

**Exhibit B**  
**to the**  
**Declaration Of Ryan S. Hilbert In Support Of**  
**Plaintiffs' Opposition To Defendants' Renewed**  
**Motion For Judgment As A Matter Of Law**

EXHIBIT  
EYRICH  
95  
LC 2-12-08  
PENGAD 800-831-6699

## AGREEMENT

THIS AGREEMENT is made as of the 1st day of March, 2000, by and between the National Football League Players Association ("NFLPA"), a non-profit corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 2021 L Street, N.W., Suite 600, Washington, D.C., 20036, and National Football League Players Incorporated ("Players Inc"), a for-profit corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 2021 L Street, N.W., Suite 500, Washington, D.C., 20036.

### WITNESSETH:

WHEREAS, NFLPA has been duly appointed and is acting on behalf of the football players of the National Football League who have entered into group licensing authorization agreements, by execution of a Group Licensing Assignment, by execution of a player contract containing a group licensing authorization provision, the forms of which are attached hereto as Exhibit I (hereinafter referred to as "Group Licensing Rights"), or otherwise, and that in such capacity it has the right to negotiate this contract and the right to grant the rights to revenue described herein;

WHEREAS, NFLPA owns and possesses all rights with respect to: (1) the name "National Football League Players" and "National Football League Players Incorporated" (hereinafter referred to as the "Names"); (2) any abbreviation, hyphenation, or other use of such Names; (3) any recombination, rephrasing, shortening, or other adjustment of the words in such Names; and (4) a logo or logos using such Names (hereinafter referred to as the "Logo");

WHEREAS, NFLPA owns and possesses certain contracts wherein NFLPA has authorized and will authorize certain third parties to utilize the Group Licensing Rights, the Names, and/or the Logo; and

WHEREAS, NFLPA requires various services to be performed with respect to certain contracts listed in Exhibit II (hereinafter "Trading Card Agreements"), as further described herein;

NOW, THEREFORE, NFLPA and Players Inc mutually agree as follows:

WHOLLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

PI000133

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA <b>TRIAL EXHIBIT 95</b> CASE No. C07 0943 WHA DATE ENTERED _____ BY _____ DEPUTY CLERK
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**1. GRANT OF LIMITED LICENSED RIGHTS.**

(A) Upon the terms and conditions hereinafter set forth, and in consideration of the services provided by Players Inc in connection with certain trading card agreements (hereinafter referred to as the "Trading Card Agreements") referenced in Exhibit II, as amended from time to time, NFLPA hereby grants to Players Inc and Players Inc hereby accepts the exclusive worldwide right, license, and privilege of utilizing the Names and Logo, Group Licensing Rights, and certain contracts other than the Trading Card Agreements, as mutually agreed upon from time to time (hereinafter referred to collectively as the "Licensed Rights"), including the right to grant sublicenses of one or more such Licensed Rights, until the expiration, cancellation, or other termination of this Agreement.

(B) NFLPA shall provide sufficient Group Licensing Rights to Players Inc, as of the effective date of this Agreement and throughout the term of this Agreement, to ensure that Players Inc is able to perform under this Agreement.

(C) Players Inc shall have full discretion as to the manner in which the Licensed Rights are to be used; provided, however, that any license or sublicense arrangement into which Players Inc enters must identify the specific products that are licensed or sublicensed for production; and provided further that any license or sublicense must be based on terms and conditions consistent with this Agreement.

(D) Players Inc may develop and exploit additional name(s), logo(s), or both in the context of performing under this Agreement; provided, however, that any name or logo so developed or utilized shall be the property of NFLPA and subject to the terms and conditions of this Agreement, including but not limited to the provisions of Sections 9 and 17 set forth below; and provided further that Players Inc shall take all necessary steps to properly register and trademark such name(s), logo(s), or both in the name of NFLPA.

(E) Any Group Licensing Rights obtained by Players Inc during the term of this Agreement, or any renewals thereof, shall be the property of NFLPA and subject to the terms and conditions of this Agreement.

**2. TERRITORY.** Players Inc shall have the right to utilize the Licensed Rights for distribution of licensed or sublicensed product(s) anywhere in the world, including but not limited to the United States, its

territories and possessions.

3. **TERM.** This Agreement shall commence on March 1, 2000, and continue until February 28, 2019 (hereinafter referred to as "Original License Period") unless earlier terminated in accordance with the provisions hereof. Thereafter, the Agreement shall be extended upon mutual agreement by the parties.

4. **PLAYERS INC'S OBLIGATIONS UNDER THE GROUP LICENSING RIGHTS.**

The term "gross licensing revenues" shall mean the actual cash proceeds received (including, without limitation, any payments made in connection with the settlement or other resolution of any disputes with licensees) less sales and cash discounts actually allowed, but without deductions of any other kind, relating to the license or sublicense of the Licensed Rights, pursuant to the terms of this Agreement. Any amounts received by Players Inc as payment for the endorsement, sponsorship, appearance or other personal services or property of one or more players shall be included in gross licensing revenue less a deduction for any payments to players for such items.

(A) Gross licensing revenue shall exclude any revenues derived from the following:

- (i) amounts received under preexisting sponsorship events;
- (ii) amounts received under any sponsorship event that are specifically allocated to marketing, operational, or other business expenses relating to such event;
- (iii) the first \$500,000 of gross licensing revenue derived from the Sponsorship Agreement between NFL Properties, Inc. and Players Inc.
- (iv) any payments (or portion thereof) made in connection with the settlement or other resolution of any disputes with licenses where such payments are specifically allocated to offset the cost of a designated marketing promotion or event; and
- (v) amounts received by retired players pursuant to Group Licensing Assignments or Group Licensing Rights.

(B) Players Inc hereby agrees to pay to such players as have currently licensed NFLPA to use their Group Licensing Rights, and who meet the eligibility requirements set forth in Section 4(D) below, a royalty in the amount of 60 percent of gross licensing revenues, as defined in Section 4(A) above. Players Inc acknowledges that NFLPA has an interest in ensuring that eligible players are paid arm's-length royalties, in order to encourage players to grant their respective Group Licensing Rights to NFLPA in the future and to ensure that eligible players are paid no more than an arm's-length royalty.

(C) Either party may seek, periodically, to revise, either upward or downward, the royalty percentage specified in Section 4(B) in accordance with changes in market conditions.

(D) NFLPA shall establish eligibility requirements from time to time, in accordance with which Players Inc shall make royalty payments to players.

#### **5. NFL PROPERTIES SETTLEMENT AGREEMENT.**

Effective May 6, 1993, NFLPA entered into the Settlement Agreement (attached hereto as Exhibit IV) with National Football League Properties, Inc ("NFL Properties"). Under the Settlement Agreement, NFLPA agreed to certain terms and conditions with respect to certain licensing agreements. See Exhibit IV, ¶¶ 9-12. Players Inc agrees to be bound by all obligations, terms, and conditions with respect to which NFLPA is bound under the Settlement Agreement, including any amendments thereto. Under Paragraph 12(a) of the Settlement Agreement, NFL Properties is required to make certain payments to NFLPA in the event royalties earned by NFLPA under the Classic Games and Fleer licensing arrangements do not meet specified annual dollar thresholds. Any such payments by NFL Properties are not subject to this Agreement, and shall be the property of NFLPA unless otherwise agreed to in writing by NFLPA.

#### **6. PERIODIC STATEMENTS.**

(A) Players Inc shall furnish to NFLPA, no later than fifteen (15) days following the last day of each May, August, November, and February of this Agreement, a complete and accurate statement certified to be accurate by an officer of Players Inc, showing the gross licensing revenue derived by Players Inc during the preceding calendar quarter.

(B) Once in every twelve-month period, Players Inc shall

furnish to NFLPA a detailed statement prepared by an independent certified public accountant, showing the gross sales of the licensed products covered by this Agreement.

(C) Such statements shall be furnished to NFLPA whether or not any of the licensed products have been purchased during the reporting period for which such statement is due. The receipt or acceptance by NFLPA of any statement shall not preclude NFLPA from questioning the correctness thereof at any time and, in the event any inconsistencies or mistakes are discovered in connection therewith, they shall immediately be rectified and the appropriate payment made by Players Inc.

**7. BOOKS AND RECORDS.** In the event of termination or expiration of this Agreement, Players Inc shall deliver to NFLPA all of its books and records with respect to gross licensing revenues earned in connection with this Agreement at such place and time as shall be designated by NFLPA.

**8. INDEMNIFICATION AND INSURANCE.**

(A) Players Inc agrees that it will not challenge or in any way infringe upon, during the term of this Agreement or thereafter, the title or any rights of NFLPA in and to any of the Licensed Rights, or challenge or in any way infringe upon the validity of this Agreement.

(B) Players Inc further agrees to assist NFLPA to the extent necessary in the procurement of any protection for the Licensed Rights or to protect any of the Licensed Rights, and Players Inc, if it so desires, may commence or prosecute at its own expense any claims or suits in its own name or in the name of NFLPA or join NFLPA as a party thereto. Players Inc shall notify NFLPA in writing of any infringement or imitations.

(C) Players Inc hereby indemnifies NFLPA and undertakes to defend NFLPA from and against any claims, suits, losses, and damages (including reasonable attorneys' fees and expenses) arising out of any acts or omissions of Players Inc in connection with this Agreement, including but not limited to the sublicense, marketing, sale, distribution, or use of the Licensed Rights.

(D) NFLPA hereby indemnifies Players Inc and undertakes to defend Players Inc from and against any claims, suits, losses, and damages (including reasonable attorneys' fees and expenses) arising

out of any acts or omissions of NFLPA in connection with this Agreement, including but not limited to the sublicense, marketing, sale, distribution, or use of the Licensed Rights.

**9. COPYRIGHT AND TRADEMARK NOTICES.** Players Inc shall cause to be imprinted, or cause any sublicensee to have imprinted, irremovably and legibly on each Licensed Product manufactured, distributed, or sold under this Agreement, including, but not limited to, advertising, promotional, packaging, and wrapping material and any other such material whereon the Names and or Logo of NFLPA or Players Inc may appear, either (i) the appropriate copyright notice, including year date, following an encircled "c;" (ii) the initials "TM," the letter "R" encircled, the letters "TS" encircled, as applicable; or (iii) both, as may be amended from time to time by NFLPA.

**10. GOODWILL.**

(A) Players Inc recognizes the great value of the goodwill associated with the Names and Logo of NFLPA, and acknowledges that such goodwill belongs exclusively to NFLPA, and that said Names and Logo have a secondary meaning in the mind of the public.

(B) Players Inc agrees that all elements (including all material of any nature utilizing in any way the Licensed Rights, including but not by way of limitation all packages, cartons, point-of-sale material, newspaper and magazine advertisements) of any Licensed Products shall be of high standard and of such style, appearance, and quality as to be adequate and suited to the best advantage and to the protection and enhancement of the Licensed Rights; that the marketing of any Licensed Products will be conducted in accordance with all applicable Federal, State, and local laws; that any Licensed Products shall be exploited to the best advantage of NFLPA; and that such exploitation shall in no manner reflect adversely upon the good name of the NFLPA or Players Inc.

**11. SPECIFIC UNDERTAKINGS OF PLAYERS INC**

(A) With respect to the Trading Card Agreements, Players Inc shall furnish the following services to NFLPA:

(i) NEGOTIATIONS AND APPROVALS.

a. With respect to rights licensed under the Trading Card Agreements, Players Inc agrees to review and approve or disapprove the specific manner in which such rights are to be used on the licensed products in question under such contracts.

b. In the event a company to whom NFLPA has granted certain rights under the Trading Card Agreements (hereinafter referred to as "Licensee" or "Licensees") is interested in securing an individual player's personal endorsement, Players Inc agrees and acknowledges that it will review and approve or disapprove such endorsement, provided the individual player personally approves such endorsement. Players Inc acknowledges that all contact between Licensee and such player or player's agent shall be made by Players Inc.

c. With respect to the promotion by Licensees of the sale of licensed products, Players Inc agrees to review and approve or disapprove such promotions. Any promotions using the licensed products covered by the Trading Card Agreements as premium items shall require a separate agreement to be negotiated by Players Inc with separate terms and conditions, and nothing contained herein shall obligate NFLPA, Players Inc, or Licensee to enter into such an agreement.

d. In the event that a Licensee notifies Players Inc of any infringement by others of the rights covered by the Trading Card Agreements, Players Inc shall completely investigate whether or not any action shall be taken on account of any such infringement. Further, in the event that a Licensee requests Players Inc's approval of any suit or action by Licensee on account of any such infringement, Players Inc shall completely investigate Licensee's request.

e. Players Inc agrees to compile and update an Attachment "B" to the Trading Card Agreements. Attachment "B" to the Trading Card Agreements generally shall be established and modified in the following manner:

(1) Upon execution of each of the Trading Card Agreements, and thereafter annually as provided in those Trading Card Agreements, Licensee shall submit to Players Inc a proposed list of players' names for inclusion in Attachment "B" for the upcoming football season.

(2) Players Inc shall respond to such submissions in writing to Licensee, signifying approval or disapproval in the case of each player's name so requested.

(3) Licensee may submit requests in writing to Players Inc for additions, deletions, or substitutions of players' names contained in Attachment "B" to the Trading Card Agreements and Players Inc shall respond to such requests within a reasonable period of time.

f. Players Inc agrees to review and approve or disapprove the quality and style of samples of artwork, plans, photographs, and any other representations of licensed products produced by or for Licensee (hereinafter collectively "artwork") and samples of each of the licensed products, together with their packaging, hangtags, and wrapping material. Any approval or disapproval by Players Inc will be in writing. Review and approval or disapproval shall be before the manufacture, sale, or distribution of such artwork, whichever occurs first, and no licensed products shall be manufactured, sold, or distributed by Licensee without such prior written approval or disapproval of such artwork and such sample licensed products.

g. Players Inc agrees to review and approve or disapprove the use by Licensee of player names, likenesses, or both to promote licensed products on or in any material pertaining to packaging, hangtags, wrapping material, print ads, flyers, point-of-purchase displays, press releases, catalogues, trade show booths and exhibits, or any other written material or medium, including but not limited to electronic or interactive use.

h. Players Inc agrees to review and approve or disapprove the use by Licensee of player names, likenesses, or both (including, without limitation, action footage) in radio or television commercials to promote licensed products. Players Inc agrees to review all scripts and story boards before any commercials shall be made or shall be contracted for by Licensee.

i. Players Inc will negotiate with Licensee regarding the amount of required additional payments to Players Inc separate from and in addition to the guarantees or royalty payments included in the Trading Card Agreement, if Licensee requests to use player names, likenesses, or both in accordance with this Section 11(A)(i), in any radio or television commercials, print ads, point-of-

purchase displays, packaging, hangtags, wrapping material, press releases, catalogues, flyers, trade show booths and exhibits, or any other written material or medium, including but not limited to electronic or interactive use, to promote licensed products. All contacts with such players or their agents shall be made by Players Inc.

j. Players Inc agrees to inspect and audit expenditure documentation for Licensee activities that stimulate and promote the market for licensed products on the same basis as Licensee's books and records.

(ii) PERIODIC STATEMENTS.

a. Players Inc shall periodically furnish to NFLPA a complete and accurate statement, certified to be accurate by an employee of each Licensee who is authorized to provide such statement, showing the gross cash proceeds derived by each Licensee pursuant to the Trading Card Agreements during the preceding calendar quarter.

b. Once in every twelve-month period, Players Inc shall furnish to NFLPA a detailed statement certified by an officer of each Licensee, showing the gross sales of the licensed products covered by the Trading Card Agreements.

c. Such statements shall be furnished to NFLPA whether or not any of the licensed products have been purchased during the reporting period for which such statement is due. The receipt or acceptance by NFLPA of any statement shall not preclude NFLPA from questioning the correctness thereof at any time and, in the event any inconsistencies or mistakes are discovered in connection therewith, they shall immediately be rectified and Players Inc shall recover the appropriate payment from the Licensees for remittance to NFLPA.

(iii) BOOKS AND RECORDS. For a period of two (2) years following the termination or expiration of this Agreement, Licensees shall maintain accurate books and records for itself and any subsidiary or affiliated entity with respect to its sale of licensed products under this Agreement. Players Inc agrees to inspect and audit said books and records at reasonable times upon reasonable notice from Players Inc to Licensee. In addition, Players Inc agrees to inspect and audit the books and records of any entity with which Licensee contracts for services or production of product to the extent

necessary to confirm the audit of Players Inc.

(B) Players Inc agrees that every use of the Licensed Rights by Players Inc or any sublicensee shall inure to the benefit of NFLPA and that neither Players Inc nor any sublicensee shall acquire, at any time, any title or interest in the Licensed Rights by virtue of any use Licensee or any sublicensee may make of such Licensed Rights.

(C) Upon expiration, cancellation, or termination of this Agreement, the Licensed Rights shall immediately revert to NFLPA, and Players Inc shall refrain from further use of such Licensed Rights, or any further reference thereto, direct or indirect. Players Inc acknowledges that its failure to cease the use of such Licensed Rights at the termination or expiration of this Agreement will result in immediate and irreparable damage to NFLPA, and to the rights of any subsequent licensee(s). This Section 11(C) does not affect any sublicensee arrangement entered into by Players Inc under the authority of this Agreement. Any such arrangement shall be honored by NFLPA in the event of expiration or termination of this Agreement.

(D) Upon expiration, cancellation, or termination of this Agreement, Players Inc agrees that it will cease to compete or otherwise participate in any activities involving the licensing of players' names, photographs, likenesses, etc., except with the express written consent of NFLPA, for a period of two years following such expiration, cancellation, or termination.

**12. FORCE MAJEURE.** If, in the event of war, national police action, government edict, unavailability of material, act of God, or force majeure, Players Inc becomes unable to perform any obligation or duty arising under this Agreement, NFLPA will have no right to terminate this Agreement as a result of such inability to perform or for any non-performance. To the extent that performance under this Agreement is delayed as a result of the occurrence of one or more of the events listed above, all expiration dates in this Agreement shall be extended by a period of time equal to the period of such delay.

**13. PARTNERSHIP.** Nothing herein contained shall be construed to place NFLPA and Players Inc, or any sublicensee, in the relationship of partners or joint venturers, and neither Players Inc nor any sublicensee shall have the power to obligate or bind NFLPA in any manner whatsoever.

**14. WAIVER OR AMENDMENT.** None of the terms of this

Agreement shall be waived or amended except by an express agreement in writing signed by both parties. With the exception of the Trading Card Agreements, there are no representations, promises, warranties, covenants, or undertakings other than those contained in this Agreement. No written waiver shall excuse the performance of an act other than those specified therein. The failure of either party hereto to enforce, or delay by either party in enforcing, any of the Licensed Rights shall not be deemed a continuing waiver or amendment thereof and either party may commence, within the time provided by applicable law, appropriate legal proceeding(s) to enforce any or all such rights.

**15. NON-ASSIGNABILITY.** Players Inc shall not assign this Agreement without the prior written consent of NFLPA. Notwithstanding this Section 15, Players Inc shall have the right to authorize third parties to use the Licensed Rights in carrying out any activities that Players Inc is authorized to carry out under the terms of this Agreement, except that any such third party authorization is prohibited to the extent it constitutes a "de facto" assignment of Players Inc's rights under this Agreement. In general, such a third party authorization will constitute a de facto assignment if the authorization subverts, in any way, the intent of this Section 15 and otherwise accomplishes a result similar to a formal assignment of the Licensed Rights.

**16. TERMINATION.**

(A) Either party shall have the right to terminate this Agreement by providing sixty (60) days' written notice if the other party has failed to substantially comply with one or more of its obligations hereunder. However, if either party corrects such noncompliance within such 60-day notice period, then no right of termination shall exist and this Agreement shall be enforced as if such noncompliance had not occurred.

(B) Upon termination of this Agreement by lapse of time, operation of this Section 16, or otherwise, NFLPA shall have the right to enter into any phase of the business of Players Inc, either alone or in conjunction with any persons or corporations, without any restrictions of any kind, and all rights of Players Inc hereunder shall lapse and terminate except that any sublicenses, contracts, or other third party obligations entered into or incurred by Players Inc under the authority of this Agreement shall be honored.

**17. DEFENSE OF NAME.** If lawsuits or other types of action

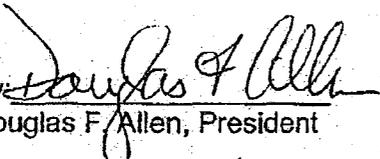
are instituted against Players Inc because of its use or any sublicensee's use of the Licensed Rights, Players Inc shall notify NFLPA immediately and NFLPA shall cooperate with Players Inc, such sublicensee, or both in the defense of any and all such suits or actions. Players Inc and NFLPA agree to confer on the allocation of the expenses of such defenses based upon the particular facts and circumstances involved in a suit.

18. **CONSTRUCTION.** This Agreement is made within the District of Columbia and shall be construed in accordance with the laws of the District of Columbia and the United States of America.

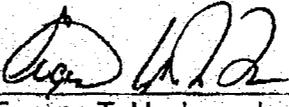
19. **SEVERABILITY.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable, for any reason and to any extent, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain between the parties as expressed herein, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, NFLPA and Players Inc have caused this Agreement to be signed by their authorized representatives, all as of the day and year first above written.

National Football League  
Players Incorporated

By:   
Douglas F. Allen, President

National Football League  
Players Association

By:   
Eugene T. Upshaw, Jr.,  
Executive Director