

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-922

MILTON JAMES GARRETT, on Behalf of
Himself and the CITY OF ROANOKE
RAPIDS and its TAXPAYERS

Plaintiff,

v.

RANDLE "RANDY" H. PARTON;
RICHARD "RICK" G. WATSON; ERNEST
C. PEARSON; 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.

**DEFENDANT RICHARD "RICK" G.
WATSON'S MOTION TO DISMISS**

Defendant Richard "Rick" G. Watson, through his attorneys Bailey & Dixon, L.L.P. and Harris, Winfield, Sarratt & Hodges, LLP, hereby moves the Court, pursuant to North Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss Plaintiff's Complaint. The basis for this Motion is set forth in the Memorandum filed by Defendant Watson contemporaneously with this Motion.

WHEREFORE, Defendant Watson respectfully requests that the Court dismiss Plaintiff's Complaint with prejudice.

This the 11th day of September, 2008.

BAILEY & DIXON, L.L.P.

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LLP**

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*Attorneys for Defendant
Richard "Rick" G. Watson*

CERTIFICATE OF SERVICE

The undersigned attorney for Defendant Watson hereby certifies that on this day the foregoing Motion to Dismiss was served upon the attorneys of record for the parties in this action by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Jeanette K. Doran NC Institute for Constitutional Law 333 E. Six Forks Road, Suite 180 Raleigh, North Carolina 27609 <i>Attorneys for Plaintiff</i>	Mark A. Finkelstein Smith Moore LLP 2800 Two Hannover Square Raleigh, North Carolina 27601 <i>Attorneys for Ernest C. Pearson</i>
Gary J. Rickner Ward and Smith, P.A. Post Office Box 2091 Raleigh, North Carolina 27602-2091 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>	Scott A. Scurfield McAngus, Goudelock & Courie, LLC Post Office Box 30516 Raleigh, North Carolina 27622 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>
John L. Sarratt Harris, Winfield, Sarratt & Hodges, LLC 1620 Hillsborough Street, Suite 200 Raleigh, North Carolina 27605 <i>Attorneys for Richard G. Watson</i>	J. Nicholas Ellis Jenny M. McKellar Poyner & Spruill, LLP Post Office Box 353 Rocky Mount, North Carolina 27802 <i>Attorneys for Defendant Randle "Randy" H. Parton and Moonlight Companies</i>

This the 11th day of September, 2008.

/s/Cathleen M. Plaut

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-922

MILTON JAMES GARRETT, on Behalf of
Himself and the CITY OF ROANOKE
RAPIDS and its TAXPAYERS

Plaintiff,

v.

RANDLE "RANDY" H. PARTON;
RICHARD "RICK" G. WATSON; ERNEST
C. PEARSON; 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.

**MEMORANDUM IN SUPPORT OF
DEFENDANT RICHARD "RICK" G.
WATSON'S MOTION TO DISMISS**

Defendant Richard "Rick" G. Watson ("Watson"), by and through his attorneys Bailey & Dixon, L.L.P., submits this Memorandum in support of his Motion to Dismiss pursuant to North Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6).

STATEMENT OF FACTS

Plaintiff Milton James Garrett ("Garrett" or "Plaintiff") filed this action "on behalf of himself and similarly situated taxpayers of Roanoke Rapids for the benefit of Roanoke Rapids and seeks to restore to the City of Roanoke Rapids and its taxpayers" the losses allegedly incurred by them as a result of alleged wrongful conduct of the defendants. *Plaintiff's*

Complaint, ¶4. Plaintiff alleges that Defendants appropriated public monies and properties and wrongfully induced the City of Roanoke Rapids to finance a theatre in connection with an entertainment enterprise formerly known as "The Randy Parton Theatre." *Plaintiff's Complaint*, ¶1.

In his Complaint, Plaintiff correctly asserts that Watson obtained an equity interest in the various "Moonlight Companies." *Plaintiff's Complaint*, ¶6. Plaintiff also correctly asserts that the Moonlight Companies' Annual Reports filed with the North Carolina Secretary of State on April 27, 2007 reveal that Watson was an owner of the "Moonlight Companies." *Plaintiff's Complaint*, ¶9. Indeed, the Annual Report for Defendant Moonlight Bandit Productions, LLC clearly lists Watson as a Member. *See, Exhibit 1.*

Plaintiff further alleges:

Plaintiff brings this action on behalf of himself and the city of Roanoke Rapids because the City is unlikely to take such action, including litigation, as may be necessary to recover from Defendants the losses and damages incurred as a result of Defendants' actions as alleged herein. A request of the City to act would be futile as evidenced by the City's decision to enter into a so-called Settlement Agreement in February 2008 with Defendants Parton and Moonlight Companies, without the approval of Plaintiff or his fellow taxpayers. Pursuant to the Settlement Agreement, the City agreed to pay \$750,000 to Defendants Parton and Moonlight Bandits in consideration of the release of and from any and all claims, actions, or causes of action which each party to the Settlement Agreement had or might have had against the other party at the time the Settlement Agreement was executed.

Plaintiff's Complaint, ¶44.

A copy of the Settlement Agreement and Release of All Claims ("Settlement and Release") that Plaintiff refers to in his Complaint is attached hereto as *Exhibit 2* and incorporated herein by reference. The Settlement and Release was executed by the City of Roanoke Rapids, Randy Parton and Moonlight Bandit Productions LLC ("MLB"). Paragraph 1 of the Settlement and Release states in pertinent part:

Consideration. In consideration of the compromise of certain disputed claims identified in Paragraph 2 herein and in further consideration of the payment by the City to Parton and MLB of the sum of \$750,000, the receipt and sufficiency of which is hereby acknowledged, and the other agreements of the parties contained herein, the parties do hereby voluntarily and knowingly execute this Release with the expressed intention of effecting the extinguishment of all claims or obligations herein designated that either party hereto has asserted or could have asserted against the other party relating to the Economic Development Agreement and all documents referenced therein (collectively, the "EDA") executed by them on or about June 30, 2005 (as supplemented or amended); the Performance and Management Agreement and all documents referenced therein (Collectively, the "PMA") executed by them on or about November 20, 2007; and the creation, ownership, management, promotion of and operation of the Randy Parton Theatre (now the Roanoke Rapids Theatre)(the "Theatre") in Roanoke Rapids, North Carolina, as further described herein.

Paragraph 4 of the Settlement and Release states:

Releases. Each party hereto does for itself and its agents, representatives, officers, managers, *members*, successors, successors in title, and assigns, hereby promises and covenants not to sue or demand arbitration and does release, acquit and forever discharge the other party and its agents, assigns, insurers, sureties, servants, employees, representatives, attorneys, *owners*, officers, managers, *members*, affiliates, predecessors and successors, and each of them, of and from any and all claims, actions or causes of action, demands, damages (both actual and punitive), costs, judgments, expenses, liabilities, attorneys' fees and legal costs, injunctive or declaratory relief, whether asserted or unasserted, whether in law or in equity, whether in tort or contract, including without limitation claims to recover damages from whatsoever cause arising or from whatsoever act or omission and claims for reimbursement or indemnity (except as hereafter specified), which each party now has or might otherwise have asserted against the other allegedly arising out of or relating to the EDA, the PMA, or the creation, ownership, management, promotion of or operation of the Theatre, whether known or presently unknown, of any type or kind whatsoever, all to the end that all claims, issues, or matters relating to the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre that are or might be in controversy between the parties may be forever put at rest, it being the parties' clear intention to forever discharge and release all of their past, present, and future claims against each other concerning or relating to the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre.

In no event shall this Release in any way release, acquit, discharge, or otherwise provide any benefit to United Group Limited, UNICCO Service Company, UGL Unicco, or to any subsidiary, parent company, affiliate, officer, director, shareholder, agent, employee, representative, predecessor, or successor thereof, with regard to any claim or cause of action that may be brought by Parton, MLB, or the City against any of them.

(Emphasis added).

The Settlement and Release expressly releases the members of Moonlight Bandit Productions, LLC. Watson was a Member of Moonlight Bandit Productions, LLC, and the City has released him from all claims arising out of the Economic Development Agreement, the Performance and Management Agreement, and the creation, ownership, management, promotion of, or operation of the Randy Parton Theatre.

Plaintiff lacks standing to bring this claim against Watson for himself or on behalf of Roanoke Rapids or its taxpayers. Further, because the City released Watson from all claims, Plaintiff is constrained by the Settlement and Release and is barred from bringing this action against Watson.

LEGAL ARGUMENT

1. Plaintiff Lacks Standing to Bring this Action Against Watson.

There is no legal authority under the laws of North Carolina that provides Plaintiff standing to bring this action.

Standing to sue is a jurisdictional issue and does not generally concern the ultimate merits of a lawsuit. *Town of Ayden v. Town of Winterville*, 143 N.C. App. 136, 140, 544 S.E.2d 821, 824 (2001). Standing is properly challenged by a motion to dismiss pursuant to either Rule 12(b)(1) for lack of subject matter jurisdiction, *Fuller v. Easley*, 145 N.C.App. 391, 395, 553 S.E.2d 43 (2001), or Rule 12(b)(6) for failure to state a claim upon which relief can be granted, *Energy Investors Fund LP v. Metric Constructors, Inc.* 351 N.C. 331, 337, 525 S.E.2d 441 (2000); and the burden is upon the party asserting standing to show that such standing exists. *Neuse River Foundation, Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 113, 574 S.E.2d 48, 51 (2002), *rev. denied*, 356 N.C. 675, 577 S.E.2d 628 (2003).

“Generally, an individual taxpayer has no standing to bring a suit in the public interest.” *Fuller v. Easley*, 145 N.C.App. 391, 395, 553 S.E.2d 43 (2001), citing *Green v. Eure*, 27 N.C.App. 605, 608, 220 S.E.2d 102, 105 (1975), cert. denied, 289 N.C. 297, 222 S.E. 2d 696 (1976). There are a few specific exceptions to this general rule, none of which apply in this instance. For example, the court in *Textl Industries v. City of Fayetteville*, 44 N.C.App. 268, 270, 261 S.E.2d 21, 23 (1979) found that this rule “does not apply where a taxpayer shows that the tax levied upon him is for an unconstitutional, illegal, or unauthorized purpose, that the carrying out of a challenged provision will cause him to sustain personally a direct and irreparable injury, or that he is a member of the class prejudiced by the operation of a statute.” (Citations omitted).

None of these exceptions apply here. Plaintiff does not allege a tax levied upon him for an unconstitutional, illegal, or unauthorized purpose. *Blinson v. State*, ___ N.C.App. ___, 651 S.E.2d 268 (2007) put the issue of the constitutionality of government economic incentives to rest. Nor does Plaintiff allege that the carrying out of a challenged provision of any government action will cause him to sustain a personal injury, or that he is a member of a class prejudiced by the operation of a statute.

There are two other lines of authority upon which Plaintiff may attempt to rely that provide an exception to the general rule. The first is *Goldston v. State of North Carolina*, 361 N.C. 26, 637 S.E.2d 876 (2006); and the second is *Branch v. Board of Education*, 233 N.C. 623, 625, 65 S.E.2d 124, 126 (1951).

The Court in *Goldston* defined the issue as follows: “In this case, we must determine whether individual taxpayers have standing to seek relief when they allege government officials violated statutory and constitutional provisions by diverting tax levies appropriated for one

purpose but disbursed for another.” *Id.* at 27-28. The Court’s conclusion was: “We reaffirm our long-standing holdings that taxpayers have standing to challenge unlawful or unconstitutional government expenditures. . .” *Id.* at 28. In the present case there is no allegation that government officials violated statutory or constitutional provisions, nor is there a challenge to any unlawful or unconstitutional government expenditures. It is noteworthy that the defendant in the *Goldston* case is a government entity. This is a consistent thread of the “taxpayer derivative” cases that Plaintiff apparently depends upon. In every such case, the plaintiff is suing a government entity charged with unlawful conduct. In the present instance, Plaintiff purports to sue on behalf of the government entity itself, asserting tort and contract remedies which Plaintiff deems the government entity ought to have asserted but did not. There is no precedent for this legal theory.

The *Goldston* court cites a variety of precedent for the proposition that a taxpayer has a right to sue “to prevent an illegal disposition of the moneys of the county”, citing *Stratford v. City of Greensboro*, 124 N.C. 110, 114, 32 S.E. 394, 396 (1899); or to prevent a government entity from “making illegal disbursements of public funds”, *Freeman v. Board of County Commissioners*, 217 N.C. 209, 212, 7 S.E.2d 354, 357 (1940); or from “transcending their lawful powers” *Lewis v. White*, 287 N.C. 625, 644, 216 S.E.2d 134, 146 (1994) (quoting *Merrimon v. S. Paving & Constr. Co.*, 142 N.C. 427, 431 – 32, 55 S.E. 366, 367 (1906)) or “to bring an action against appropriate government officials for the alleged misuse or misappropriation of public funds” *Goldston* at 33. In summary, the *Goldston* court states “we hold only that these taxpayers . . . have standing to challenge the government expenditures as illegal or unconstitutional.” *Id.* at 35. (*Emphasis added*). The present case does not fall within this specifically restricted parameter.

The *Branch v. Board of Education* line of cases does not provide any more support for Plaintiff's standing in this case than does the *Goldston* line of cases. In *Branch* plaintiff sued "solely in their capacity as taxpayers of Robeson County" in asserting that Robeson County and its county manager "have unlawfully diverted various school funds belonging to each of the four school administrative units". *Id.* at 125. Citing *Branch*, the plaintiffs in *Guilford County Board of Commissioners v. Trogon*, 478 S.E.2d 643 (N.C.App. 1996) relied on the *Branch* theory in a case brought by a successor Board of County Commissioners, as well as taxpayers suing for themselves and others similarly situated, against a predecessor Board of Education challenging the legality of the prior Board's action. Once again, the emphasis was on taxpayers suing to force a government entity to do the right thing. That is far from the thrust of the present action.

The present cause of action is unlike any other reported decision in this or, as far as undersigned counsel can tell, any other jurisdiction. Plaintiff purports to assert contract and tort remedies on behalf of the City of Roanoke Rapids. Plaintiff's claim essentially is that the Defendants jointly and severally misled the City of Roanoke Rapids into entering into the Economic Development Agreement attached to the Complaint as Exhibit A. There is no assertion that the City's action in entering into that agreement was unlawful, unconstitutional, in violation of statute, or in any other way improper.

Plaintiff's claims are:

1. That the Defendants (who do not include the City of Roanoke Rapids) acted unlawfully and or fraudulently in inducing the City to enter into the agreement complained of;
2. That the Defendants breached a fiduciary duty that they had to the City;

3. That Defendants fraudulently made representations and caused omissions of material fact to be made to the City upon which the City reasonably relied;
4. That the Defendants committed a tortuous act against the City;
5. That the Defendants committed unfair or deceptive acts or practices in making misrepresentations of material fact or omitting to state material facts to the City;
6. That fraudulent misrepresentations were made by the Defendants to the City;
7. That negligent misrepresentations were made by the Defendants to the City; and
8. That for all of the above reasons, any agreement between the Defendants and the City should be rescinded.

None of these claims fall within the ambit of any case which has ever provided any tax holder standing to sue on behalf of a government entity.

Beyond the simple and dispositive circumstance that Plaintiff has cited no relevant authority for asserting standing, there remain two other matters apparent on the face of the Complaint which bar Plaintiff from proceeding further in this matter. The first is a Settlement Agreement reached by the City; and the second is the failure of Plaintiff to adequately demand of the City that it assert the rights which Plaintiff is now purporting to assert on its behalf.

2. The Settlement and Release Bars Plaintiff's Claims Against Watson.

A release given for valuable consideration is a complete defense to a claim for damages. *See, e.g., Best v. Ford Motor Co.*, 148 N.C. App. 42, 557 S.E.2d 163 (2001). On February 29, 2008, the City entered into the Settlement and Release referenced in Paragraph 44 of the Complaint and attached hereto. Every purported misdeed by any Defendant referenced in the Complaint took place prior to the date of that Settlement and Release. In the Settlement and

Release, the City released Randy Parton, Moonlight Bandit Productions, LLC and its owners and members (which necessarily includes Watson) from any and all claims which the City might have against them, including any and all claims which Plaintiff now purports to assert on the City's behalf in this action.

It is clear that the parties to the Settlement and Release intended that the scope of the agreement include Watson as an owner and member of Moonlight Bandit Productions, LLC. The Settlement and Release specifically reserves the parties' rights against other specific entities, so the parties manifestly considered exclusions from the general release provisions. Had the City wished to reserve its rights against Watson, it could have included him within the exclusions from the general release provisions.

Thus, whether or not the City was ever misled in any respect, on February 29, 2008 the City undertook and agreed to release all of the claims which Plaintiff purports to bring against Watson. There is no assertion in the Complaint that the City did not have the legal authority to act as it did in executing this release nor, indeed, that the City acted improperly in doing so. There is certainly no allegation that any of the Defendants misled, fraudulently induced, or unfairly or otherwise tortuously caused the City to enter into the Settlement and Release. With this in mind, Plaintiff is doing no more or less than asking the Court to substitute the judgment of the Plaintiff taxpayer for the judgment of the City of Roanoke Rapids and its City Council with respect to the contract and tort claims which Plaintiff wishes the City to assert.

3. Plaintiff Failed to Establish a Demand Made to the City of Roanoke Rapids or a Refusal to Act by the City.

A second related issue is that under the law relied upon by Plaintiff, as articulated in *Branch*, a taxpayer or derivative Plaintiff must further establish either: (a) that there has been a demand on and refusal by the proper authorities to institute proceedings for the protection of the

interests of the public agency or political subdivision; or (b) that a demand on such authorities would be useless.” *Branch* 233 N.C. at 626, 65 S.E.2d at 126-27. Plaintiff has not met this requirement. Without doubt, there has not been demand and refusal to act, nor has Plaintiff properly pled that a demand on the proper authorities would be useless. Plaintiff pleads merely that “the City is unlikely to take such action, including litigation, as may be necessary. . .” *Plaintiff’s Complaint at 44.*

CONCLUSION

For the foregoing reasons, Defendant Watson’s Motion to Dismiss should be allowed.

September 11, 2008.

BAILEY & DIXON, L.L.P.

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Fax: 919.546.8789

Attorneys for Defendant

Richard "Rick" G. Watson

CERTIFICATE OF SERVICE

The undersigned attorney for Defendant Watson hereby certifies that on this day the foregoing Memorandum in Support of Motion to Dismiss was served upon the attorneys of record for the parties in this action by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Jeanette K. Doran NC Institute for Constitutional Law 333 E. Six Forks Road, Suite 180 Raleigh, North Carolina 27609 <i>Attorneys for Plaintiff</i>	Mark A. Finkelstein Smith Moore LLP 2800 Two Hannover Square Raleigh, North Carolina 27601 <i>Attorneys for Ernest C. Pearson</i>
Gary J. Rickner Ward and Smith, P.A. Post Office Box 2091 Raleigh, North Carolina 27602-2091 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>	Scott A. Scurfield McAngus, Goudelock & Courie, LLC Post Office Box 30516 Raleigh, North Carolina 27622 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>
John L. Sarratt Harris, Winfield, Sarratt & Hodges, LLP 1620 Hillsborough Street, Suite 200 Raleigh, North Carolina 27605 <i>Attorneys for Richard G. Watson</i>	J. Nicholas Ellis Jenny M. McKellar Poyner & Spruill, LLP Post Office Box 353 Rocky Mount, North Carolina 27802 <i>Attorneys for Defendant Randle "Randy" H. Parton and Moonlight Companies</i>

This the 11th day of September, 2008.

/s/Cathleen M. Plaut

APR-26-2006 11:46

Sanford Holshouser

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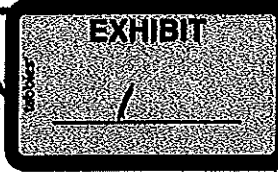
Elaine F. Marshall

North Carolina Secretary of State

2006 109 00065



LIMITED LIABILITY COMPANY ANNUAL REPORT



2006 109 00065
3-606-14493240

NAME OF LIMITED LIABILITY COMPANY: *Moonlight Bandit Productions, LLC*

FISCAL YEAR ENDING: *December 31*

STATE OF INCORPORATION: *NC*

SECRETARY OF STATE R.L.L.P. ID NUMBER: *0766350*

FEDERAL EMPLOYER ID NUMBER: XXXXXXXXXX

NATURE OF BUSINESS: *To produce musical performances*

REGISTERED AGENT: *Walt, Samuel W.*

REGISTERED OFFICE MAILING ADDRESS: *Post Office Box 2447
Raleigh, NC 27602
Wake County*

REGISTERED OFFICE STREET ADDRESS: *219 Fayetteville Street, Suite 1000
Raleigh, NC 27601
Wake County*

SIGNATURE OF THE NEW REGISTERED AGENT: _____

SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

PRINCIPAL OFFICE TELEPHONE NUMBER: *919-755-1800*

PRINCIPAL OFFICE MAILING ADDRESS: *Post Office Box 2447
Raleigh, NC 27602
Wake County*

PRINCIPAL OFFICE STREET ADDRESS: *219 Fayetteville Street, Suite 1000
Raleigh, NC 27601
Wake County*

MANAGERS/MEMBERS/ORGANIZERS: *SEE ATTACHED*

Name:	Name:	Name:
Title:	Title:	Title:
Address:	Address:	Address:
City:	City:	City:
State:	State:	State:
Zip:	Zip:	Zip:

CERTIFICATION OF ANNUAL REPORT MUST BE COMPLETED BY ALL LIMITED LIABILITY COMPANIES

Ernest C. Pearson

April 13, 2006

FORM MUST BE SIGNED BY A MANAGER/MEMBER

DATE

ERNEST C. PEARSON

MEMBER/MANAGER

TYPE OR PRINT NAME

TYPE OR PRINT TITLE

ANNUAL REPORT FEE: \$200 MAIL TO: Secretary of State - Corporations Division - Post Office Box 29225 - Raleigh, NC 27626-0225



**MEMBER ATTACHMENT
MOONLIGHT BANDIT PRODUCTIONS, LLC**

**Randy Parton
3460 Wiley Noland Road
Sevierville, Tennessee 27876**

**Deb Parton
3460 Wiley Noland Road
Sevierville, Tennessee 27876**

**Rick Watson
106 Hornblow Point Road
Edenton, North Carolina 27932**

**Brenda Womble
103 Zanna Lane
Gamer, North Carolina 27529**

**Ernest C. Pearson
5028 Sunset Forest Circle
Holly Springs, North Carolina 27540**

**Frank Harper
301 Southeast Second Street
Snow Hill, North Carolina 28580**



SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

The City of Roanoke Rapids (the "City") on the one hand, and Randy Parton ("Parton") and Moonlight Bandit Productions LLC, a North Carolina limited liability company ("MLB"), on the other hand, do hereby fully and finally enter this Settlement Agreement and Release of all Claims ("Release") on this 29th day of February, 2008, as more particularly described below.

1. **Consideration.** In consideration of the compromise of certain disputed claims identified in paragraph 2 herein and in further consideration of the payment by the City to Parton and MLB of the sum of \$750,000, the receipt and sufficiency of which is hereby acknowledged, and the other agreements of the parties contained herein, the parties do hereby voluntarily and knowingly execute this Release with the expressed intention of effecting the extinguishment of all claims or obligations herein designated that either party hereto has asserted or could have asserted against the other party relating to the Economic Development Agreement and all documents referenced therein (collectively, the "EDA") executed by them on or about June 30, 2005 (as supplemented or amended); the Performance and Management Agreement and all documents referenced therein (collectively, the "PMA") executed by them on or about November 20, 2007; and the creation, ownership, management, promotion of, and operation of the Randy Parton Theatre (now the Roanoke Rapids Theatre) (the "Theatre") in Roanoke Rapids, North Carolina, as further described herein.

The consideration specified herein shall be paid in the following manner: (a) the City shall and hereby does release in favor of Parton and MLB all of its right, title, and interest in and to the following bank accounts, with total deposits as of the date of settlement of two hundred three thousand thirteen and 38/100 dollars (\$203,013.38): (i) Citizens Community Bank account number 23327760; (ii) Citizens Community Bank account number 23327752; and RBC Centura Bank account number 0002031494; (b) the City's check in the amount of five hundred forty-six thousand nine hundred eighty-six and 62/100 dollars (\$546,986.62). The City hereby authorizes and directs Citizen Community Bank and RBC Centura Bank immediately to release all funds held in the aforementioned accounts to Parton and MLB without any further acknowledgement or notice to the City. The City's check in the amount specified above shall be delivered to Parton and MLB within five (5) business days of the approval of this Release by the City Council.

2. **Escrow of Certain Settlement Funds.** The parties agree and acknowledge that all bills, obligations, and other sums due and owing to third parties by MLB relating to the operation of the Theatre arising on or prior to November 20, 2007, including all sales, employment-related, or other taxes, shall be the sole obligation of MLB. All bills, obligations, and sums due and owing related to the operation of the Theatre arising after November 20, 2007 shall be the sole obligation of the City. The parties agree that the sum of seventy thousand and no/100 dollars (\$70,000) shall be set aside from the settlement proceeds and deposited into the trust account of Poyner & Spruill LLP, as an escrow for the purpose of satisfying the outstanding claims of vendors for goods supplied or services rendered to MLB relating to the operation of the Theatre on or prior to November 20, 2007. For a period of ninety (90) days from the date of the approval of this Release by the City Council, counsel for Parton/MLB and the City Attorney

shall cooperate in good faith to identify, verify, and pay all valid and qualifying invoices from such escrow account. In the event counsel for Parton/MLB and the City Attorney cannot agree whether a particular invoice should be paid, they shall agree on a third person, who shall be either a certified public accountant or an attorney, to decide such matter, and such person's decision shall be final. The cost of such third person's services shall be borne by Parton/MLB if the invoice is ordered to be paid out of the escrowed funds and by the City if the invoice is not ordered to be paid therefrom. At the end of ninety (90) days, all monies remaining in such escrow account shall be disbursed to Parton/MLB; except, however, that a balance sufficient to pay any invoices submitted to a third person for a payment determination shall be maintained until such time as that payment determination shall be made as described above.

3. Termination of Prior Agreements. The parties hereto agree that in entering this Release, they hereby confirm that all prior agreements between and among them, including without limitation the EDA, as supplemented and amended, and the PMA, are dissolved, terminated, and rendered null and of no continuing effect, that the parties shall have no further duties or obligations under such agreements, and that such rights and duties as they may have toward each other relating to the Theatre from and after the date of their execution of this Release are governed solely by this Release.

4. Releases. Each party hereto does for itself and its agents, representatives, officers, managers, members, successors, successors in title, and assigns, hereby promises and covenants not to sue or demand arbitration and does release, acquit, and forever discharge the other party and its agents, assigns, insurers, sureties, servants, employees, representatives, attorneys, owners, officers, managers, members, affiliates, predecessors, and successors, and each of them, of and from any and all claims, actions or causes of action, demands, damages (both actual and punitive), costs, judgments, expenses, liabilities, attorneys' fees and legal costs, injunctive or declaratory relief, whether asserted or unasserted, whether in law or in equity, whether in tort or contract, including without limitation claims to recover damages from whatsoever cause arising or from whatsoever act or omission and claims for reimbursement or indemnity (except as hereafter specified), which each party now has or might otherwise have asserted against the other allegedly arising out of or relating to the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre, whether known or presently unknown, of any type or kind whatsoever, all to the end that all claims, issues, or matters relating the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre that are or might be in controversy between the parties may be forever put at rest, it being the parties' clear intention to forever discharge and release all of their past, present, and future claims against each other concerning or relating to the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre.

In no event shall this Release in any way release, acquit, discharge, or otherwise provide any benefit to United Group Limited, UNICCO Service Company, UGL Unicco, or to any subsidiary, parent company, affiliate, officer, director, shareholder, agent, employee, representative, predecessor, or successor thereof, with regard to any claim or cause of action that may be brought by Parton, MLB, or the City against any of them.

5. **Indemnification.** The City does hereby agree to indemnify and hold harmless Parton and MLB for any repayment or restitution required of Parton or MLB by the North Carolina Local Government Commission from the sum of \$254,000 advanced to Parton/MLB by the City on or about September 15, 2005 from the Reserve Fund (as defined in the FIDA), up to the amount of \$254,000.

6. **No Admission of Liability.** Each party agrees that the other has admitted no liability of any sort with regard to the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre, or their other dealings with each other. Each party specifically understands that the monetary consideration offered and paid and to be paid by the City to Parton and MLB and the other consideration recited herein is not intended to be, and is not deemed to be, an admission of liability of any sort by any party, and such consideration is given by the parties solely in order to terminate further controversy between the parties hereto concerning the EDA, the PMA, or the creation, ownership, management, promotion of, or operation of the Theatre.

7. **Execution of Documents and Other Actions.** The parties agree to execute and deliver such other or additional documents and instruments and to take such other or further actions as may be reasonably necessary to fully and completely carry out the intent and terms of this Release. For example and without limitation, Parton and MLB agree to (a) take all actions and execute all documents necessary to fully and completely transfer the Theatre phone system and related systems and agreements at or relating to the Theatre to the City, with the exception that Parton/MLB will retain all rights, title, interests, and ownership in, to, and of the phone number "1-877-6Parton"; and (b) take all actions and execute all documents necessary to transfer to the City any remaining warranties or related agreements for existing equipment or property located at the Theatre.

8. **No Further/Other Representations and Related Documents.** Each party hereby warrants that no representations other than those contained in this Release about the nature or extent of any claims, demands, damages or rights that it may have against the other party have been made to it or to anyone acting on its behalf to induce it to execute this Release, and it relies on no such representations in entering this Release.

9. **Tax Consequences.** The City makes no representation regarding the taxable consequences of the consideration paid by it to Parton and MLB under the terms of this Release, and the City shall have no liability for any tax, penalty, or similar liability, if any, incurred by Parton and MLB as a result of the payment by the City referred to in paragraph 1 herein or under this Release. Parton and MLB shall have no recourse against the City in the event such consideration may have tax consequences adverse to Parton or MLB or different from those Parton or MLB contemplated at the time they agreed to this settlement or at the time Parton and MLB execute this Release.

10. **Severability.** In the event that any provision or portion of this Release shall be found to be void or invalid for any reason, then such portion or provision shall be deemed severable from the remaining provisions or portions of this Release, and it shall not effect the

validity of the remaining provisions, which shall be given full effect as if the void or invalid provision had not been included herein.

11. Attorneys' Fees, Costs and Expenses. Each party shall bear its own attorneys' fees, costs, and expenses in connection with this Release.

12. Governing Law. North Carolina law shall govern the interpretation of this Release, without regard to its conflicts of laws or choice of laws principles. This Release is intended to be effective as an instrument executed under seal.

13. Entire Agreement. This Release contains the entire agreement by the parties, and the terms hereof are contractual and not a mere recital.

14. Survival of Obligations. The City, Parton, and MLB further agree that the other covenants and agreements set forth herein shall survive the releases and agreements not to sue given herein.

15. Review and Signing. By executing this Release, each party represents that it has read and reviewed this Release, that the party has had the opportunity to discuss and has discussed the terms of this Release with the party's attorneys, and that the party has voluntarily executed this Release.

16. Authority. The representative of each entity executing this Release hereby represents and warrants that he or she is authorized to enter into this Release and that any appropriate corporate or other resolution or authorization allowing such person to so execute this Release on behalf of such entity has been duly passed and obtained, and that this Release shall be the legal, valid, and binding obligation of such party.

17. Counterparts. This Release may be signed in one or more counterparts, each of which shall be considered an original.

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Executed this the 29 day of February, 2008.

THE CITY OF ROANOKE RAPIDS

By: *Randy N. Parton* (SEAL)

Printed Name: Randy N. Parton

Title: Mayor

MOONLIGHT BANDIT PRODUCTIONS, LLC

By: _____ (SEAL)

Printed Name: _____

Title: _____

Randy Parton (SEAL)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Name: *Michelle H. Hester*
Finance Officer, City of Roanoke Rapids,
North Carolina

Executed this the _____ day of February, 2008.

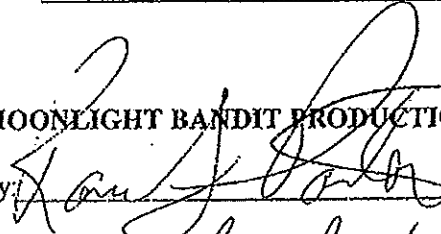
THE CITY OF ROANOKE RAPIDS

By: _____ (SEAL)

Printed Name: _____

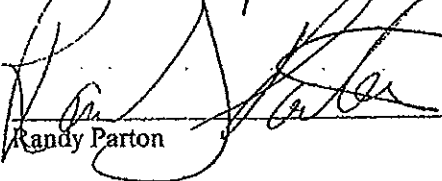
Title: _____

MOONLIGHT BANDIT PRODUCTIONS, LLC

By:  (SEAL)

Printed Name: RANDY PARTON

Title: MEMBER / MANAGER

 (SEAL)
Randy Parton

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Name: _____
Finance Officer, City of Roanoke Rapids,
North Carolina