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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF HALIFAX SUPERIOR COURT DIVISION
08 CVS 922

JAMES GARRETT)
)
Plaintiff,)
)
v.)
)
RANDLE "RANDY" PARTON;)
RICHARD "RICK" WATSON;)
MOONLIGHT BANDIT PRODUCTIONS,)
LLC; MOONLIGHT BANDIT)
PROPERTIES, LLC; FRIENDS OF)
MOONLIGHT BANDITS, LLC;)
MOONLIGHT BANDIT CONCESSIONS,)
LLC; MOONLIGHT BANDIT)
MERCHANDISING, LLC;)
NORTHEASTERN NORTH CAROLINA)
REGIONAL ECONOMIC)
DEVELOPMENT COMMISSION; AND)
NORTH CAROLINA'S NORTHEAST)
PARTNERSHIP;)
)
Defendants.)

AMENDED COMPLAINT
AND PETITION FOR
DECLARATORY JUDGMENT

(Jury Demanded)

NOW COMES Plaintiff, by undersigned counsel, complaining of the Defendants, alleges that:

INTRODUCTION

1. This action is brought pursuant to statutory and common law as set forth below to obtain relief from certain acts of Defendants in the obtaining and the subsequent distribution of public monies in connection with a certain entertainment theater complex, formerly known as "The Randy Parton Theatre," now known as "The Roanoke Rapids Theater," ("Theater"), which

resulted in harm to Plaintiff as a taxpayer and property owner in Roanoke Rapids, Halifax County, North Carolina, as well as to other taxpayers.

2. This action arises from the creation of Carolina Crossroads Music and Entertainment District ("Carolina Crossroads"), an entertainment district in Roanoke Rapids, by appropriate local government bodies and from the use of tax increment financing ("TIF") bonds to finance the construction and operation of the Theater within Carolina Crossroads.

PARTIES

(Plaintiff)

3. Plaintiff Jim Garrett is a citizen and resident of Roanoke Rapids, Halifax County, North Carolina, and is a taxpayer to the governments of Roanoke Rapids, Halifax County and the State of North Carolina. Plaintiff pays various types of taxes including state income tax, real property tax and sales taxes on items purchased.

(Defendants)

4. Upon information and belief, Defendant Randy Parton is currently a citizen of the State of Tennessee. At relevant times set forth in this Amended Complaint, Defendant Parton was a citizen of the State of North Carolina and domiciled at Halifax County, North Carolina. Upon information and belief, Defendant Parton relocated to Tennessee in January 2008, but is engaged in substantial activity within North Carolina in that he maintains substantial contacts in the State of North Carolina, including business and financial ties in connection with the Theater, and returns periodically to North Carolina for business and legal affairs. Defendant Parton is the managing member of Defendant Moonlight Bandit Productions, LLC, and is or was managing

member of other companies organized and operating in North Carolina, including those described at Paragraph 6 below.

5. Defendant Rick Watson is a citizen and resident of Edenton, North Carolina. Defendant Watson was at various times as set forth below President and Chief Executive Officer of Defendants Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership, as well as a member and member manager of Defendant Moonlight Bandit Productions, LLC. Defendant is sued in his individual capacity and as an agent of Defendants Commission and Partnership.

6. Defendants Moonlight Bandit Productions, LLC ("Moonlight Bandit"), Moonlight Bandit Merchandising, LLC, Moonlight Bandit Concessions, LLC, Moonlight Bandit Properties, LLC, Friends of Moonlight Bandit, LLC, (collectively "Moonlight Bandit companies"), were each incorporated in North Carolina as a for-profit, duly chartered corporation. On or about June 2008, Moonlight Bandit Merchandising, LLC, Moonlight Bandit Concessions, LLC, and Friends of Moonlight Bandit, LLC were dissolved. Moonlight Bandits' principal offices and operations were located in North Carolina until July 31, 2008, after which Moonlight Bandit ceased to have a principal office. Upon information and belief, Defendant Parton is the managing member of both Moonlight Bandit Productions and Moonlight Bandit Properties, the only two of the original Moonlight Bandit companies still in existence.

7. Defendant Northeastern North Carolina Regional Economic Development Commission ("the Commission") is the regional entity designated by statute to market the northeastern area of the State for economic development. Defendant Commission, also known as North Carolina's Northeast Commission, was created in 1993 pursuant to General Statute 158-8.2 for the purpose

of facilitating economic development in certain counties in the northeastern part of North Carolina, including Halifax County.

8. Defendant North Carolina's Northeastern Partnership ("the Partnership") was incorporated as a tax-exempt 501(c)(6) non-profit corporation in August, 1994, by the Commission to administer the objectives of the Commission.

JURISDICTION AND VENUE

9. This action is brought pursuant to G.S. 58-63-1, *et seq.*, and common law as set forth below.

10. This Court has jurisdiction over the parties pursuant to G.S. § 1-75.4.

11. Venue is proper in this Court pursuant to G.S. § 1-82.

FACTUAL BACKGROUND

TIF Statutory Scheme and Relevant Constitutional Amendment

12. HB 1293/SB725 was passed by the General Assembly of North Carolina on third reading on July 19, 2003, and signed by the Governor on August 7, 2003. This legislation set forth the specific language of the amendment to the North Carolina Constitution and is hereinafter referred to as "Amendment One."

13. On November 2, 2004, the voters of North Carolina answered the question relating to Amendment One as follows: 1,504,383 (51.2%) for; 1,429,185 (48.8%) against.

14. As a consequence of the ratification of Amendment One, the People have been deprived of their constitutional right under Article V, Section 4 of the North Carolina Constitution to approve or disapprove TIF bond issues.

Initial Theater Planning

15. Upon information and belief Defendant Watson began working on plans to develop an entertainment theater in Eastern North Carolina in August 2004. Upon information and belief, Defendant Watson traveled to Pigeon Forge, Tennessee, to meet with Randy Parton on or about August 23, 2004.

16. Upon information and belief, on or about October 15, 2004, Defendant Watson sent a letter to Defendant Randy Parton and his wife, Deb Parton, outlining a plan to develop a theater project involving the Northeast Partnership and Currituck County. Upon information and belief, Defendant Parton and Deb Parton received a check from the Northeast Committee of 1000 in the amount of \$5000 as inducement for the Partons to sign the letter. Upon information and belief, at that time, Defendant Watson was the registered agent and president of the Northeast Committee of 1000, which is, upon information and belief, an organization which works with the Commission to promote economic development in the northeast region of the state. Defendant Parton and Deb Parton signed the letter on October 19, 2004, and returned it to Defendant Watson.

17. Upon information and belief, on or about October 15, 2004, Defendant Watson presented a letter of intent, printed on Defendant Partnership letterhead, to Currituck County. This letter of intent was addressed to Defendant Parton and outlined the tentative terms of an agreement among Defendant Partnership, Currituck County and Defendant Parton. Upon information and belief, this letter of intent was drafted by Defendant Watson or others acting under his supervision and at his direction.

18. Upon information and belief, Currituck County Economic Developer Wayne Leary wrote to Defendant Watson, on or about October 26, 2004, to communicate that officials of Currituck

County were, or were becoming, uninterested in Defendants' proposed theater project because Currituck County officials "balked over the wording that to them indicated that Currituck County would buy the land and build the theater and front the operation."

19. Upon information and belief, Currituck County did not pursue Defendants' Theater project and did not enter into a memorandum of understanding or letter of intent with Defendants Parton or the Moonlight Bandit Companies.

20. On or about November 15, 2004, Cathy Scott, who was then employed by Defendant Commission and was a subordinate of Defendant Watson, emailed a reporter of the Chowan Herald newspaper recommending changes to a story prepared by a Chowan Herald reporter about the Theater project and alleging support for the project from Defendant Parton's sister, musician Dolly Parton. Scott's email also requested that Defendant Parton's name precede that of his sister in news stories. Additionally, in that email, Scott added or revised the following statements for the newspaper article:

A visit in mid-December by [Northeast] Partnership, county and state officials will produce yet another legendary entertainer's endorsement of the North Carolina's Northeast entertainment district.

Progress of the entertainment district and identification of the newest celebrity endorsement will appear exclusively in The Chowan Herald[.]"

21. Upon information and belief, Scott's November 15, 2004, email was sent under the supervision and at the direction of Defendant Watson.

22. Upon information and belief, as a result of Currituck County's lack of interest in the project, Defendants, including Defendant Watson acting as President and CEO of the Commission, distributed a request for proposals ("RFP") "from interested counties/communities for the recruitment of an entertainment district(s) in North Carolina's Northeast Region." The date the RFP was distributed is unclear. Responses to the RFP were due by 5:00 pm on

December 3, 2004. The RFP directed questions to, inter alia, "Rick Watson, President & CEO," and provided as his contact information: a telephone number and email address connected to the Commission.

23. On or about December 14, 2004, Ernest Pearson, a licensed attorney practicing law with the firm of Sanford Holshouser, L.L.P., sent to Defendant Watson a draft of a confidentiality agreement which was, upon information and belief, prepared by Pearson, who represented the Partnership and/or the Commission. A cover letter from Pearson to Defendant Watson described the confidentiality agreement as being for use by the Commission and any county "which will be in the running for a Parton entertainment facility." Pearson's letter also referenced a "proposed letter for legislative leaders to sign, showing their support for the project." Pearson's letter also stated that Pearson "will get [Defendant Watson] an opinion letter as to questions about any conflict of interest."

24. Upon information and belief, during the months of November and December 2004, the City of Roanoke Rapids became interested in the theater project being developed by Defendants. On or about January 7, 2005, Rick Benton, formerly City Manager of Roanoke Rapids, emailed to Defendant Watson at an email address associated with the Commission a proposal from developer Michael Dunlow which Benton described as "for the benefit of the Partons."

25. On or about January 13, 2005, the City and the Halifax County Tourism Development Authority presented a letter of intent to Defendant Parton and his wife Deb. This letter of intent outlined the proposed rights and responsibility of the Partons and the City of Roanoke Rapids and the Halifax County Development Authority. This letter of intent is substantially similar to the letter of intent drafted by Defendant Watson and delivered to Currituck County. Upon information and belief, Defendant Watson was responsible for the drafting of the letter of intent

and/or specifying the substantive provisions of the letter of intent presented by the City and the Halifax County Tourism Development Authority to Defendant Parton and his wife Deb. Upon information and belief, Defendant Watson, his subordinate at the Commission Cathy Scott, and others employed by the Commission directly or indirectly advised and advocated for the City to agree to the Letter of Intent based on their roles with Defendants Commission and Partnership.

26. On or about February 7, 2005, Sam Whitt, another attorney at Sanford Holshouser, wrote to Pearson and Defendant Watson and others, that Bill White, attorney for developer Michael Dunlow, informed him (Whitt) that: i) Dunlow would make a \$3,000,000 charitable contribution to the City to establish a reserve fund for operating costs for the Theater; ii) Dunlow was concerned with the inclusion of noncompete clauses in the proposed agreement among the parties; and iii) Dunlow objected to subordinated deeds of trust being placed on the property. Whitt also wrote that he told White "such Deeds of Trust would provide security for Moonlight Bandit in receiving its 13.5% proceeds." It is unclear why and for what reason Defendant Moonlight Bandits would be receiving a 13.5% interest in some type of proceeds.

27. Upon information and belief, the agreement between the City, the Partons, Moonlight Bandit, and Dunlow evolved during the week following Whitt's February 7th email with various parties, including the Defendant Watson and Ernie Pearson, negotiating the terms of the agreements.

28. On or about February 11, 2005, Defendant Moonlight Bandit Productions, LLC, was formed. The registered agent was Sam Whitt.

29. On or about February 12, 2005, Whitt sent an email to attorneys involved in the negotiations regarding the project and copied Pearson and Defendant Watson. In this email, Whitt stated that the City would seek approval from the Local Government Commission

("LGC") to issue TIF bonds to finance the project and upon receiving such approval would "assume the financial obligations in the deal originally contemplated by the parties." Whitt also stated that he and Pearson discussed the "most appropriate manner to document this transaction" and "believe it best to re-draft the current Agreement into two separate documents, one between Moonlight Bandit Productions and Roanoke Rapids Entertainment One [Dunlow's development company for the project] and another between Moonlight Bandit Productions and the City of Roanoke Rapids." He added "We [Whitt and Pearson] feel two different documents will help clarify respective obligations and, hopefully, with careful drafting facilitate approval by the LGC and the citizens of Roanoke Rapids."

30. On or about February 18, 2005, Whitt again emailed attorneys involved with the project and others. In this email, Whitt again recommended that the original agreement between Moonlight Bandits, the City and the developer be separated into two agreements due to various factors, including public policy.

31. Upon information and belief, the Roanoke Rapids City Council approved the Agreement with Moonlight Bandits on or about April 5, 2005.

32. Upon information and belief, on or about April 7, 2005, Cathy Scott in her capacity as an employee of the Commission and as a subordinate of Defendant Watson emailed Rick Bennet, former City Manager, that Defendant Parton's "business plan would be ready on the 15th [of April, 2005]" and that the consultants were still preparing the feasibility study. Upon information and belief, Benton had requested the business plan on behalf of the City for use in seeking LGC approval of the TIF bond issuance.

33. Economic Research Associates ("ERA") was commissioned to prepare a feasibility study of the Theater. ERA based substantial, if not most, of its analysis on information obtained

directly or indirectly from Defendants Watson and Parton and others working under their supervision and at their direction, including information that the Theater would anchor a much larger development project formally known as the Carolina Crossroads Music and Entertainment District ("Carolina Crossroads"). The feasibility study, which was not complete until April 14, 2005, concluded that the Theater could be a "market-viable attraction concept" if surrounding development in Carolina Crossroads was complete and operating by the time the Theater opened. Specifically, the feasibility study found the Theater could be viable if specified "assumptions" were met. The study listed several assumptions on which the economic viability of the Theater depended, specifically that "key elements of the larger proposed development [Carolina Crossroads], including two hotels, at least 200,000 square feet of retail, and additional entertainment/amusement opportunities are operational by the time the Theater is opened" and the "Theater is competently and proactively managed to maximize earnings and deliver a product that is in tune with the marketplace." Defendants knew or through the exercise of reasonable care should have known that these assumptions would not be met.

34. Defendant Moonlight Bandit produced a confidential Business Plan for the Theater (a copy of the Business Plan is attached as Exhibit A and incorporated by reference). The Business Plan was furnished to the City "solely for use by the City of Roanoke Rapids to support financing for a 1,450 seat music theater" and "to assist the City in securing Theater financing." Upon information and belief, Defendants Watson and Parton, together with Watson's subordinate at the Commission Cathy Scott, prepared the Business Plan.

35. The Business Plan under the heading, "Experienced Management," emphasized Defendant Parton's experience as a performer and stated he "has worked with experienced, knowledgeable industry experts in the management of Theaters." Upon information and belief,

Defendant Parton had no experience managing the business or financial operations of a theater. Upon information and belief, the purpose of the foregoing statement regarding Defendant Parton's management experience, together with other statements in the Business Plan about Defendant Parton's professional experience, were intended to create the false impression that Defendant Parton was an experienced business manager.

36. The Business Plan stated Defendant Watson "is Business Manager for Moonlight Bandit Productions, overseeing all business activities for The Randy Parton Theater." The Business Plan did not disclose Defendant Watson's ownership interest in Defendant Moonlight Bandits, nor did Defendant Watson have any experience managing a theater or theater operation.

37. Upon information and belief, at the time the Business Plan was created Defendant Watson was president and chief operating officer of Defendant Northeastern North Carolina Regional Economic Development Commission and/or Defendant North Carolina's Northeastern Partnership, agents of the State of North Carolina.

Creation of Carolina Crossroads and TIF Implementation

38. Upon information and belief, on or about April 22, 2005, staff with the State and Local Government Finance Division of the State Treasurer's Office recommended to the City that it renegotiate certain terms of a draft agreement between the City and various Defendants. Upon information and belief, the recommendations included changes in the priority of payments so that real property debt and operating costs would be paid before artist fees or profit distribution to Defendants Parton and Moonlight Bandit. The final agreement and supplements thereto, as set forth below, do not reflect the recommended changes in the priority of payments and certain other recommended changes.

39. On or about June 30, 2005, the Economic Development Agreement (EDA) was signed by Parton for himself individually and as member manager of Moonlight Bandit, by the City, by B & C Roanoke, which is affiliated with Georgia based Blanchard and Calhoun Commercial developers, and by Roanoke Rapids Entertainment One. A true copy of the EDA is attached as Exhibit B and incorporated herein by reference. Among the provisions of the EDA are the following terms and conditions:

- a. Entertainment One shall convey to the developer approximately 15 acres of land for the Theater;
- b. After construction of the Theater, the property shall to be leased by the developer to the City;
- c. The developer, with the cooperation of the City, shall be responsible for preparing plans for and constructing the Theater;
- d. Moonlight Bandit shall be responsible for managing the Theater;
- e. Defendant Parton was to be paid a \$1.5 million artist fee annually;
- f. The City was to provide Defendant Parton an "acceptable fully furnished home and an "acceptable" vehicle; and
- g. Defendant Parton would have the option to purchase the Theater for one dollar (\$1) after the bond debt had been satisfied.

40. Upon information and belief, the EDA provided that revenue from the Theater shall be distributed in the following priority:

- a. Payment of \$750,000 toward Defendant Parton's artist fee;
- b. Payment of operating costs;
- c. Payment of the balance of the artist fee; and

d. Payment to the equity fund from which a shortfall in subsequent years could be satisfied.

41. Upon information and belief, the EDA provided that the lease payments to the City by Defendant Parton would equal the annual debt service on the financing, particularly the TIF bonds, used to finance construction and start-up of the Theater.

42. Upon information and belief, the EDA provided the City would provide a vehicle and housing for Parton, and the City did provide the same.

43. On or about August 29, 2005, Moonlight Bandit Merchandising, LLC was established as a member managed LLC. The members were not made public at that time. Pearson was the registered agent.

44. On or about August 31, 2005, Moonlight Bandit Concessions, LLC, Friends of Moonlight Bandit, LLC, and Moonlight Bandit Properties, LLC, were established, each as a member managed LLC. The members of any of these companies were not made public at that time. The registered agent for each company was Pearson.

45. On or about October 24, 2005, the Commission submitted documents to the North Carolina Department of Commerce requesting \$500,000 in state funds for the Theater project. Defendant Watson signed the request.

46. On or about October 25, 2005, attorneys Robert Morgan and Winston Gilcrest issued an opinion that Defendant Watson engaging in business with Moonlight Bandit and the Commission did not constitute a conflict of interest. Upon information and belief, the opinion had been requested by Pearson at the direction of the Commission. Upon information and belief, neither Morgan nor Gilcrest had been informed of the extent of the financial dealings between and among Defendant Watson, Moonlight Bandit and the Commission. Upon information and

belief, Defendants, directly or indirectly, provided factual information to Morgan and Gilcrest on which the latter based their opinion.

47. Upon information and belief, in early November 2005, Defendant Watson received approval from the Commission to work for Moonlight Bandit while keeping his position as CEO of the Commission, for which he received a \$165,000 annual salary, plus bonuses and car allowances.

48. On or about December 13, 2005, ERA completed a study of the financial plan and economic impacts of the Carolina Crossroads district. The study specifically states "ERA's Scope of Work did not involve analyzing the market viability of the overall Entertainment District program as proposed. Rather, the proposed program was taken as an assumption set." Upon information and belief, no feasibility study of Carolina Crossroads itself was commissioned by any party.

49. On or about January 11, 2006, then Speaker Black approved a request of \$543,500 for roadway improvements for a development district in which the Theater is located.

50. Upon information and belief, on or about January 13, 2006, a dispute arose over Defendant Watson's status with the Commission and his relationship to Defendant Parton and various Theater related companies at a meeting in Edenton of the county managers who are represented on the Commission.

51. On or about January 17, 2006, Pearson sent to Lori Russell, Assistant Attorney General of North Carolina, a letter with enclosures related to Defendant Watson's work for the Commission and for the Partons and/or Moonlight Bandit. In his letter, Pearson stated he saw no conflict of interest in Defendant Watson's work for both the Commission and the Partons because, *inter alia*, the Commission did not give anything of value to the Partons, the interests of

the Partons are "exactly the same" as the interest of the Northeast Region; and Defendant Watson's independent contractor agreements specifically provide for him to pursue outside investment.

52. On or about February 28, 2006, the City, by and through its City Council, adopted a resolution establishing a development financing district to be known as "Carolina Crossroads Music and Entertainment District." ("Carolina Crossroads"). A copy of the resolution is attached to this Complaint as Exhibit C and incorporated by reference.

53. On or about March 7, 2006, the LGC approved the use of TIF bonds for the Roanoke Rapids Project. On June 8, 2006, \$3.785 million in anticipation notes were issued in relation to the Roanoke Rapids Project.

54. On or about March 2, 2006, Defendants Watson and Parton, Pearson and others signed an Operating Agreement for Moonlight Bandit. Defendant Watson's share of the company is listed at 33%. The Operating Agreement refers back to the formation of the company on February 11, 2005.

55. On or about March 7, 2006, the LGC gave initial approval for the City to borrow \$21 million using TIF.

56. In March 2006, State Auditor Les Merritt issued a performance audit of the Commission and the Partnership. The audit found a conflict of interest in Defendant Watson's involvement with the Theater, insufficient documentation of the justification for bonuses paid to employees, a poorly formulated selection process for the selection of contractors, agreement to potentially harmful contract terms by the Commission, payment to contractors without supporting documentation, financial reporting irregularities, weak internal controls, failure to obtain clarification of the Commission's legal structure, and inadequate oversight by Boards of

Directors of the Commission. The Auditor's report also described the Commission and the Partnership as "so intertwined operationally and financially" that the two entities were referred to jointly throughout the report.

57. On or about March 20, 2006, the Commission and Partnership terminated the employment of Defendant Watson, making such termination retroactive to March 1, 2006 and paying him \$165,000 in severance.

58. On April 27, 2006, all five "Moonlight Bandit" companies filed their annual reports with the North Carolina Secretary of State. The members listed for each company are: Defendant Parton, Deb Parton, Defendant Watson, Ernie Pearson, Brenda Womble and Frank Harper.

59. Upon information and belief, on or about September 1, 2006, a supplement to the EDA was completed. This is the First EDA Supplement.

60. Upon information and belief, on or about January 16, 2007, Rick Benton emailed Roanoke Rapids Mayor Drewery Beale and others that because "[t]he City has \$21.5 million tied up in the theater and we created a TIF district to finance it," the City could not legally provide incentives from increases in property taxes for more development. Benton continued, "The City just isn't in a financial position to provide from direct incentives in [Carolina Crossroads]."

61. On or about February 6, 2007, the LGC gave final approval to TIF bonds for Carolina Crossroads and the Theater.

62. On or about February 13, 2007, Defendant Parton filed amended documents leaving him as the sole manager of four of the five limited liability companies associated with the Theater: Moonlight Bandit Productions, LLC; Moonlight Bandit Concessions, LLC; Moonlight Bandit Properties, LLC; and Moonlight Bandit Merchandising, LLC.

63. Upon information and belief, on or about February 15, 2007, final revisions to the Second Supplement to the EDA were agreed upon by representatives of the City and Defendants. A true copy of the Second Supplement is attached as Exhibit D and incorporated by reference. The Second Supplement altered the timing of rent and other payments. Upon information and belief, Rick Benton noted the changes from the original and wrote "other parties (RW) insisted on the tax exempt language, thinking the \$ would be shielded from public scrutiny." Upon information and belief, the "RW" cited by Benton refers to Defendant Watson.

64. On or about March 2, 2007, construction of the Theater was completed. Upon information and belief, the total cost for the Theater was \$13,002,051.02.

65. On or about March 7, 2007, the TIF bond issue closed and \$21.5 million became available to the City for the purchase of the Theater. A deed of trust dated March 1, 2007, among the City, PRLAP, Inc as trustee and Bank of America, N.A. for \$21.5 million accompanies and secures City of Roanoke Rapids Music and Entertainment District Bonds.

66. No vote of the People was ever taken to approve or disapprove the issuance of the TIF bonds used to finance the Theater. Due to the ratification of Amendment One, no vote was required.

67. On or about March 15, 2007, Defendant Parton took possession of the Theater. The City leased the Theater to Moonlight Bandit. The lease term commenced March 15, 2007, and runs through March 15, 2010, but provided that the lease could be renewed year-to-year thereafter. Upon information and belief, although the feasibility study of the Theater prepared by ERA concluded the viability of the Theater depended on competent management and surrounding development including retail shops and two hotels, such retail space and hotels were not constructed and operational when the Parton took possession of the Theater.

68. On or about May 11, 2007, Roanoke Rapids Mayor Drewery Beale prepared a letter providing background on the Carolina Crossroads and Theater project and defending Defendant Watson's participation in the development. Beale's letter states Watson "never reaped any financial gain from the City." The letter does not mention Defendant Watson's equity interest in the Moonlight Bandit Companies.

69. On or about July 26, 2007, Defendant Parton performed his first show at the Theater.

70. On or about September 2007, City officials negotiated a new contract with Defendant Parton that significantly reduced his role as manager and lead performer. Parton's compensation was cut from a guarantee of \$750,000 annually to \$250,000 per year for five years.

71. On or about December 6, 2007, Defendant Parton did not perform at the Theater. Officials stated he was "under the weather," but media reports indicated he appeared to have been intoxicated.

72. On or about December 7, 2007, City Manager Phyllis Lee directed employees that Defendant Parton is not permitted on the premises of the Theater.

73. On or about January 8, 2008, the City renamed the Theater "Roanoke Rapids Theater."

74. Due to poor attendance rates and a lack of revenues, the City closed the Theater in June 2008, pending new management arrangements.

75. Upon information and belief, the Theater does not generate sufficient revenue to cover debt servicing on the TIF bonds used to finance its construction and start-up. As a consequence, upon information and belief, bond payments have or will be made from City and/or State funds not generated by the operation of the Theater.

Role of the Commission and its Employees

76. Pursuant to N.C.G.S. § 158-8.2, the Commission is and has been at all times an agency of the State of North Carolina and is located administratively within the North Carolina Department of Commerce with the Secretary of Commerce or a designee sitting as a member of the Commission. The Commission shall exercise its statutory powers and duties, however, independently of the Department of Commerce.

77. The Commission is charged to identify, facilitate, and implement economic development plans and activities on behalf of and for the benefit of the State and certain local government entities. This duty is intended to inure to the benefit of citizens and taxpayers in the Northeastern region and throughout the State of North Carolina.

78. The Commission and any subsidiaries are considered integral parts of the State of North Carolina's financial reporting entity and as component units are considered legally separate entities for which the State is financially accountable.

79. "Accountability" is defined as the State's substantive appointment of a majority of the component unit's governing board. Furthermore, the State must be able to impose its will upon the component unit, or there must be a possibility that the component unit may provide specific benefits to, or impose specific financial burdens on, the State.

80. As required by N.C.G.S. § 158-8.2, certain elected State officials being the Governor, the President Pro Tempore of the Senate and the Speaker of the House appoint the board members of the Commission. The State provides significant operating subsidies to the Commission, thereby creating a benefit/burden relationship. Because of the State's appointment of the board and the benefit/burden relationship, the Commission is a component unit of State of North Carolina and the Commission's financial statements are included in the State's Comprehensive Annual Financial Report.

81. Pursuant to N.C.G.S. § 158-8.2(j), "The Commission shall hire an employee to serve as president and chief executive officer." The Commission is also authorized hire and fix the compensation of any personnel necessary to its operation. The Commission may also contract with consultants for any services as it may require and contract with the State of North Carolina or the federal government, or any agency or department thereof for any services provided by those agencies.

82. On or about 1994, Defendant Rick Watson was hired by the Commission as its president and chief executive officer and continued in such capacity until on or about March 1, 2006. At all times complained of, Watson was an employee of the Commission and thus a state employee charged with the duties and responsibilities assigned to the Commission as a state agency.

83. Numerous other individuals including but not limited to Cathy Scott were employees of the Commission and thus state employees at all times complained of.

84. On or about July 27, 1994, the Commission held a special meeting at which it declared that it would no longer be affiliated with the Department of Commerce but would begin operating independently. Defendant Partnership was incorporated on or about September 16, 1994, and its articles of incorporation and bylaws indicate that it assumed the duties and functions of the Commission associated with economic development. Members of the Commission automatically became members of the Board of Directors of the Partnership by virtue of their appointment to the Commission. A copy of the March 9, 1999, Advisory Opinion is attached hereto as Exhibit E and incorporated by reference.

85. The North Carolina Attorney General issued an Advisory Opinion on or about March 9, 1999, in which the Attorney General's Office concluded that the Commission was not authorized to remove itself from the Department of Commerce in 1994 and was not authorized to abdicate

its statutory powers and duties to the Partnership. The Advisory Opinion also concludes that "even assuming arguendo that the Partnership was otherwise properly established as a private nonprofit corporation," the Partnership appears to be an agency of the State.

86. Upon information and belief, from August, 1994, until June of 2006, after the Commission had terminated the employment of Defendant Watson, the Commission and Partnership operated as one entity utilizing the same board members, same offices and telephone number and performing as one entity the duties and responsibilities of the Commission, in disregard of the advisory opinion of the Attorney General of North Carolina.

87. Upon information and belief, state appropriated moneys in excess of several million dollars were diverted by the Commission to the Partnership in violation of N.C.G.S. § 158-8.2 for the purpose of exceeding lawful compensation limits on its employees and allowing the awarding of bonuses and severance packages, all of which are neither authorized nor allowed by law. The financial accountability of the Partnership was substantially less than that required of a state agency and allowed for the misuse of taxpayer funds by the Partnership.

88. Upon information and belief, the Boards of Directors of the Commission and the Partnership were grossly negligent in their fiduciary capacity as Boards in allowing this arrangement and allowing the diversion of public funds lawfully appropriated to a government agency to be diverted to a private, non-profit corporation.

89. Upon information and belief, subsequent to the removal of Defendant Watson, the Partnership attempted to amend its Form 990 (Return of Organization Exempt from Income Tax) required by the IRS by returning taxpayer funds, not previously committed to the Commission in recognition of the impropriety of its previous actions.

90. As more specifically alleged in this Complaint, on or about the summer and fall of 2004, Watson, as an employee of the Commission, instituted a proposal submitted to various counties in northeastern North Carolina for an Entertainment District anchored by a Theater featuring Randy Parton.

91. Upon information and belief, as part of his effort in the fall of 2004, Defendant Watson through Cathy Scott, his assistant at the Commission, and Ernest Pearson, attorney for the Commission and/or Partnership, prepared in concert with Randy Parton a Letter of Intent addressed to Randy Parton dated October 15, 2004, which was duly signed by Defendant Watson, Van Rogerson, Vice President for Marketing for the Commission, Jack Runion, Chairman of the Commission, and Defendant Parton and his wife Deb Parton. Signature spaces for officials for Currituck County were on the document but upon information and belief not signed.

92. Upon information and belief, the Letter of Intent referenced above was submitted allegedly on behalf of the Partnership in an effort to allow Defendant Watson and others to avoid the legal responsibilities required of the Commission.

93. In the Letter of Intent, the Partnership, represented by Defendant Watson, represents that the Partnership will assist in attempting to bring the Theater project to successful conclusion. The assistance includes work in relation to the financing of the project, incentives for the project and permits needed for this project. Further, the Letter of Intent says that the assistance to Defendant Parton will be in the nature of "encouraging" various entities and promoting the attributes of the project.

94. As alleged above, subsequent to the Letter of Intent, officials of Currituck County questioned the one-sided nature of the Parton proposal in that all of the investment would come

from public sources. As a result, Currituck County declined to participate and was publicly criticized by Watson and Pearson for their officials' unwillingness to commit to the project.

95. As alleged above, on or about November of 2004, Defendant Watson, under the purported authority of the Partnership, had Pearson prepare a Request for Proposals under a Confidentiality Agreement for a number of counties in the northeast North Carolina region.

96. Upon information and belief, at such point in time in December of 2004 or January 2005, the City of Roanoke Rapids, hereinafter "City", expressed an interest in the proposal. Defendant Watson, along with other Commission employees, including Cathy Scott, began assisting and advising the City in their capacity as state employees. As state employees, Defendant Watson and all other employees of the Commission had a fiduciary duty to the City, its governing body, and the citizens and residents of the City to represent their best interest in assisting in the proposed project.

97. Upon information and belief, Defendant Watson, by and through his fellow employee and subordinate at the Commission, Cathy Scott, and others, advised and counseled the City on the project, urging them to agree to the proposals submitted by Defendant Parton and prepared by Defendant Watson and his employees.

98. As more fully alleged above, a Letter of Intent dated January 13, 2005, was submitted by the City and the Halifax County Tourism Development Authority to Defendant Parton and his wife Deb setting out various terms and conditions that the City was willing to satisfy to facilitate the music theater/entertainment district in Roanoke Rapids. The terms included:

- a. arranging for the financing and construction of the Theater;
- b. assuming all costs for site preparation and construction;
- c. an effort to secure other public funds for the project;

- d. the payment to Defendant Parton of \$1.5 million per year in artist fees;
- e. the lease of the Theater to the Partons for \$1.00 a year; and
- f. the option for Partons to purchase the Theater for \$1.00 after the amortization of the debt.

99. Upon information and belief, Defendant Watson and other employees of the Commission worked with and urged the City to accept these terms which were highly favorable to the Partons and ultimately to the companies they formed.

100. As alleged above, upon information and belief, at some point in time during this process, Defendant Watson secured or began an effort to secure an ownership interest or interests in the various companies being formed by Defendant Parton for the operation of the Theater and other side businesses as well as an additional role as a manager of the Theater.

101. Upon information and belief, this business relationship with Defendant Parton was not disclosed to the City during such time as Watson continued to advise the City on the Theater deal with Defendant Parton. To the extent one or more members of the City Council may have been aware of the business relationship, the information was not made public to the citizens and residents of Roanoke Rapids at the various public hearings during which time certain necessary resolutions were being debated and passed by the Council.

102. As more alleged above, upon information and belief, Cathy Scott, an employee of the Commission, operating on the instruction and advice of Watson, prepared the Randy Parton Business Plan, a document relied on by the City, various banks, the Local Government Commission and ultimately the purchasers of the TIF bonds as proof of the viability of the Theater project and its impact on the Entertainment District.

103. Upon information and belief, Defendant Watson's role as business manager of the Theater was not known until the production of the Parton Business Plan.

104. Upon information and belief, Defendant Watson received ownership interests in the companies without a financial investment; rather his equity interest was awarded in compensation for his role in helping negotiate an Agreement between the City and Defendant Parton and his companies that was highly favorable to Parton and the companies, as well as for his role in facilitating the approval of a TIF bond package by the Local Government Commission.

105. Defendant Watson, individually and as an employee of the Commission, was grossly negligent in his conduct in securing the Agreement and the ultimate bond financing and other state appropriations that went to the project.

106. Defendant Watson, individually and as an employee of the Commission intentionally and fraudulently provided information that was inaccurate or knowingly wrong to the City, its citizens and taxpayers, the Local Government Commission and the purchasers of the TIF bonds as to the management skills and team that would operate the Theater and as to the status of the other projects necessary for the success of the Theater.

107. The Commission and the Partnership were grossly negligent in allowing Defendant Watson and Cathy Scott to continue to aid and advise the City and others in moving the Theater project forward, having been informed of the inherent conflict presented by Watson and Scott's continued assistance to Parton and the Moonlight Bandit Companies while owing a fiduciary duty to the City, its citizens and taxpayers, as government employees.

108. The Commission as a state agency regularly funneled state appropriated funds to the Partnership accounts, and as such the Partnership's Board which was essentially the same Board

as the Commission's regularly gave out bonuses to various employees and others, in violation of state law.

109. In March, 2006, the State Auditor filed a Performance Audit of both the Commission and Partnership which described the Commission and the Partnership as "so intertwined operationally and financially" that the report described the two entities "jointly" throughout the report.

110. The Auditor's Report noted that of "the \$4.08 million in funds provided by the State (to the Commission) during the three year period under audit, 14%, or \$572,000 of the funds were paid out in bonus payments to the Organization's employees, employees of the North Carolina Department of Commerce, and to several of the Organization's independent contractors without any documented basis for the payments."

111. These bonuses consisted of tax funds paid by the citizens of North Carolina and are not authorized by law to be paid by the Commission.

112. The Boards of Directors of the Commission and Partnership were grossly negligent in permitting and authorizing such payments as well as the severance package to Defendant Watson which, upon information and belief, amounted to \$165,000.

113. The taxpayers of the State of North Carolina have been deprived and defrauded of these moneys based upon the gross negligence and misconduct of Defendant Watson and Boards responsible for his employment.

Count 1 - Breach of Fiduciary Duty

114. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 113.

115. Pursuant to N.C.G.S. § 158-8.2, the Commission is charged to identify, facilitate, and implement economic development plans and activities on behalf of and for the benefit of the State and certain local government entities and the citizens and taxpayers thereof, and has been entrusted with public funds for the accomplishment of that statutory duty.

116. Pursuant to N.C.G.S. § 158-8.2(i), the Commission is required to hire an "employee" to serve as president and chief executive officer and so employed Defendant Watson in that capacity at relevant times complained of herein.

117. As complained of herein, Defendant Watson worked for Defendant Parton and Moonlight Bandit Companies and held an ownership interest in the Moonlight Bandit companies while employed by the Commission. Defendant Watson's work for Defendant Parton and the Moonlight Companies he co-owned took place in the ordinary course and scope of the business of the Commission and the Partnership of which he was president and chief executive officer and used resources, including the services of subordinate employees, of the Commission and the Partnership which were funded by tax dollars.

118. Defendants Watson, the Commission and the Partnership owed a fiduciary duty to the City and to the taxpayers of the City of Roanoke Rapids and the State of North Carolina.

119. Defendants Watson, the Commission and the Partnership breached their respective fiduciary duties by failing to perform their duties in a fiduciary manner and by failing to act openly, honestly and in good faith with due care for the City and the taxpayers of the City and the State.

120. Defendants' conduct amounted to constructive fraud in that a relation of trust and confidence existed between Defendant Watson, the Commission, the Partnership and the City, the State, and the citizens and taxpayers, including Plaintiff, and Defendants took advantage of

that position of trust to consummate the Agreements and financing for the Theater complained of herein, all to the detriment of the City, the State, and the citizens and taxpayers, including Plaintiff.

121. As a result of the foregoing, Plaintiff has been harmed in that he has lost the honest benefit of the services paid for by his taxes and by the diminution in the funds available to the State, the Commission and the Partnership for lawful purposes which resulted from the diversion of funds to unlawful and authorized purposes.

122. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreements of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of the tax revenues which would have been available from Carolina Crossroads had Defendants' scheme not depleted bond revenues available for the development of the TIF district at Carolina Crossroads.

123. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreement of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of tax monies which now must be diverted to operation costs of the Theater and to debt servicing on TIF bonds used to finance the Theater, and which monies inured to the benefit of Defendants.

Count 2 – Tortious Acting in Concert

124. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 123.

125. As alleged above, Defendants Watson, the Commission and the Partnership caused or allowed to be used State resources allocated pursuant to N.C.G.S. § 158-8.2 for economic

development to facilitate the development, construction, and operation of the Theater with the intent that Defendant Watson would personally profit from the same.

126. Defendants committed a tortious act in concert with each other and pursuant to a common design in that Defendants agreed to do and did in fact fraudulently procure or caused to be procured public financing for the construction, development and operation of the Theater and the same inured to the benefit of Defendants personally.

127. Defendants, and others acting under their supervision or at their direction, committed a tortious act in concert with each other and pursuant to a common design in that Defendants used State resources for personal profit in violation of their fiduciary duty to the City, the State, and the taxpayers, including Plaintiff.

Count 3 – Negligent Misrepresentation

128. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 127.

129. Defendants made without reasonable care statements or omissions of material facts in various documents, including a Confidential Business Plan and two feasibility studies, prepared by Defendants or other acting under their supervision or at their direction, which were relied upon by the City, the Local Government Commission of the State, the State, and others in considering Defendants' proposed Theater project and the means by which to finance the same, including consideration of the use of TIF bonds to finance the construction and operation of the Theater. These documents were solicited by the City and the State in connection with the City issuance of \$21.5 million in TIF bonds and the State's role in approving the same.

130. Among the statements and omissions of material facts made without reasonable care as referenced in the preceding paragraph include the statements concerning Defendant Parton's

experience in the music theater industry and concealment of Defendant Watson's ownership interest in the Defendant Moonlight Bandit Companies, as alleged above.

131. The City, the State and others acting on behalf of Plaintiff as a citizen and taxpayer justifiably relied to their detriment and to Plaintiff's detriment on information prepared without reasonable care by Defendants and those acting under their supervision or at their direction.

132. Defendant Commission and Partnership owed a duty to the City, the State and the citizens and taxpayers, including Plaintiff, arising out of the Commission's statutory duty to promote economic development, and Defendant Watson owed a duty to the City, the State and the citizens and taxpayers arising out of his status as an employee of the Commission and the State.

133. As a result of the foregoing, Plaintiff has been harmed in that he has lost the honest benefit of the services paid for by his taxes and by the diminution in the funds available to the State, the Commission and the Partnership for lawful purposes which resulted from the diversion of funds to unlawful and authorized purposes.

134. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreements of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of the tax revenues which would have been available from Carolina Crossroads had Defendants' scheme not depleted bond revenues available for the development of the TIF district at Carolina Crossroads.

135. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreement of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of tax monies which now must be diverted to operation costs of the Theater and to

debt servicing on TIF bonds used to finance the Theater, and which monies inured to the benefit of Defendants.

Count 4—Negligent Supervision

136. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 126.

137. Defendant Watson was an employee of the Commission and the Partnership at all relevant times complained of, and the conduct by Defendant Watson complained of herein took place in the ordinary course and scope of business of the Commission and the Partnership.

138. As alleged above, Defendant Watson owed a fiduciary duty to the City, the State and the citizens and taxpayers, including Plaintiff, but breached this fiduciary duty.

139. Defendant Watson developed substantial material conflicts of interest by attempting to represent simultaneously the interests of the Commission, the Partnership, the City, and the Moonlight Bandit Companies, and thereby himself, in breach of his fiduciary duty to the Commission, Partnership, the City, the State, and citizens and taxpayers, including Plaintiff, by failing to perform these duties as a fiduciary would and failing to act openly, fairly, honestly, in good faith and with due regard to the City, the State and citizens and taxpayers thereof, including Plaintiff, in his business relationships throughout the course of dealing.

140. Defendant Watson as an employee made or caused to be made misrepresentations upon which the City and the State justifiably relied in connection with the development, construction, operation, and financing of the Theater.

141. The Commission and the Partnership were negligent in their supervision of Defendant Watson in connection with his breach of fiduciary duty, conflicts of interest, and the

misrepresentations, omissions and concealment of material facts as set forth in this Claim for Relief.

142. Watson's breach of fiduciary duty, conflicts of interest, and misrepresentations demonstrate his incompetence and inherent unfitness as an employee of the Commission and the Partnership.

143. The Commission and the Partnership had actual knowledge of Defendant Watson's breach of fiduciary duty, conflicts of interest, and misrepresentations, or, in the alternative, should have known of such by the exercise of ordinary care in its oversight and supervision of Watson.

144. Defendants knew or should have known that their conduct would cause direct and proximate injury to the City, the State and citizens and taxpayers thereof, including Plaintiff.

145. As a result of the foregoing, Plaintiff has been harmed in that he has lost the honest benefit of the services paid for by his taxes and by the diminution in the funds available to the State, the Commission and the Partnership for lawful purposes which resulted from the diversion of funds to unlawful and authorized purposes.

146. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreements of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of the tax revenues which would have been available from Carolina Crossroads had Defendants' scheme not depleted bond revenues available for the development of the TIF district at Carolina Crossroads.

147. As a result of the foregoing, Plaintiff has been and will in the future be injured by the acts and agreement of Defendants in that Plaintiff, as a citizen and taxpayer, is and will be deprived of the benefit of tax monies which now must be diverted to operation costs of the Theater and to

debt servicing on TIF bonds used to finance the Theater, and which monies inured to the benefit of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

- A. For actual and punitive damages to be paid by Defendants, jointly and severally, to the City of Roanoke Rapids and the State of North Carolina in an amount in excess of \$10,000.
- B. That Defendants be compelled to return or refund all proceeds derived by each and all Defendants from the City for development, construction or operation of the Theater or for professional services rendered by Defendants, either individually or collectively, in furtherance of or in connection to the allegations contained in this Complaint;
- C. That Defendant Watson be ordered to return, refund or reimburse all money and benefits, including bonuses, car allowances, and severance wages, received from the Commission and/or Partnership in excess of that compensation permitted by North Carolina; and that the Commission and Partnership use all reasonable and appropriate means to recover such money or benefits from Defendant Watson;
- D. That the Court issue a declaration that all contracts entered into by or among any Defendants in furtherance of or in connection to the Theater, including the Settlement Agreement between Defendant Parton and the City of Roanoke Rapids, be declared null and void;
- E. For a jury trial;

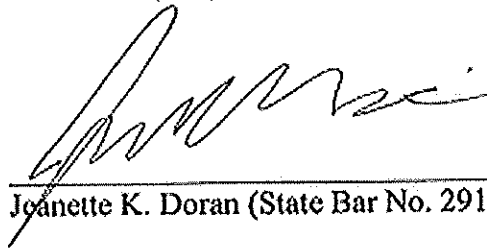
F. That the Court designate this case as an "exceptional or complex" matter pursuant to Rule 2.1 of the General Rules of Practice;

G. That the Court award to plaintiffs reasonable attorney's fees and costs, to the extent allowed by law;

H. That the Court award such further and additional relief as the Court may deem necessary and proper.

This 26th day of September, 2008.

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CONSTITUTIONAL LAW
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Facsimile: (919) 838-5316



Jeanette K. Doran (State Bar No. 29127)

Attorney for the Plaintiff

CERTIFICATE OF SERVICE

FILED

I hereby certify that I have this day served a copy of the foregoing **AMENDED COMPLAINT** by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following persons at the following address which is the last address known to me:

2008 SEP 26 B 2:00
JASPER COUNTY, C.S.C.

Scott A. Scurfield
McAngus, Goudelock & Courie, LLC
P.O. Box 30516
Raleigh, NC 27622

John L. Sarratt
Harris, Winfield, Sarratt & Hodges, LLP
1620 Hillsborough St., Ste. 200
Raleigh, NC 27605

BY 

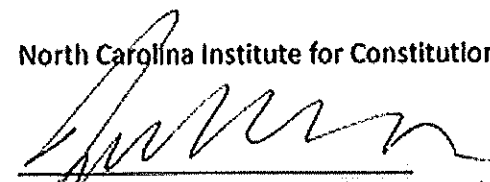
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This the 26th day of September, 2008.

North Carolina Institute for Constitutional Law



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