

17. Destruction or Damage to Leased Premises

If the Premises are at any time damaged or destroyed in whole or in part by fire, casualty or other causes, Lessor shall have sixty (60) days from such damage or destruction to determine in its sole discretion and inform Lessee whether Lessor will restore the Premises to substantially the condition that existed immediately prior to the occurrence of the casualty. If Lessor determines not to restore the Leased Premises, it will notify Lessee and Lessee's sole remedy shall be to terminate the Lease upon prior written notice to Lessor. If Lessor elects to rebuild, Lessor shall complete such repairs to the extent of insurance proceeds within one hundred and eighty (180) days from the end of the sixty (60) day period. If such repairs have not been completed within that 180-day period, and Lessee desires to terminate the Lease as a result thereof, then Lessee must notify Lessor prior to Lessor's completion of the repairs of Lessee's intention to terminate this Lease. Lessor shall then have ten (10) days after Lessor's receipt of written notice of Lessee's election to terminate to complete such repairs (as evidenced by a certificate of completion). If Lessor does complete such repairs prior to the expiration of such ten-day cure period, Lessee shall have no such right to terminate this Lease. Lessee shall, upon substantial completion by Lessor, promptly and diligently, and at its sole cost and expense, repair and restore any improvements to the Leased Premises made by Lessee to the condition which existed immediately prior to the occurrence of the casualty. If, in Lessor's reasonable estimation, the Leased Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either Lessor or Lessee may terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the date such notice is given. Subsequent to Lessor's determination to restore the Leased Premises, and until the restoration of the Premises is complete, there shall be an abatement or reduction of the Rent in the same proportion that the square footage of the Leased Premises so damaged or destroyed and under restoration bears to the total square footage of the Leased Premises, unless the damaging event was caused by the negligence or willful misconduct of Lessee, its employees, officers, agents, licensees, invitees, visitors, customers, concessionaires, assignees, sub Lessees, contractors or subcontractors, in which event there shall be no such abatement.

18. Default

18.1 DEFAULT. The following will be events of default by Lessee under this Lease:

(a) Failure to pay when due any installment of Rent or any other payment required pursuant to this Lease;

(b) The filing of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission that it cannot meet its financial obligations as they become due, or the appointment of a receiver or trustee for all or substantially all of the assets of Lessee; the foregoing shall also apply to all Guarantors;

(c) A transfer in fraud of creditors or an assignment for the benefit of creditors, whether by Lessee or any Guarantor;

(d) Any act which results in a lien being filed against the Leased Premises, the Land, Buildings;

(e) The liquidation, termination or dissolution of Lessee or any Guarantor, or, if Lessee or any Guarantor is a natural person, the death of Lessee or such Guarantor;

(f) Failure to cure any non-monetary provision of this Lease within 20 days after written notice thereof to Lessee.

18.2 **REMEDIES.** In the event of any default hereunder by Lessee, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, the Lessor shall have the following rights and remedies, which are cumulative and not alternative:

(a) Lessor may terminate this Lease by notice to Lessee and retake possession of the Premises for Lessor's account. Lessee shall then quit and surrender the Premises to Lessor. Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder, including to the extent legally permissible, payment of all Rent and other charges until the date this Lease would have expired had such termination not occurred. If Lessor so elects, Rent shall be accelerated and Lessee shall pay Lessor damages in the amount of any and all sums that would have been due for the remainder of the Term.

(b) Lessor may enter the Premises as agent of the Lessee to take possession of any property of the Lessee on the Premises, to store such property at the expense and risk of the Lessee or to sell or otherwise dispose of such property in such manner as the Lessor may see fit without notice to the Lessee. Re-entry and removal may be effected by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Lessor shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(c) Lessor may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any Rent then attainable; grant any concessions of Rent, and agree, at Lessee's expense, to paint or make any special repairs, alterations, and decorations for any new Lessee as it may deem advisable in its sole and absolute discretion. Lessor shall be under no obligation to relet or to attempt to relet the

Premises greater than that imposed by law.

(d) Lessor may remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and to enter upon the Premises for such purposes. No notice of the Lessor's intention to perform such covenants need to be given the Lessee unless expressly required by this Lease. The Lessor shall not be liable to the Lessee for any loss or damage caused by acts of the Lessor in remedying or attempting to remedy such default and the Lessee shall pay to the Lessor all expenses incurred by the Lessor in connection with remedying or attempting to remedy such default. Any expenses incurred by Lessor shall accrue interest from the date of payment by Lessor until repaid by Lessee at the highest rate permitted by law.

18.3 COSTS.

Lessee shall pay to Lessor on demand all costs incurred by Lessor, including attorneys' fees and costs, (whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Lessor in enforcing any of the obligations of Lessee under this Lease. In addition, upon any default by Lessee, Lessee shall also be liable to Lessor for the expenses to which Lessor may be put in re-entering the Premises, reletting the Premises and putting the Premises into the condition necessary for such reletting (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by Lessor.

18.4 WAIVER.

No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

18.5 DEFAULT BY LESSOR.

In the event of any default by Lessor of any material term of this Lease, Lessee will give Lessor written notice specifying such default with particularity, and Lessor shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. Unless and until Lessor fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Lessee shall not have any remedy or cause of action by reason thereof. Notwithstanding any provision of this Lease, Lessor shall not at any time have any personal liability under this Lease, and Lessee's sole remedy with respect thereto shall be termination of the Lease.

19. Hold Over

In addition to and not limiting any other rights or remedies which Lessor may have on account of Lessee holding over without written consent of Lessor, Lessee shall pay to Lessor any and all direct and consequential damages incurred by Lessor on account of such unapproved holding over including claims by Lessees entitled to future possession.

20. Condemnation

If the property or any part thereof wherein the demised premises are located shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, this lease, at the option of the Lessor, shall forthwith terminate and the Lessee shall have no claim or interest in or to any award of damages for such taking.

21. Quiet Enjoyment

If Lessee pays the rent and all other charges and fully performs all of its obligations under this Lease, Lessee shall be entitled to peaceful and quiet enjoyment of the Premises for the full Term without interruption or interference by Lessor or any person claiming through Lessor.

22. No Waiver or Modification

None of the provisions hereof shall be waived or modified, except by mutual agreement, in writing, and no alleged verbal or written inducement prior to execution nor subsequent verbal waiver, or modification, shall be binding under any circumstances. Further, that this lease constitutes the entire understanding of the parties and that neither the failure of the Lessor to enforce each and every provision, nor any course of conduct by the Lessor shall be considered as a waiver of these provisions.

23. Successors and Assigns

The provisions hereof shall be binding upon and inure to the benefit of the successor, executors, administrators and permitted assigns of the respective parties.

24. Special Notice Regarding Radon Gas

Lessee is hereby notified, in accordance with Section 404.056(8), Florida Statutes, that Radon Gas is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of Radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Lessee is further notified that additional information regarding Radon Gas, and the testing for Radon Gas, may be obtained from the Public Health Units of the various counties.

25. Notices

Any notice to be given or to be served upon any party hereunder, in connection with this lease, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter, containing such notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail; or, if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be addressed to the parties herein at the following addresses:

TO LESSOR: M. O. Bagley, Director,
Industrial Development & Real Estate
Florida East Coast Railway, L.L.C.

IN WITNESS WHEREOF, the parties have hereto set their names and seals this _____ day of _____ 2001.

Signed, sealed and delivered

in the presence of:

Paula Bate

Witness as to Railway

E. V. Dahl

Witness as to Railway

**FLORIDA EAST COAST RAILWAY,
L.L.C. A Limited Liability Company**

By: R. F. MacSwain (SEAL)
R. F. MacSwain, Executive Vice President

Attest: Theresa W. Rayno
Assistant Secretary

Date of Execution: 1/25/02

**CITY OF POMPANO BEACH
a Municipal Corporation**

Joanne Bochan
Witness as to Industry

(Print Name) JOANNE BOCHAN

Asceleta Hammond
Witness as to Industry

(Print Name) Asceleta Hammond

By: Wm F. Griffin (SEAL)
President / Mayor

(Print Name) WILLIAM F. GRIFFIN

Attest: Mary L. Chambers
Secretary / City Clerk

(Print Name) MARY L. CHAMBERS

Date of Execution: 1/14/02

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Joanne Bochan
Signature

By: W.F. Griffin
WILLIAM F. GRIFFIN, MAYOR

Shelley R. Bouthomieu
Signature

By: C. William Hargett, Jr.
C. WILLIAM HARGETT, JR.,
CITY MANAGER

Attest:

Mary L. Chambers
MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

Gordon B. Linn
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14th day of January, 2002 by **WILLIAM F. GRIFFIN**, as Mayor of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

OFFICIAL NOTARY SEAL
ASCELETA HAMMOND
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC800663
MY COMMISSION EXPIRES JAN. 7, 2003


ASCELETA HAMMOND
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA

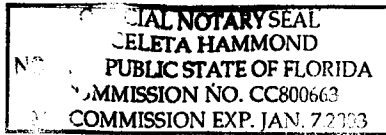
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14th day of January, 2002 by **C. WILLIAM HARGETT, JR.**, as City Manager of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.



NOTARY PUBLIC, STATE OF FLORIDA

NOTARY'S SEAL:



ASCELETA HAMMOND

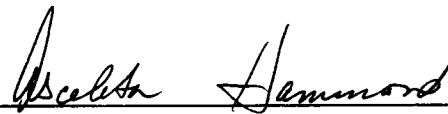
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA

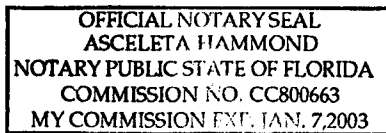
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14th day of January, 2002 by **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.



NOTARY PUBLIC, STATE OF FLORIDA

NOTARY'S SEAL:



ASCELETA HAMMOND

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

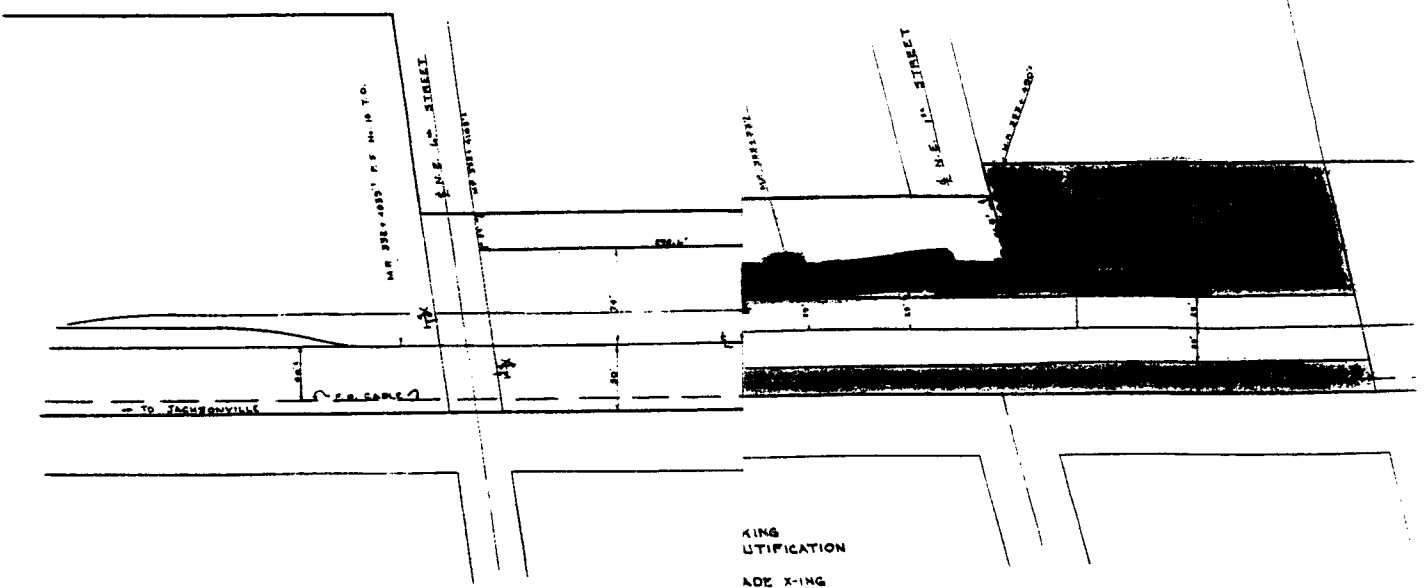


OFFICE OF INDUSTRIAL DEVELOPMENT
AND REAL ESTATE
ST. AUGUSTINE, FLORIDA

POMPANO BEACH, FLORIDA

AREAS SERVING THE
CITY OF POMPANO

OWN BY	RJD	M. P. LOC.	332+4103 ²	SCALE	1" = 50'
DEED BY		VAL. MAP.		DATE	3/28/89
	333-2-1			DIV. NO.	C-110



KING
UTILIFICATION
ADE X-ING

RISK MANAGEMENT DIVISION

100 West Atlantic Boulevard
Suite 219
Post Office Drawer 1300
Pompano Beach, Florida 33061



Phone: (954) 786-4628
Fax: (954) 786-4067

City of Pompano Beach, Florida

CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED.

COVERAGE

THIS IS TO CERTIFY THAT THE CITY OF POMPANO BEACH IS SELF INSURED, AND SELF ADMINISTERED FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN.

<u>TYPE OF INSURANCE</u>	<u>POLICY EFFECTIVE</u>	<u>POLICY EXPIRATION</u>	<u>LIMITS</u>
GENERAL LIABILITY	1/1/01	12/31/02	STATUTORY
PRODUCT LIABILITY	1/1/01	12/31/02	STATUTORY
COMPLETED OPERATIONS	1/1/01	12/31/02	STATUTORY
PERSONAL INJURY	1/1/01	12/31/02	STATUTORY
PROFESSIONAL LIABILITY	1/1/01	12/31/02	STATUTORY
AUTOMOBILE LIABILITY	1/1/01	12/31/02	STATUTORY
ANY AUTO	1/1/01	12/31/02	STATUTORY
ALL OWNED AUTOS	1/1/01	12/31/02	STATUTORY
HIRED AUTOS	1/1/01	12/31/02	STATUTORY
WORKERS' COMPENSATION	1/1/01	12/31/02	STATUTORY

CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE CITY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE CITY, ITS AGENTS OR REPRESENTATIVES.

Nancy L. Bolton
Nancy L. Bolton
Risk Manager
1/17/01
Date

CERTIFICATE HOLDER:

Florida East Coast Railway

NORTH RIVER INSURANCE COMPANY CERTIFICATE OF INSURANCE

DATE ISSUED: 12/26/01

PRODUCER
 Marsh Inc.
 One Financial Plaza Suite 2400
 Ft. Lauderdale, FL 33394

INSURED
 City of Pompano Beach, Florida
 100 W. Atlantic Boulevard
 Pompano Beach, FL 33060

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate **DOES NOT** amend, extend or alter the coverage afforded by the policies below.

COMPANIES AFFORDING COVERAGE

COMPANY (A) NORTH RIVER INSURANCE COMPANY

COMPANY (B) _____

COMPANY (C) _____

COMPANY (D) _____

COVERAGES
 This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

CO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
LTR					
GENERAL LIABILITY					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	SEE BELOW	SEE BELOW	SEE BELOW	GENERAL AGGREGATE PRODUCTS-COMP/OP AGG EACH OCCURRENCE FIRE DAMAGE (any one fire) MED. EXPENSE (any one person)
AUTOMOBILE LIABILITY					
A	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY	SEE BELOW	SEE BELOW	SEE BELOW	COMBINED SINGLE LIMIT BODILY INJURY (per person) BODILY INJURY (per accident) PROPERTY DAMAGE
EXCESS LIABILITY					
A	<input type="checkbox"/> UMBRELLA FORM <input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM	544-000073-4	7/21/01	7/21/02	EACH OCCURRENCE AGGREGATE
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY					
					STATUTORY LIMITS EACH ACCIDENT DISEASE-POLICE LIMIT DISEASE-EACH EMPLOYEE

XXXX - POLICY SUBJECT TO Endorsement FM GEN 001. Self-insured retention per occurrence

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS -
 All operations usual to the City of Pompano Beach including Industrial Development & Real Estate Florida East Coast Railway LLC as their interests may appear. All Terms and Conditions of Policy Remain Unchanged

CERTIFICATE HOLDER

Industrial Development & Real Estate
 Florida East Coast Railway LLC
 One Malaga Street
 PO Box 1048
 St. Augustine, FL 32085-1048

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Authorized signature: Sandra M Donaghy
 Sandra M. Donaghy

RECEIVED
 DE JAN 17 AM 9:47
 CITY OF POMPANO BEACH
 INSURANCE