

**SETTLEMENT AGREEMENT BETWEEN FLOYD COUNTY AND
CHARLES AND SUSAN CRATON**

This Settlement Agreement (hereinafter "Agreement") is made by and between (1) (a) Charles Craton; and (b) Susan H. Craton (Charles and Susan Craton hereinafter individually and collectively referred to as the "Cratons"); and (2) Floyd County, Georgia (hereinafter "the County"). Each party is represented by counsel.

WHEREAS High Five Investments, LLC, Shannon Video, Inc. (High Five Investments, LLC and Shannon Video, Inc. hereinafter individually and collectively referred to as the "Store"), and the County are engaged in litigation to wit, *High Five Investments, LLC et al. v. Floyd County, Georgia*, Case No. 4:06-CV-190-HLM;

WHEREAS on March 14, 2008 the United States District Court for the Northern District of Georgia issued an order granting summary judgment in favor of the County;

WHEREAS on April 10, 2008 High Five and Shannon Video appealed that order to the United States Court of Appeals for the Eleventh Circuit as Appeal No. 08-11893-B;

WHEREAS Charles and Susan Craton have agreed to settle the litigation and to be bound by this agreement;


NOW, THEREFORE, the agreement is as follows:

- 1) Ordinance. A true copy of County Ordinance No. 2006-002A ("the Ordinance") is attached to this Agreement as Exhibit A and is incorporated by reference.
- 2) Compliance. By and after December 31, 2008, the Cratons shall not operate a "sexually-oriented business," as defined in the Ordinance, at 5561 New Calhoun Highway (GA 53) in Floyd County. Nothing in the foregoing sentence shall preclude the Store or the Cratons from displaying adult novelties at 5561 New Calhoun Highway in an amount equal to or less than the Store has regularly displayed, according to the representations of its counsel during settlement negotiations, provided that no such novelties shall be visible from a public right-of-way.
- 3) Future Amendments. Any future amendments the County may make to the Ordinance shall not apply to the Store.

- 4) Signage and Advertising. The Cratons acknowledge and agree that by October 15, 2008, the Store will replace the freestanding sign on its premises with a sign bearing the face(s) reflected in the drawing attached hereto as Exhibit B, and said face(s) shall reflect the only language allowed on any exterior signs. The Store will not use “adult,” “superstore,” “sex,” “erotic,” “porn,” “pornography,” “X,” “X-rated,” “XXX,” or substantially similar language in any of the Store’s advertising by any medium, including signs and billboards. The Store’s advertising will be limited to such phrases as “couples boutique” and “everything for him and her” or substantially similar language.
- 5) Media Release. Within five business days after execution of this Agreement, the Cratons, together with the Store and Ken and Janet Gabler will issue the general media release attached hereto as Exhibit C. Other than issuing said media release, the Cratons as well as their representatives, including their attorneys, shall not communicate about the litigation referenced above or this Agreement to any entity or person.
- 6) Other Conditions. The Cratons acknowledge and agree that the Store and any entity in which either the Store or the Cratons own an ownership interest will not: (1) allow minors on its premises, (2) have viewing booths on its premises, (3) expand its premises, or (4) open a “sexually oriented business” as defined in the Ordinance at any other location in Floyd County.
- 7) Termination and Release. The Cratons acknowledge and agree that within five business days of the execution of this Agreement, the Store will file a motion in the Eleventh Circuit to voluntarily dismiss its appeal with prejudice. The Cratons release the County from all claims involving the Ordinance, except those related to enforcement of this Agreement. The Cratons will not file any other lawsuit involving the Ordinance, except as provided for in paragraph 8 of this Agreement.
- 8) Cure. If one party believes any other party has violated this Agreement, the complaining party must notify the other party hereto (and the parties to the two other agreements simultaneously-executed herewith as part of the settlement of the litigation) in writing by specifying the alleged violation. Within seven business days after receipt of such notification, the offending party must respond to all other noticed parties in writing by either (a) explaining the specific steps it has taken to cure the violation or (b) disputing the alleged violation and providing evidence demonstrating that no violation occurred. Thereafter, the complaining party may seek redress by filing a civil action for breach of contract under Georgia law in the Floyd County Superior Court. Such action shall be the sole civil recourse for any violation of this Agreement, but shall not preclude a party from seeking traditional forms of relief, including injunctive relief, from the court in said action. If a court finds a party to have breached this Agreement, the breaching party shall be liable for the opposing party’s reasonable attorney fees incurred in securing compliance with this Agreement.

- 9) No Admission of Liability. This Agreement shall not be construed as any admission or indication of liability by either party.
- 10) Attorneys Fees and Costs. Each party shall bear its own costs and attorney fees associated with this action.
- 11) Entire Agreement. This Agreement constitutes the entire agreement between the signators hereto. The parties may modify this Agreement only in a writing signed by the signators hereto. This Agreement shall not be assignable by either party. This agreement shall forever bind the County and the Store as well as their owners, shareholders, partners, principals, officers, employees, successors, and heirs.
- 12) Severability. If a court of law holds any term or provision of this Agreement illegal, the remaining terms and provisions shall not be affected but shall be construed and enforced as if the agreement did not contain the illegal term or provision.
- 13) Voluntary. The parties knowingly and voluntarily accept all terms of this Agreement after consultation with counsel. Each party has had equal opportunity to draft and revise this Agreement.
- 14) Signatures. The signatures of the parties hereto need not appear on the same page. A copy of a signature is as valid as an original signature.

WITNESS the following signatures:

CHARLES CRATON


Date: 07-24-08

SUSAN H. CRATON


Date: 07-24-08

FLOYD COUNTY, GEORGIA

By: _____

Date: _____

Title: _____