

AGREEMENT
GOLF PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____, 2012 by and between:

CITY: CITY OF WINNEMUCCA
a Nevada municipal corporation
City Hall
90 W. Fourth Street
Winnemucca, Nevada 89445

PROFESSIONAL: _____

RECITALS:

A. City owns and operates the Winnemucca Municipal Golf Course, a nine-hole golf course open to the general public ("Golf Course"), in Winnemucca, Humboldt County, Nevada, and has need for a qualified golf professional to manage the Golf Course and Golf Course Clubhouse ("Clubhouse") in accordance with the rules and regulations for operation of the Golf Course adopted and amended from time to time by the City ("City Rules").

B. Professional is a holder of a Class A-1 card from the Professional Golfer's Association of America ("PGA") and is qualified and capable of providing the services for operation and management of the Golf Course and Clubhouse in accordance with the City Rules and as described in this Agreement.

WITNESSETH: For and in consideration of the mutual recitals, representations, warranties and covenants herein it is mutually agreed as follows:

1. PROFESSIONAL SERVICES. Professional is appointed the Golf Professional (herein "Professional" or "Golf Pro") at the Golf Course with the exclusive right, license and privilege of providing the following services in a professional manner in accordance with City Rules, this Agreement, and the PGA Code of Ethics:

a. Course Operations. Operating, managing and overseeing the operations, play and functions of the Golf Course and Clubhouse.

b. Golf Professional Services. Furnishing professional golf services at the Golf Course and conducting all activities associated with furnishing professional golf services.

c. Concession Services. Operating and managing a golf pro-shop and food and beverage concession business at the Clubhouse.

2. TERM. The term of the appointment for the Professional is a period commencing January 1, 2012 and ending December 31, 2012.

The term of this Agreement may be extended for one or more additional one year

term(s) upon the mutual written agreement of City and Professional. Each twelve (12) month period of this Agreement may be referred to as an "Agreement year".

3. CONSIDERATION.

a. Compensation. City shall pay Professional the sum of \$?? per Agreement year, and such sum is payable in monthly installments of \$?? on the first day of each month of the term, or on such other recurring periodic date as determined by the City.

b. Benefits. There are no benefits provided to the Professional, an independent contractor, for social security (FICA), Medicare or Medicaid, retirement (PERS or otherwise), worker's compensation, disability, unemployment insurance (FUTA and state), health care including medical, dental, vision or prescription drugs, annual and other leave, overtime compensation, and life, disability or accidental death insurance.

4. CITY DUTIES-RESOURCES.

a. Facilities. In addition to the payment of compensation as provided herein, City shall provide and maintain for use by Professional the Golf Course, Clubhouse and the facilities thereon for operation of a public golf course, including:

- (i) the 9 hole golf course, driving range, practice green and maintenance facilities;
- (ii) the golf cart storage sheds, clubhouse, and surrounding fences and gate;
- (iii) the existing fixtures, furniture, utility connections and appurtenances;
- (iv) an operational fire suppression system for the Clubhouse grill cooking area and annual system servicing by a certified provider;
- (v) annual cleaning of the Clubhouse carpets;
- (vi) annual cleaning of the Clubhouse cooking area; and
- (vii) interior and exterior painting of the Clubhouse as determined by the City.

b. Equipment/Supplies/Utilities. City shall provide, at City expense, all equipment, supplies and utilities that are, in City's good faith opinion, reasonably necessary to operate and maintain the buildings, equipment and grounds necessary for operation of a public golf course. Such equipment, supplies and utilities are the property of City, and may be removed, repaired, modified or replaced in the sole discretion of City.

5. PROFESSIONAL DUTIES-RESOURCES. Professional shall operate, manage and oversee the Golf Course and Clubhouse in an efficient and business-like manner consistent with sound management and business practices with an emphasis on public and customer service and in accordance with the policies, rules and regulations set out in the City Rules for the Golf Course adopted initially pursuant to City of Winnemucca Resolution No. 98-01 and amended from time to time by Resolution (the "City Rules" referred to herein), which is incorporated herein by reference. In addition, the Professional shall:

a. Process and record the collection of all City fees and revenues related to the operation and use of the Golf Course, golf cart storage building and Clubhouse, and deposit such fees and revenues collected, along with detailed pertinent records including the daily player sign-in sheets, at City Hall each day, or at such other place and time as directed by the City; and, provide the City with a detailed concession financial report by December 30 of each Agreement year.

b. Provide all services related to the promotion and regulation of golf play and player conduct, including taking and assigning tee time reservations, performing starter services, youth program services and enforcing and encouraging compliance with City Rules.

c. Provide golf lessons and instructions, and any other services customarily provided by a PGA certified golf professional.

d. Operate and manage a first class municipal golf pro-shop for the sale and rental of golf equipment and golf merchandise.

e. Manage or assist with the promoting and staging of public and private golf tournaments at the Golf Course.

f. Keep and maintain at all times, at Professional expense, the entire exterior and interior of the Clubhouse, including all stands, display cases, bar and dining area, fixtures, equipment and restrooms in a clean, sanitary and orderly condition, and good state of repair; conduct the food and beverage concession in accordance with all applicable laws, regulations, and requirements; and, keep the entire premises open to inspection at all times by the City and inspectors authorized by the City or authorized by applicable law.

g. Provide for rental and maintain in good condition, at fees equivalent to such fees at similar golf courses in the surrounding area, gas or electric powered golf carts (a minimum of six must be provided), hand carts, golf clubs, driving range golf balls, and other equipment necessary to play golf, all in varieties and quantities sufficient to meet the reasonable requirements of Golf Course users.

h. Provide for sale, at prices comparable to such prices at similar golf courses in the surrounding area, inventories of golf merchandise, supplies, clubs, bags, clothing, shoes, and other golf equipment appropriate for the operation of a first class municipal golf pro-shop, all in varieties and quantities sufficient to meet the reasonable requirements of Golf Course users.

i. Provide, with the authorization of the City, counters, booths, stands, showcases, mobile units, equipment, signs or other fixtures which Professional deems necessary or appropriate to supplement those provided by the City, for storage, display, advertising and demonstrating equipment and merchandise.

j. Provide a computer with adequate software for processing and recording transactions and collections of various membership, storage, usage, greens fees, rental and other fees and sales revenues.

k. Keep and accurately and timely maintain books of accounts and records

reflecting all transactions related to the purchase, rental and/or sale of carts, range balls, food and beverages, merchandise, and repair of equipment, and make such records available for inspection and/or audit by the City upon request at reasonable times.

l. Provide janitorial and maintenance services for the Clubhouse, including cleaning the windows on an as-needed basis and the restrooms on a daily basis when the Clubhouse is open for business.

m. Secure the Clubhouse and golf cart storage buildings at the close of operations each day, including locking of all doors, and provide security in accordance with City Rules.

n. Maintain a complete and up-to-date accounting of all tournament prize money owed to players by the Professional; and, maintain an appropriate inventory of pro-shop merchandise for prize money purchases and provide in a timely manner all special merchandise ordered by players.

o. Provide or employ, at Professional expense, such personnel as the Professional determines necessary or convenient for the efficient and effective operation of the Golf Course; and, comply with all applicable laws, regulations and requirements for such employees or contractors, including benefits for social security (FICA), Medicare or Medicaid, retirement (PERS or otherwise), worker's compensation, disability, unemployment insurance (FUTA and state), health care including medical, dental, vision or prescription drugs, annual and other leave, overtime compensation, and life, disability or accidental death insurance.

p. Obtain and pay for all permits, business, health and liquor licenses or other licenses, which may be required by law to conduct the Professional business operations at the Golf Course.

q. Pay sales, income and any other taxes or assessments which may be assessed or levied against Professional, the Professional's business and the equipment and/or merchandise used in the operation of the Professional's business.

r. Assist the City with recommendations for improvement and efficient operation of the Golf Course and Golf Course facilities, including the Clubhouse and cart storage facilities; and, provide suggestions for revisions to City Rules.

s. Promptly advise the City of any deficiency or dangerous condition known to Professional in any part of the Golf Course, including buildings, equipment or grounds, or any Professional perceived deficiency, maintenance need or Golf Course operations problem.

t. Coordinate with and consult with the City Public Works Department personnel in the care, maintenance and upkeep of the Golf Course.

6. CLUBHOUSE OPERATIONS.

a. Professional shall have the right to sell any food, alcoholic and non-alcoholic beverages or refreshments of any kind, and shall have the right to install or keep upon the premises any machines used for the vending of goods, wares or merchandise, upon prior approval of the City or authorized designee.

b. Professional shall provide food services consistent with, but not limited to, such services provided by similar golf courses.

c. Professional has the exclusive right to cater food and supply meals for special events and special group activities at the Clubhouse.

d. Professional shall maintain a sufficient inventory of food stuffs, alcoholic and non-alcoholic beverages to avoid shortages of such products.

e. The portion of the Clubhouse used for the pro-shop and concessions are not leased to the Professional, the Professional is a licensee of such premises and the right to occupy and use the same and to conduct business operations thereon shall continue only so long as this Agreement is in effect and there is compliance with the terms and conditions herein.

7. TIME-HOURS OF OPERATION.

a. The Golf Course shall be open beginning March 1 and continuing through October 31, unless otherwise determined by the Professional and approved by the City.

b. The Clubhouse shall be open to the public: (i) from 7:00 a.m. to dusk from the Saturday prior to Memorial Day through Labor Day; and, (ii) from 8:00 a.m. to dusk for the remainder of the golf season.

c. The golf shop and driving range shall be kept open whenever the Golf Course is open for play.

d. The Professional or assistants shall be available to give lessons and instructions in golf, and to serve the public, at all times when the Golf Course is open for play.

8. RECEIPTS AND ACCOUNTING.

a. Professional shall electronically process, in a manner prescribed by the City, all monies collected on behalf of the City, including but not limited to all seasonal, monthly and other pass fees, greens fees, private golf cart storage fees, tournament fees and private golf cart usage (path) fees. The fees received or collected on behalf of the City shall be held by the Professional in a fiduciary capacity, and the Professional shall not make any personal or other use of the same. The fees collected on behalf of the City shall be deposited daily in an account or place as designated by the City. The Professional is strictly liable for all cash shortages.

b. Professional shall collect and keep all revenues from Clubhouse operations, including the sale and rental of golf clubs, golf equipment, golf merchandise, golf pull carts, golf power carts, golf lessons, storage and maintenance of golf clubs, maintenance work on golf carts of third parties, and food and beverage concession operations. The Professional shall have the exclusive right to salvage golf balls from water hazards on the Golf Course.

9. PROFESSIONAL RESTRICTIONS. The Professional shall not become an officer or member of any golf club or organization of golfers formed or to be formed at the Golf Course or of any organization in which participation would conflict with the orderly and efficient

operation of the Golf Course. The Professional shall not, in the management and operation of the Golf Course, particularly with starting times and playing privileges, grant any preferential treatment to any individual or group of individuals except as authorized by City Rules.

10. INSURANCE.

a. The fire insurance maintained by the City for the Golf Course, Clubhouse and improvements situated thereon is for the sole benefit of the City. Professional shall hold City harmless from any loss sustained by fire to Professional's business operations, income, inventory, machinery, fixtures, equipment, merchandise or other personal property.

b. Professional shall procure and keep in force during the term of this Agreement a public liability insurance policy written by a company authorized to do business in the State of Nevada, insuring against any loss or a liability for: (i) bodily injury and property damage; (ii) premises and operations; (iii) worker's compensation and employer's liability; and, (iv) independent contractors, resulting from the operations of the Golf Course with limits of not less than \$1,000,000 for injury to one person and \$1,000,000 for injury to more than one person, together with \$1,000,000 products liability insurance. The policies shall provide coverage for the contingent liability of City, and shall name the City as an additional insured with provision for thirty (30) days advance notice of cancellation to all named insureds. A copy of the insurance policy or policies shall be delivered to the City upon request. The City shall have the right, with or without cause, to disapprove the company or companies providing such insurance.

c. Professional shall, at Professional expense and as Professional deems necessary or advisable, procure and maintain any other insurance relating to Professional and Professional's management, operation and oversight of the Golf Course and Clubhouse.

11. INDEMNIFICATION. The Professional shall indemnify, hold harmless and defend the City and its officers, agents or employees from any claim or cause of action of any kind, character or nature from any person, persons, entity or organization which may arise out of the use of the Golf Course and Clubhouse premises in connection with the Professional's management, operation and oversight of the Golf Course and Clubhouse as herein provided. The City shall not be liable for concessionaire losses which result from the condition of the Golf Course or facilities.

12. INDEPENDENT CONTRACTOR. The Professional is an independent contractor with respect to the City, and this Agreement is not a contract of employment. No relationship of master and servant, employer and employee, partnership, or joint venture is created by this Agreement. Neither Professional nor City shall hold itself out or act as the agent of the other, or have the power to obligate the other to third parties in any way. Professional shall not make any claim against the City under this Agreement for social security benefits (FICA), Medicare or Medicaid benefits, retirement benefits, worker's compensation benefits, disability benefits, unemployment insurance benefits (FUTA and state), health care benefits, annual and other leave benefits and pay, overtime compensation, or any other employee benefits of any kind. Subject to the obligations of the City to provide a well managed, well maintained and good quality public golf course, City shall neither have nor exercise any control over the methods used by Professional to provide services pursuant to this Agreement. Professional shall provide services pursuant to this Agreement at all times in accordance with generally accepted and approved methods and practices, the sole role of the City being to ensure that

services rendered pursuant to this Agreement shall be performed in a competent, efficient and satisfactory manner. The City is not liable or responsible for the acts or omissions of the Professional or the Professional's assistants, employees, contractors, customers, or suppliers in performing the duties of Professional as contemplated by this Agreement.

13. TAXES/WITHHOLDING. Professional is solely responsible for payment and/or withholding of federal, state and local taxes, social security (FICA), workers' compensation insurance and unemployment insurance (FUTA and state), and any other contributions of Professional and Professional's assistants, employees and contractors as required by federal and state laws.

14. NON-DISCRIMINATION. Professional shall uphold and abide by all laws pertaining to equal access and employment opportunities, including: Title VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Age Discrimination in Employment Act of 1975, the Equal Pay Act of 1963, Section 501 & 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1991 and Americans with Disabilities Act of 1990.

Professional shall not discriminate against any person the Professional comes into contact with in the performance of this Agreement because of race, color, religion, age, sex, sexual preference, national origin, veteran's status or disability (including AIDS and related conditions).

15. TERMINATION. This Agreement and the contract with Professional may be terminated as follows:

a. Upon Occurrence of Certain Events. The City may unilaterally terminate this Agreement before its expiration, effective immediately unless otherwise provided, on the occurrence of any of the following events:

(i) Disability or Death. Disability of Professional which cannot be reasonably accommodated, or Professional's death.

(ii) Criminal Conviction. Conviction of any crime punishable as a felony or conviction of a misdemeanor or gross misdemeanor crime involving moral turpitude.

(iii) Golf Course Closure. Closure of the Golf Course for any reason, including damage or destruction to the physical facilities.

b. Material Breach. Either party may terminate this Agreement before its expiration based on a material breach of this Agreement by the other party if it has given written notice to the party in breach describing the breach, and within thirty (30) days after the giving of such written notice the breaching party has not cured the breach and provided reasonable assurances that the breach will not be repeated. No opportunity to cure shall be required for any second breach by a party and termination may be made effective on giving of the second notice. A material breach includes, but is not limited to, the following events:

(i) Default. Professional defaults on any of the covenants hereby agreed to be performed by Professional.

(ii) **Law Violation.** Professional violates any federal, state or local laws, excepting misdemeanor traffic violations.

(iii) **Incapacity.** If, in the opinion of the City, the Professional, by reason of incapacity or otherwise, is unable to perform his duties for a period exceeding thirty (30) consecutive days.

(iv) **Misconduct.** Misconduct, dishonesty, incompetence, negligence, inattention or irresponsibility on the part of Professional.

(v) **No cooperation.** Failure or refusal of Professional to cooperate with the City, City officials or City officers, employees and agents in connection with compliance with the terms of this Agreement or City Rules.

c. **Third Party Causes.** Either City or Professional may, by written notice to the other party, terminate this Agreement in the event that any federal, state or local government agency passes, issues or promulgates any law, rule, regulation, standard or interpretation that prohibits, restricts, limits or in any way substantially changes the arrangement contemplated by this Agreement or which otherwise significantly affects either party's rights or obligations hereunder. If this Agreement can be amended to the satisfaction of both parties to compensate for such prohibition, restriction, limitation or change, this clause shall not be interpreted to prevent such amendment.

d. **Without Cause.** Either City or Professional may, by written notice to the other party, terminate this Agreement without cause one hundred eighty (180) days after the giving of such written notice.

At the effective date of termination, all rights, duties and obligations of City and Professional under this Agreement shall terminate except City shall compensate Professional for services performed by the Professional for which compensation is due but has not been received, and City shall purchase: (i) the golf merchandise with the Golf Course logo, at a mutually agreed wholesale price, with the wholesale cost for such merchandise verified by the purchase invoice(s) or other acceptable proof; and, (ii) the power golf carts in good operating condition, as determined by the City, for the appraised value, less 5%, with the City procuring and paying for a professional, independent evaluation and appraisal of such carts.

Upon termination of this Agreement or upon resolution of any other dispute hereunder, there shall be no right of review or appeal under any City policies, fair hearing plan or manual.

16. RELEASE. Upon any termination under this Agreement and upon acceptance of all compensation for services performed, the Professional shall be deemed to have voluntarily released and discharged the City, the Mayor and City Council of the City, and City officers, directors, employees, agents and successors and assigns, individually and collectively, and in their official capacity from any and all liability arising out of Professional providing of services under this Agreement.

17. GENERAL PROVISIONS. The general provisions attached hereto as **Exhibit "A"** are made a part of this Agreement and are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed effective as of the beginning of the term.

CITY:

PROFESSIONAL:

Di An Putnam
Mayor

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EXHIBIT "A"
TO
AGREEMENT FOR GOLF PROFESSIONAL SERVICES
GENERAL PROVISIONS

A. AMENDMENT. This Agreement may be modified or amended only in writing by an instrument executed with the same formality as this Agreement.

B. APPLICABLE LAW. This Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Nevada in effect from time to time. The parties agree that in the event litigation is used to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in Humboldt County, Nevada and the parties waive the right to bring, try or remove such litigation to any other county or judicial district; provided, however, nothing in this Agreement shall be construed to limit the right of a court of competent jurisdiction to change the venue.

C. ASSIGNMENT. This Agreement relates to the performance of services by Professional and shall not be transferred or assigned by Professional without the prior written consent and agreement of City. Any unauthorized transfer of this Agreement shall be void. The City may assign this Agreement to a successor organization or successor entity of City.

D. BINDING EFFECT. This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

E. CAPTIONS. The captions or titles used in this Agreement shall have no effect on its interpretation and are for convenience and reference only and in no way define limits or describe the scope of this Agreement or the scope or content of any Agreement provision.

F. COMPLIANCE WITH LAW. In the performance of services pursuant to this Agreement, there shall be compliance by City and Professional with all applicable laws, regulations and rules. Professional shall comply with City policies when Professional is providing services at the Golf Course.

G. CONSTRUCTION. Whenever the construction of this Agreement requires, singular terms shall be deemed plural, and plural the singular; and, masculine shall be deemed to be feminine or neuter, and feminine the masculine or neuter. The language of all parts of this Agreement shall in all circumstances be construed as a whole, according to its fair meaning, and not strictly for or against any party. The doctrine or rule of construction against the drafting party shall not apply, nor shall any such presumption apply, to the interpretation and/or enforcement of this Agreement or any documents attached to this Agreement.

H. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

I. DEFINITIONS/TERMS. The term "City" as used in this Agreement shall include, when the context requires inclusion, all City officers, employees and agents. For purposes of the Professional reporting, soliciting authorization or having contact with the City as contemplated by this Agreement, the term "City" shall refer to the City Manager, or the designee of the City Manager. The term "Professional" as used in this Agreement shall include, when the context requires inclusion, all Professional associates, assistants, subcontractors, employees and agents of Professional used to provide services or carry out Professional services under this Agreement.

J. DISPUTE RESOLUTION. Any controversy, claim or dispute relating to this Agreement shall be the subject of informal discussions between Professional and the City Manager. If no agreement can be reached between Professional and City Manager, the decision of the City Manager will stand. If Professional is dissatisfied with the decision of the City Manager, the dispute will be submitted to the City Council for resolution. Following exhaustion of either of the dispute resolution procedures outlined above, the parties shall attempt to settle by informal mediation using a mediator agreed upon by the parties; provided, however, in the event mediation is unsuccessful or if the parties do not agree on a mediator, then the decision of the City Council is final. Each party shall pay their respective costs of dispute resolution under this Section, except for costs of a mediator which shall be split equally between the parties.

K. EXHIBITS. All exhibits attached and referred to in this Agreement are fully incorporated herein by reference.

L. FEES AND COSTS. In the event that either party institutes a suit against the other party, either directly by complaint or by way of cross complaint, including a cross complaint for indemnity, for alleged negligence, error, omission or other failure to perform, or for declaratory relief, or to enforce or interpret the provisions of this Agreement, and if instituting party fails to obtain a judgment in its favor, the lawsuit is dismissed, or if judgment is rendered for the other party, the instituting party agrees to pay the other party all costs including the other party's fees incurred for notices of default, negotiation, settlement, trial, appeal after trial, reasonable attorney's fees, expert witness fees, court costs and any and all other expenses of defense. Such payment shall be made immediately following dismissal of the case or upon entry of judgment. If the instituting party is the prevailing party, then the prevailing party shall be entitled to reasonable attorney's fees, which fees shall be set by the court in the action to any other costs assessed by the Court.

M. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties and there are no terms, promises, conditions, inducements, representations or warranties, express or implied, other than as herein set forth. This Agreement and the other instruments attached hereto or herein referred to supersede any prior discussions, contracts or agreements of the parties pertaining to the subject of this Agreement.

N. NOTICES. Any notice, request or demand or other communication pursuant to this Agreement shall be in writing and shall be considered given (i) upon personal service to the party to be served, or (ii) upon acknowledgment of receipt of a facsimile or other electronic transmission or communication, or (iii) upon the sooner of first attempted delivery or receipt for Federal Express or other similar delivery service keeping records of deliveries and attempted deliveries, or (iv) seventy-two (72) hours after deposit in the United States mail, certified and postage prepaid, return receipt requested, in a regularly maintained receptacle for the deposit of United States mail to the party to be served at their address given herein, or at such other address or attention as from time to time may be specified by either party by notice to the other party in the manner herein provided.

O. RECITALS. The recital and introductory paragraphs of this Agreement are considered an integral part of this Agreement and form a basis for entering into this Agreement and shall be considered *prima facie* evidence of the facts, events, documents and information referred to therein.

P. RECONSIDERATION. If either party to this Agreement reasonably determines that a provision of this Agreement is unworkable or, if either party identifies a method of improving the working relationship between the parties, this Agreement may be reconsidered for amendment. If there is failure of the parties to reach agreement on the proposed amendment, then this Agreement shall continue in force and effect without change.

If, in the opinion of counsel for the City, changes in federal or state statutes or regulations, or court interpretations of statutes or regulations applicable to City, render this Agreement or any of its provisions illegal, or significantly impair or restrict City's ability to perform this Agreement, the parties shall negotiate in good faith to eliminate the illegality or adverse effects occasioned by such changes while maintaining the intended effect of this Agreement as nearly as possible. If the parties are unable to reach agreement or if, in the opinion of counsel for the City, it is not possible to eliminate the illegality or adverse effects through mutual agreement, City may terminate this Agreement on sixty (60) days written notice to Professional. In the event of termination under this section, the parties shall be relieved of all obligations each to the other pursuant to this Agreement from the date of termination.

Q. REVIEW OF AGREEMENT. The parties represent that they have read this Agreement, that the terms and provisions of this Agreement have been explained to them and that they are fully aware of the contents and binding legal effect of this Agreement and that they are entering into this Agreement freely and voluntarily.

R. SEVERABILITY. The enforceability, voidability, invalidity or illegality of any provisions of this Agreement shall not render any other provisions unenforceable, void, invalid or illegal.

S. TIME. Time is of the essence of this Agreement and each of its provisions.

T. WAIVERS. All waivers under this Agreement must be in writing and signed by the party against whom the waiver is sought to be enforced. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.