

**CITY OF FORT LAUDERDALE, FLORIDA
LAND USE DISPUTE RESOLUTION**

111 PROPERTIES, INC,

v.

CITY OF FORT LAUDERDALE/

SETTLEMENT AGREEMENT

WHEREAS, 111 PROPERTIES, INC., 111 Properties, Inc. (hereinafter referred to as “OWNER”) owns property located at FORT LAUDERDALE B-40D, LOTS 8, 9, 17 BLK 16, also referred to as 109 SW 2 Avenue, Fort Lauderdale, Florida (hereinafter referred to as “SUBJECT PROPERTY”); and

WHEREAS, the City of Fort Lauderdale Code Enforcement Department (hereinafter referred to as “CITY”) opened a code enforcement case against OWNER for a violation of Code of Ordinances of the City of Fort Lauderdale Section 5-56(d). The case was opened after a complaint was received on November 15, 2010, Case No. CE10110905. On November 22, 2010, the Code Enforcement Inspector Adam Feldman issued an inspection report informing the OWNER that they were in violation of 5-56(d), to wit music and other forms of entertainment were heard outdoors from the property (“America’s Backyard”) after the permitted hours. The corrective action was to cease all outdoor music and entertainment after the permitted hours. The case was scheduled for a hearing in front of the Code Enforcement Special Magistrate on March 3, 2011. Special Magistrate Mark Purdy heard the matter and found that the OWNER was in violation of section 5-56(d) in that there was music and entertainment that could be heard outdoors from the property after the permitted hours; and

WHEREAS, OWNER timely filed a Request for Relief from Local Government Action, pursuant to Florida Statutes, Section 70.51, “Land use and environmental dispute resolution” on or about April 1, 2011 with the CITY requesting that a Special Magistrate be appointed to conduct proceedings to determine whether the code enforcement action was an unreasonable and unfair burden on SUBJECT PROPERTY; and

WHEREAS, CITY and OWNER complied with the proceedings under Florida Statutes, Section 70.51 and the matter was heard before the Special Magistrate on August 31, 2011 without a settlement agreement reached and the Special Magistrate received additional information from OWNER regarding a sound management plan and economic impact report; and

WHEREAS, on May 18, 2012, the Special Magistrate issued his Report and Recommendations finding that the CITY unreasonably or unfairly burdens the use of the “America’s Backyard” and the Special Magistrate recommended that the (1) CITY review its

noise ordinance to further reduce the decibel limits at the exterior of the facilities in the Special Entertainment District after 12:00 a.m. and until 4:00 a.m.; (2) CITY conduct strict code enforcement of indoor and outdoor entertainment facilities; (3) CITY provide a penalty of closure of the facility after 12:00 a.m., if the facility is found to have violated the noise ordinance more than 3 times within a period of 12 months; (4) CITY permit outside singing and music until 4:00 a.m., if the facility meets the appropriate decibel limits; (5) establishment of a design code for outside speakers and other sources of amplified music and singing; (6) require all windows and doors of all facilities in the Special Entertainment District be closed after 12:00 a.m. if they have music, singing or other sources of amplified sound; and (7) OWNER mitigate the levels of noise outside the premises as set forth in the Sound Management Plan submitted to the Special Magistrate by the OWNER; and

WHEREAS, the CITY and OWNER have in good faith entered into settlement negotiations after the Special Magistrate's report in an effort to settle the dispute which is part of the process of the Dispute Resolution Act's purpose; and

WHEREFORE, the following mutually acceptable resolution of the conflict between CITY and OWNER, pursuant to Section 70.51, Florida Statutes, is as follows:

1. The parties jointly agree to reject the Report and Recommendations of the Special Magistrate rendered on May 18, 2012 and such shall not be entitled to the presumptions included in Sections 70.51(25) and (26), Florida Statutes. All actions taken, including all documents prepared or submitted and statements made in connection with the Mediation process, shall be deemed to be and shall be treated as in the nature of settlement negotiations and offers of compromise and shall be inadmissible in any further judicial or administrative proceeding; provided, however, upon ratification and approval of this Settlement Agreement, evidence of this Settlement Agreement may be admissible in any actions to enforce the terms and conditions of this Settlement Agreement.

2. The parties to this Settlement Agreement do not waive or abandon any legal rights, arguments or positions that they may have relative to matters not included in, or addressed by, this Settlement Agreement.

3. Each party shall bear its own costs and expenses in connection with this proceeding.

4. The parties agree that this Settlement Agreement is to further the public interest in protection of the peace and quiet of the surrounding neighborhoods of the SUBJECT PROPERTY while providing the OWNER with the ability to provide music and entertainment at the facility known as "America's Backyard" after midnight on weekdays and 1 a.m. on weekends.

5. The parties agree that the CITY shall allow the OWNER to provide music, singing and other forms of entertainment after midnight on weekdays and 1:00 a.m. on weekends in accordance with the requirements of the Downtown Himmarshee Special Entertainment

Overlay District and hours of operation subject to the following requirements of this Settlement Agreement and the Code of Ordinances of the City of Fort Lauderdale, County, State and Federal law.

6. OWNER agrees to take the following actions within thirty (30) days of the execution of this Settlement Agreement:

a. Cease all live music after 11:00 p.m. during weekdays and 12:00 a.m. on the weekends, unless permitted in advance by the City as a Special Event.

b. Cease all microphone work by disc jockeys (DJs) and other entertainers from 12:00 a.m. until closing.

c. Cease the use of buzzers, horns or whistles.

d. Remove upper street-side balcony speakers as identified in images ABY108 and ABY108(b), attached hereto as **Exhibit A**.

e. Remove pair of rear-facing upper canopy speakers as identified in images ABY109, ABY109(b) and ABY119, attached hereto as **Exhibit B**.

7. OWNER agrees to take the following actions within ninety (90) days of the execution of this Settlement Agreement:

a. Develop and implement a sound management policy with maximum sound levels and regular monitoring by staff and management of America's Backyard, or any other tenant of the SUBJECT PROPERTY, that is compliance with the CITY's Code of Ordinances, Chapter 17, Noise Control, as may be amended from time to time.

b. Install electronic broadcast limiters on the sound system inputs to level the loudness of the system and automatically reduce the sound levels to be in compliance with the CITY's Code of Ordinances, Chapter 17, Noise Control, as may be amended from time to time.

c. Provide managerial and operational override control of the output.

d. Provide controls to process the entertainer's microphone(s) at all times and provide an automatic cessation of the microphone(s) at 12:00 a.m.

8. OWNER agrees to take the following actions within one hundred (120) days of the execution of this Settlement Agreement:

a. Lower the main dance floor (stage area) speakers to nine (9) feet above finished floor to bottom of cabinet and vertically orient and tilt speakers downward so that the upper axis of the coverage ends at the dance floor edge.

- b. Provide subwoofer speaker enclosures which should at a minimum surround the bottom, top and sides of the speaker cabinets.
- c. Provide that the speaker cabinets be laid four wide and not stacked in any combination.
- d. Provide that the bass frequency energy is brought inwards toward the facility.
- e. Provide that subwoofer speaker cabinets are acoustically isolated from the sub-floor slab with commercial vibration isolators.
- f. Provide that hanging speakers are acoustically isolated from the facility through the use of commercial vibration isolators.

9. Parties agree that this Settlement Agreement is predicated upon the OWNER performing the above requirements within the time periods provided and within thirty (30) days thereafter an inspection shall be performed by a certified sound technician to be chosen by mutual agreement between the CITY and OWNER and paid by the OWNER that includes testing of the sound system of the facility to determine whether the OWNER has complied with the conditions of this Settlement Agreement and that the OWNER is in compliance with CITY's Code of Ordinances, Chapter 17.

10. Notices. All notices, requests, consents and other consents and other communication required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by messenger or courier service, sent by facsimile, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

To CITY:

Mr. Lee Feldman, or successor
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

with a copy to:

Harry Stewart, or successor
City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

To OWNER:

Cara Ebert Cameron
President
111 Properties, Inc.
2929 East Commercial Boulevard, Suite 410
Fort Lauderdale, FL 33308

with a copy to:

Stephen K. Tilbrook, Esq.
Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, Florida 33301

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City of Fort Lauderdale through its City Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, 2012; and OWNER through its officer authorized to execute this Agreement.

Witness

CITY OF FORT LAUDERDALE, a
municipal corporation

Print Name

By: _____
John P. "Jack" Seiler, Mayor
____ day of _____, 2012

Witness

Print Name

By: _____
Lee Feldman, City Manger
____ day of _____, 2012

ATTEST:

Approved as to form and legality by
Office of the City Attorney

Jonda Joseph, City Clerk

By: _____
Harry Stewart, City Attorney

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by JOHN P. "JACK" SEILER, Mayor of CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Print Name: _____
Commission No.: _____
My Commission Expires: _____

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by LEE FELDMAN, City Manager of CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Print Name: _____
Commission No.: _____
My Commission Expires: _____

Witness

**111 PROPERTIES, INC., a Florida
corporation**

Print Name

By: _____

Cara Ebert Cameron, President

____ day of _____, 2012

Witness

Print Name

STATE OF FLORIDA)

)

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Cara Ebert Cameron, President of 111 PROPERTIES, INC., a Florida Corporation, on behalf of the corporation. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida

Print Name: _____

Commission No.: _____

My Commission Expires: _____