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MEMORANDUM

TO: Members of the Board
Central Florida Expressway Authority

FROM: Right-of-Way Counsel
Shutts & Bowen LLP 

DATE: August 6, 2014

RE: Second Amendment to Contract for Sale and Purchase of Rail Line Easements

The Authority previously approved and entered into a Contract for Sale and Purchase of Rail Line Easements (the "Contract") with All Aboard Florida - Operations LLC ("AAF") for the right to use certain real property of the Authority, and certain real property contemplated to be acquired by the Authority, along S.R. 528 for use exclusively for intercity passenger rail. The Contract sets forth certain timelines for AAF to inspect the real property, cause the property to be surveyed, obtain a commitment for a title policy, provide written notice of any objections to the title commitment, and establishes an outside date by which all conditions precedent to closing must have occurred or been waived.

On April 24, 2014, the Authority and AAF entered into a First Amendment to Contract for Sale and Purchase of Rail Line Easements whereby the dates in the Contract were extended for AAF's Inspection Period, for AAF to obtain the Title Commitment and Survey, and for AAF to provide Initial Notice of any objections to the Title Commitment. Since that time, to no fault of any of the parties, certain actions related thereto were put in abeyance pending the outcome of Senate Bill 230 creating the Central Florida Expressway Authority.

AAF has now requested a Second Amendment to Contract for Sale and Purchase of Rail Line Easements (the "Second Amendment") whereby the dates in the Contract would be further extended for AAF's Inspection Period (to September 1, 2014, subject to AAF's right of entry agreements with the owners of real property contemplated to be acquired by the Authority), for AAF to obtain the Title Commitment and Survey (to August 15, 2014), for AAF to provide Initial Notice of any objections to the Title Commitment (to September 1, 2014) and to extend outside date by which all conditions precedent to closing must have occurred (to December 31, 2014).

It is recommended the Board approve the Second Amendment and authorize its execution by the Chairman.

cc: Joseph Passiatore, General Counsel
Joseph Berenis, Deputy Executive Director, Engineering, Operations, Construction and Maintenance
Laura Kelley, Deputy Executive Director, Administration and Finance

Consent Agenda 08/14/14

SECOND AMENDMENT TO
CONTRACT FOR SALE AND PURCHASE OF RAIL LINE EASEMENTS

THIS SECOND AMENDMENT TO CONTRACT FOR SALE AND PURCHASE OF RAIL EASEMENTS (the "Second Amendment") is effective as of June 26, 2014 (the "Amendment Effective Date"), by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, as successor in interest to the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority" or "Seller") and All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF" or the "Buyer" and collectively with the Authority referred to as the "Parties").

RECITALS:

WHEREAS, Seller and Buyer heretofore entered into that certain Contract of Sale and Purchase of Rail Line Easements dated as of its Effective Date (the "Agreement"); and

WHEREAS, Seller and Buyer desire to amend the Agreement in certain respects; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

AGREEMENTS:

1. Recitals. The recitals set forth above are true and correct and are hereby incorporated into this Second Amendment in their entirety.
2. Definitions. Capitalized terms used but otherwise not defined herein shall have the meaning ascribed to such terms in the Agreement.
3. Inspection Period. The extension of the Inspection Period (as defined in Section 5(b) of the Agreement) to September 1, 2014 is hereby ratified. The first sentence of Section 5(b) of the Agreement is hereby amended to read as follows:

"Subject to its rights of entry onto the Ranch Property and Additional Property as set forth in Section 5(a) above, Buyer shall have a period commencing as of the Effective Date and terminating on September 1, 2014 (the "Inspection Period"), in which to determine, in Buyer's sole discretion, whether the OOCEA Property and the Ranch Property is suitable to Buyer."

4. Outside Closing Date. The extension of the Outside Closing Date (as defined in Section 6 of the Agreement) to December 31, 2014 is hereby ratified. The second sentence of Section 6 of the Agreement is hereby amended to read as follows:

"However, absent the written consent of Buyer and Seller, the Closing Date shall not be later than December 31, 2014 (the "Outside Closing Date") and should the Conditions Precedent not have occurred or been waived by the Outside Closing Date, then this Contract may be terminated as provided in Paragraph 11."

5. Title Commitment. The first sentence of Section 8(a) of the Agreement is hereby amended to read as follows:

“By August 15, 2014, Buyer shall obtain, at Buyer’s expense, and deliver to Seller an ALTA commitment for the Title Policy (the “Title Commitment”) issued on behalf of First American Title Insurance Company (“Title Company”) to insure the easement rights set forth in the Easement.”

6. Survey. The third sentence of Section 8(a) of the Agreement is hereby amended to read as follows:

“By August 15, 2014, Buyer may, at Buyer’s expense, cause the OOCEA Property and Ranch Property to be surveyed by a Florida licensed surveyor (the “Survey”).”

7. Initial Notice. The first sentence of Section 8(a)(i) of the Agreement is hereby amended to read as follows:

“Buyer shall have until September 1, 2014 to examine the Title Commitment, the Exception Documents and the Survey, and in which to give Seller written notice (the “Initial Notice”) of objections which render Seller’s title unsuitable or less than good and marketable to convey the easement rights set forth in the Easement in the OOCEA Property and the Ranch Property.”

8. Waiver. In consideration for this Second Amendment, both Seller and Buyer unconditionally waive any right to claim or assert that the other has not timely and fully performed and observed all obligations accrued to date under the Agreement.

9. References to the Orlando – Orange County Expressway Authority. All references to the “Orlando – Orange County Expressway Authority” or “OOCEA” in the Agreement, as amended, shall hereafter be deemed to refer to the Central Florida Expressway Authority.

10. Ratification. Except as herein amended, the Agreement is hereby ratified and affirmed in its entirety by Seller and Buyer.

11. Counterparts; Email Signatures. This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this Second Amendment, Seller and Buyer may execute and exchange by e-mail as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, this Second Amendment has been duly executed by the Buyer and Seller as of the respective dates indicated below.

BUYER

ALL ABOARD FLORIDA- OPERATIONS
LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date executed by Buyer: _____, 2014

SELLER

CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, as successor in interest to the
ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY, a body
corporate and politic existing pursuant to
Chapter 348, Florida Statutes

By: _____
Name: _____
Title: _____

Date executed by Seller: _____, 2014

APPROVED AS TO FORM AND
LEGALITY

By: _____
Name: _____
Title: _____

Date executed by Legal _____, 2014