

THIS MEMORANDUM IS A COMMUNICATION FROM COUNSEL TO AGENTS AND REPRESENTATIVES OF THE CITY OF FORT PIERCE IN AN ATTORNEY/CLIENT RELATIONSHIP AND IS THEREFORE CONFIDENTIAL AND IS FURTHER PROTECTED BY FLORIDA STATUTE SECTION 119.07 AS IT CONTAINS WORK PRODUCT OF THE ATTORNEY PREPARED IN ANTICIPATION OF, OR IN CONNECTION WITH, POTENTIAL OR PENDING ADVERSARIAL ADMINISTRATIVE PROCEEDINGS AND/OR CIVIL LITIGATION.

## CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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### MEMORANDUM

**TO:** Fort Pierce Mayor and Commissioners (*via email*)

**FROM:** Robert V. Schwerer, City Attorney

**SUBJECT:** K & K II, Inc. v City of Fort Pierce

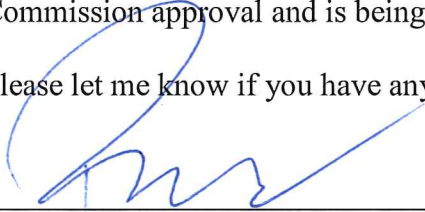
**DATE:** December 10, 2015

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Please be advised we have reached a settlement with K & K II, Inc. on their claim against the City of Fort Pierce relating to the Sunrise Theatre "free ticket" covenant. Attached is a copy of the Settlement Agreement already signed by K & K. The agreement requires Commission approval and is being submitted to you with such recommendation.

Please let me know if you have any questions concerning the attached.



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Robert V. Schwerer, Esq.  
City Attorney

/mlp

Attachments

cc: Nicholas Mimms, City Manager (*via email*)  
John Wilkes, Executive Director, Sunrise Theatre (*via email*)  
William J. Cornwell, Esquire (*via email*)

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 7<sup>th</sup> day of December, 2015, by and among K & K II, INC ("K&K") and the CITY OF FORT PIERCE, FLORIDA ("City"), K&K and City are sometimes hereinafter collectively referred to as the "Parties" and each is sometimes hereinafter referred to individually as a "Party".

### RECITALS

WHEREAS, on or about July 12, 2013, K&K filed a lawsuit styled *K&K II, Inc. v. City of Fort Pierce*, Case No. 56 2013 CA 002183 (BC) in the Circuit Court of the Nineteenth Judicial Circuit in and for Saint Lucie County, Florida against the City alleging claims for: (1) breach of contract; (2) specific performance; (3) inverse condemnation; and (4) declaratory judgment (the "Lawsuit" or the "Complaint").

WHEREAS, on or about November 25, 2013, the City filed its Amended Answer and Amended Affirmative Defenses to K&K's Complaint disputing the claims asserted by K&K.

WHEREAS, the Lawsuit is currently scheduled for trial on January 19, 2016.

WHEREAS, the Parties would like to resolve such disputes between them, all as more specifically set forth below;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby mutually covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and by this reference are hereby incorporated into this Agreement.

2. **Settlement Subject to Approval of City Commission:** This Settlement Agreement is contingent on the approval of this Settlement Agreement by the City of Fort Pierce City Commission.

3. **Payment by City:** The City will pay K&K within thirty (30) days of approval of the Settlement Agreement by the City Commission the sum of Eighty Seven Thousand Five Hundred (\$87,500) Dollars. Payment shall be made to K&K's counsel The Koblegard Law Firm Trust Account.

4. **Ticket Purchase Rights:** K&K will have the same rights that preferred members of the theater have to elect to purchase at face value up to 6 tickets located at Row K, Seats 101-106. Tickets acquisition is subject to all rules applicable and any changes in the preferred ticket holder program that the City adopts in the future applicable to advance ticket purchases for the preferred member program.

5. **Mutual Releases to be Executed:** Within five (5) business days of receipt of payment K&K shall execute a Release in favor of the City in the form attached hereto as Exhibit

"A" and the City shall execute a Release in favor of K&K in the form attached hereto as Exhibit "B".

6. **Joint Stipulation for Dismissal with Prejudice:** Within five (5) business days of each party's receipt of the releases required in paragraph 5 above, the parties counsel shall execute a Joint Stipulation for Dismissal With Prejudice with each party to bear their own attorneys' fees and costs in the form attached hereto as Exhibit "C".

7. **No Admission.** It is acknowledged, understood and agreed among the Parties that this Agreement represents a settlement and compromise of heavily disputed claims reached as a business decision and shall not constitute or be construed as an admission of liability or guilt by any of the Parties. If this Agreement is not fully and finally consummated, then no statements contained in this Agreement shall be used for any purpose against any of the Parties to this Agreement in any subsequent proceeding.

8. **Consultation with Counsel.** Each of the Parties to this Agreement represents that they have fully reviewed this Agreement with their respective attorneys and understand the legal effect of this Agreement and Mutual Release provided for herein, and each of the Parties represents that having understood the legal effects of this Agreement, each of the Parties has freely and voluntarily consented to and authorized this Agreement.

9. **Termination Instrument to be Executed.** Within five (5) business days of receipt of payment K&K shall execute an instrument, in a form acceptable to the City, to be recorded by the City in the public records of Saint Lucie County terminating and forever extinguishing Section 6.01 ("Theater Tickets") of the Declaration of Covenants, Conditions, Restrictions and Easements pertaining to the Sunrise Theatre Building recorded in the Public Records of St. Lucie County, Florida and that deed dated the 30th day of June, 2000 and recorded at OR Book 1311, Page 1556 of the Public Records of St. Lucie County, Florida.

10. **Miscellaneous.**

(a) **Attorneys' Fees.** Each Party will bear its own attorneys' fees and court costs in connection with the preparation, negotiation and execution of this Agreement.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. It supersedes all prior negotiations, letters and understandings relating to the subject matter hereof.

(c) **Choice of Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Florida, without regard to its choice of law provisions.

(d) **Effect of Waiver.** The failure of any Party at any time or times to require performance of any provision of this Agreement will not in any manner affect the right to enforce the same. The waiver by any Party of any breach of any provision of this Agreement will not be construed to be a waiver by any such Party of any succeeding breach of that provision or a waiver by such Party of any breach of any other provision.




with a copy to:

Rupert N. Koblegard, III, Esq.  
The Koblegard Law Firm  
200 S. Indian River Drive, Suite 201  
Fort Pierce, FL 34950  
koblegardlaw@aol.com

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing and shall be deemed received: (i) if mailed by certified mail, return receipt requested, postage prepaid and properly addressed to the address above, then three (3) business days after deposit of same in a regularly maintained U.S. Mail receptacle; or (ii) if mailed by Federal Express, UPS or other nationally recognized overnight courier service, overnight delivery, then one (1) business day after deposit of same in a regularly maintained receptacle of such overnight courier; or (iii) if hand delivered, then upon hand delivery thereof to the address indicated on or prior to 5:00 p.m., EST, on a business day with a signed receipt of delivery obtained from the person to whom delivery was made. Any notice hand delivered after 5:00 p.m., EST, shall be deemed delivered on the following business day. Notwithstanding the foregoing, notice, consents, waivers or other communications referred to in this Agreement may be sent by facsimile, e-mail, or other method of delivery, but shall be deemed to have been delivered only when the sending party has confirmed (by reply e-mail or some other form of written confirmation from the receiving party) that the notice has been received by the other party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

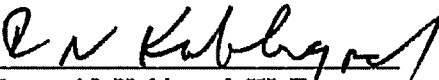
Signed, Sealed and Delivered  
In the Presence of:

  
BEN L. BRYAN, JR.  
as President of K&K II, Inc.,  
a Florida corporation

\_\_\_\_\_  
NICHOLAS MIMMS  
as Interim City Manager of the City of Fort  
Pierce, a Florida municipal corporation

THE KOBLEGARD LAW FIRM  
*Counsel for Plaintiff*  
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772-461-7772; Fax: 772-461-0226  
koblegardlaw@aol.com  
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*Counsel for Defendant*  
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561-997-9995; Fax: 561-997-5280  
wjc@whcfla.com  
dkf@whcfla.com  
filings@whcfla.com

By:   
Rupert N. Koblegard, III, Esq.  
Florida Bar No. 108382

By: \_\_\_\_\_  
WILLIAM J. CORNWELL, ESQ.  
Florida Bar No. 782017  
DAVID K. FRIEDMAN, ESQ.  
Florida Bar No. 307378

and

MATTHEW KOBLEGARD, ESQ.  
Florida Bar No. 056137  
37 Binnacle Hill  
Oakland, CA 94618  
352-262-4269  
matthewkoblegard@gmail.com

and

ROBERT V. SCHWERER, ESQ.  
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schwererlaw@aol.com  
christinefamularo@city-ftpierce.com  
maryperegrin@city-ftpierce.com  
HAYSKAR, WALKER, SCHWERER,  
DUNDAS & MCCAIN, P.A.  
*Co-Counsel for Defendant*  
Post Office Box 1480  
Fort Pierce, FL 34954-1480  
772-467-3000; Fax: 772-466-5492

EXHIBIT "A"

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That K & K II, INC., a Florida corporation, its respective administrators, successors, assigns, related entities, employees, agents, principals, attorneys, officers, directors, and representatives, ("First Party"), for and in consideration of the sum of EIGHTY SEVEN THOUSAND FIVE HUNDRED and no/100 (\$87,500.00) DOLLARS, the sufficiency whereof is hereby acknowledged, do hereby release, acquit, and forever discharge the CITY OF FORT PIERCE, FLORIDA, a Florida municipal corporation, its respective administrators, successors, assigns, related entities, employees, agents, principals, attorneys, officers, directors, and representatives, ("Second Party"), from any and all claims, actions, causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, damages or demands, economic, noneconomic, compensatory, in whatever name or nature, in tort, in contract or by statute, which the said First Party ever had, now have, or which any personal representative, successor, heir or assign of said First Party, hereafter can, shall or may have, against the Second Party for, upon, or by reason of any matter, cause or thing which has arisen, arises from, or which may hereafter arise out of the allegations in the case of K & K II, INC., Plaintiff, v. CITY OF FORT PIERCE, FLORIDA, Defendant, Case No: 562013CA002183 (BC), Circuit Court, St. Lucie County, Florida, together with all claims or causes of action arising from or related to Section 6.01 of the Declaration of Covenants, Conditions, Restrictions and Easements pertaining to the Sunrise Theatre Building recorded in the Public Records of St. Lucie County, Florida and that deed dated the 30th day of June, 2000 and recorded at OR Book 1311, Page 1556 of the Public Records of St. Lucie County, Florida.

This release covers and encompasses all claimable elements of damage and injuries under Florida law, known and unknown, including, but not limited to attorneys' fees, costs, and interest, that may be claimed in the above set forth lawsuit. Further, the First Party hereby agrees to indemnify, to save, defend, and hold harmless the Second Party from and of any and all claims, subrogated interests, or liens of any third parties, and any and all other subrogated interests or liens, regardless of their source, including any all mechanic's, materialman's, or laborer's liens.

ALL PARTIES TO THIS RELEASE ARE TO BEAR THEIR OWN RESPECTNE  
ATTORNEY'S FEES AND COSTS.

The First Party hereby acknowledge that they understand and accept all of the terms and conditions herein and that this is a settlement of the herein mentioned claims without an admission of liability therefore on the part of any party to this release.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 7<sup>th</sup> of December,

2015.

Signed, sealed and delivered in presence of:

Leah M. Hubbard  
Print name: Leah M. Hubbard

Ben L. Bryan, Jr.  
Benjamin L. Bryan, Jr., President  
K & K, II, a Florida corporation

Amy Shevlin  
Print name: AMY SHEVLIN

STATE OF FLORIDA  
COUNTY OF ST. LUCIE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Benjamin L. Bryan, Jr. for K & K, II, Inc., to me known to be the person described in, who took an oath, who read and executed the foregoing instrument, and who acknowledged before me that he is authorized to execute, and did execute the same.

WITNESS my hand and official seal in the County and State last aforesaid this 7<sup>th</sup> day of December, 2015.

Leah M. Hubbard  
Notary Signature-State of Florida at Large



**EXHIBIT "B"**

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS:

That CITY OF FORT PIERCE, FLORIDA, a Florida municipal corporation, its respective administrators, successors, assigns, related entities, employees, agents, principals, attorneys, officers, directors, and representatives, ("First Party"), for and in consideration of the sum of TEN and no/100 (\$10.00) DOLLARS, the sufficiency whereof is hereby acknowledged, do hereby release, acquit, and forever discharge K & K II, INC., a Florida corporation, its respective administrators, successors, assigns, related entities, employees, agents, principals, attorneys, officers, directors, and representatives, ("Second Party"), from any and all claims, actions, causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, damages or demands, economic, noneconomic, compensatory, in whatever name or nature, in tort, in contract or by statute, which the said First Party ever had, now have, or which any personal representative, successor, heir or assign of said First Party, hereafter can, shall or may have, against the Second Party for, upon, or by reason of any matter, cause or thing which has arisen, arises from, or which may hereafter arise out of the allegations in the case of K & K II, INC., Plaintiff, v. CITY OF FORT PIERCE, FLORIDA, Defendant, Case No: 562013CA002183 (BC), Circuit Court, St. Lucie County, Florida, together with all claims or causes of action arising from or related to Section 6.01 of the Declaration of Covenants, Conditions, Restrictions and Easements pertaining to the Sunrise Theatre Building recorded in the Public Records of St. Lucie County, Florida and that deed dated the 30th day of June, 2000 and recorded at OR Book 1311, Page 1556 of the Public Records of St. Lucie County, Florida.

This release covers and encompasses all claimable elements of damage and injuries under Florida law, known and unknown, including, but not limited to attorneys' fees, costs, and interest, that may be claimed in the above set forth lawsuit. Further, the First Party hereby agrees to indemnify, to save, defend, and hold harmless the Second Party from and of any and all claims, subrogated interests, or liens of any third parties, and any and all other subrogated interests or liens, regardless of their source, including any all mechanic's, materialman's, or laborer's liens.

**ALL PARTIES TO THIS RELEASE ARE TO BEAR THEIR OWN RESPECTNE  
ATTORNEY'S FEES AND COSTS.**

The First Party hereby acknowledge that they understand and accept all of the terms and conditions herein and that this is a settlement of the herein mentioned claims without an admission of liability therefore on the part of any party to this release.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this \_\_\_\_ of \_\_\_\_\_,  
2015.

Signed, sealed and delivered in presence of:

\_\_\_\_\_  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Print name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. LUCIE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, to me known to be the person described in, who took an oath, who read and executed the foregoing instrument, and who acknowledged before me that he is authorized to execute, and did execute the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Signature-State of Florida at Large

EXHIBIT "C"

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR SAINT LUCIE COUNTY, FLORIDA

K & K II, INC., a Florida corporation,

Plaintiff,

v.

CASE NO.: 56 2013 CA 002183 (BC)

CITY OF FORT PIERCE, FLORIDA, a Florida  
municipal corporation,

JUDGE: WILLIAM L. ROBY

Defendant.

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY stipulated and agreed by and between the parties that this case has been settled and may be dismissed with prejudice, with each party to bear its own attorneys' fees and costs.

Dated: 12/7/15

THE KOBLEGARD LAW FIRM  
*Counsel for Plaintiff*  
200 S. Indian River Drive  
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Fort Pierce, FL 34950  
772-461-7772; Fax: 772-461-0226  
[koblegardlaw@aol.com](mailto:koblegardlaw@aol.com)  
[koblegardlaw2@aol.com](mailto:koblegardlaw2@aol.com)

By: 

Rupert N. Koblegard, II, Esq.  
Florida Bar No. 108382

Dated: \_\_\_\_\_

WEISS, HANDLER & CORNWELL, P.A.  
*Counsel for Defendant*  
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[dkf@whcfla.com](mailto:dkf@whcfla.com)  
[filings@whcfla.com](mailto:filings@whcfla.com)

By: \_\_\_\_\_

WILLIAM J. CORNWELL, ESQ.  
Florida Bar No. 782017  
DAVID K. FRIEDMAN, ESQ.  
Florida Bar No. 307378

and

MATTHEW KOBLEGARD, ESQ.  
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[matthewkoblegard@gmail.com](mailto:matthewkoblegard@gmail.com)

and

ROBERT V. SCHWERER, ESQ.  
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[schwererlaw@aol.com](mailto:schwererlaw@aol.com)  
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HAYSKAR, WALKER, SCHWERER, DUNDAS &  
MCCAIN, P.A.  
*Co-Counsel for Defendant*  
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Fort Pierce, FL 34954-1480  
772-467-3000; Fax: 772-466-5492

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, via e-service, to: Rupert N. Koblegard, III, Esq., The Koblegard Law Firm, 200 S. Indian River Drive, Suite 201, Fort Pierce, FL 34950, [koblegardlaw@aol.com](mailto:koblegardlaw@aol.com); [koblegardlaw2@aol.com](mailto:koblegardlaw2@aol.com); and to: Matthew D. Koblegard, Esq., Wright, Ponsoldt & Lozeau, LLP, 10002 S.E. Monterey Commons Blvd., Suite 100, Stuart, FL 34996; [mkoblegard@wpltrnlattorneys.com](mailto:mkoblegard@wpltrnlattorneys.com); [matthewkoblegard@gmail.com](mailto:matthewkoblegard@gmail.com); this \_\_\_\_ day of December, 2015.

WEISS, HANDLER & CORNWELL, P.A.  
*Counsel for Defendant*  
One Boca Place  
2255 Glades Road, Suite 218-A  
Boca Raton, FL 33431  
561-997-9995; Fax: 561-997-5280

By: \_\_\_\_\_  
WILLIAM J. CORNWELL, ESQ.  
Florida Bar No. 782017  
[wjc@weissandhandlerpa.com](mailto:wjc@weissandhandlerpa.com)  
DAVID K. FRIEDMAN, ESQ.  
Florida Bar No. 307378  
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[dkf@weissandhandlerpa.com](mailto:dkf@weissandhandlerpa.com)  
[filings@weissandhandlerpa.com](mailto:filings@weissandhandlerpa.com)

and

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