

14782

Attachment A

2003-410

SETTLEMENT AGREEMENT, RELEASE OF ALL CLAIMS,  
COVENANT NOT TO SUE, AND HOLD HARMLESS AGREEMENT

This Agreement is entered into this 4 day of August, 2003, by and among the Covey class ("Plaintiffs") and King County.

Plaintiffs commenced a civil action in King County Superior Court under Cause No. 02-2-08317-0 SEA. King County agrees solely for the purposes of this settlement and its implementation that King County Superior Court Cause No. 02-2-08317-0 SEA shall proceed as a class action under CR 23(b)(1) and CR 23(b)(2), but if such settlement fails to be approved or otherwise fails, then King County retains all rights to object to the maintenance of the action as a class. The class is defined as all overtime eligible employees employed in the King County Sheriff's Office from March 18, 1999 through May 31, 2003.

This Agreement is made pursuant to CR 23(e) to settle the class action of *Covey, et al. v. King County*. The provisions of this Agreement apply to all members of the Covey class. Class membership alone does not necessarily make monetary relief available. Class members are entitled to relief only as specifically stated in this Agreement. This Agreement is not effective until approved by the Metropolitan King County Council and by the King County Superior Court.

The Covey named plaintiffs and the Covey class members (collectively referred to as "Plaintiffs") and King County by this Agreement wish to resolve fully and finally all of their differences related to the above-referenced lawsuit, all actual or potential claims regarding the timeliness of any wage payments or wage related benefits, and any actual or potential claims regarding payment for 2088 hours of scheduled work in any year for any period of time up to and including December 31, 2003, including any claims for attorneys' fees and costs incurred therein.


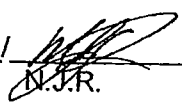
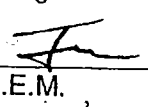
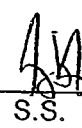

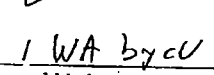

Therefore, for and in consideration of the mutual promises and conditions contained in this Agreement, the parties agree as follows:

1. After the signing of this Agreement by all parties and within 10 business days after final approval of this Agreement by the King County Superior Court, the King County Executive will present to the Metropolitan King County Council and recommend the adoption of an ordinance requesting a supplemental appropriation for the funds necessary to fulfill the terms of this Agreement ("the appropriation ordinance"). The parties recognize there is no guarantee the Metropolitan King County Council will enact the appropriation ordinance, and agree that if the Metropolitan King County Council does not enact the appropriation ordinance, the terms of this Agreement shall have no force or effect,

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 1 of 11

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J.P.C.	M.J.R.	J.E.M.	S.S.
			
C.O.	W.A.	C.V.	

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and this civil action shall proceed to trial as determined by the parties and the Court. If within 60 days of the transmittal by the Executive of the appropriation ordinance, the Metropolitan King County Council has not enacted the ordinance, Plaintiffs may revoke the Agreement and proceed to trial as determined by the Court. Time is of the essence. The parties will process this Agreement as expeditiously as practicable within the terms of this Agreement. In the event either party believes the other party is not processing the Agreement accordingly, Judge Terrence Carroll will arbitrate the issue of whether a party is dilatory without good cause. If a party is found to be dilatory without good cause, the Agreement may be revoked and the lawsuit may proceed to trial as determined by the Court.

2. Within 60 days of the Court's final approval of the Agreement, within 60 days of the County's receipt of the Distribution Data identified in Paragraph 2.1, or within 30 days of the effective date of the appropriation ordinance, whichever is later, King County will pay to Plaintiffs the total sum of seven million dollars (\$7,000,000.00) which sum includes all funds necessary to fully resolve Plaintiffs' claims as well as attorneys' fees and costs. This total amount ("the Fund") will be distributed as follows.

2.1 The amount of the Fund less class representative compensation and attorneys' fees and costs will be paid to eligible Plaintiffs on a *pro rata* basis. The *pro rata* distribution will be based upon the amount of overtime and compensatory time off that was earned by an individual that was not paid or credited either on the pay date after it was earned or, if it was earned within seven days of a pay date, then on the following pay date versus the total amount of all overtime and compensatory time off that was earned and was not paid or credited either in the pay date after it was earned or, if it was earned within seven days of a pay date, then on the following pay date. The name, social security number and the net and gross amount due each Plaintiff ("Distribution Data") will be provided by Plaintiffs' counsel to King County electronically in excel format as soon as practicable after the Court's final ruling on Plaintiffs' counsels' application for attorneys' fees and litigation costs.

2.2 From the Fund the five named plaintiffs shall each receive ten thousand dollars (\$10,000.00) for their participation as class representatives. This participation included, but was not limited to the commencement of this lawsuit, discovery matters, preparation of declarations, attendance at meetings, and assisting class counsel. These payments are designed as payment to the class representatives for the time expended, responsibilities and risk undertaken, and assistance provided in

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 2 of 11

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C.V.

*[Handwritten signatures and initials over the printed names]*

the lawsuit.

2.3 The "common fund" approach will be applied in calculating attorneys' fees which will be set as a percentage of the recovery for the class. Class counsel will apply to the Court for a fee award from the Fund. In addition, subject to the Court's approval, litigation costs advanced by Plaintiffs' counsel will be deducted from each class member's gross recovery on a pro rata basis.

3. The payment referenced in Paragraph 2 of this Agreement does not constitute wages and is not subject to withholding for federal income tax purposes and is not subject to deductions and contributions for FICA, Medicare, and retirement purposes. Each Plaintiff receiving money pursuant to this Agreement shall be solely liable for any income tax liability, if any exists.

4. Within 60 days of the Court's final approval of the Agreement, within 60 days of the County's receipt of the Distribution Data identified in Paragraph 2.1, or within 30 days of the effective date of the appropriation ordinance, whichever is later, King County will provide Plaintiffs who are current King County employees at the time this provision is implemented with a one-time only addition of three and one-half (3.5) (for employees with a 35 hour work schedule) or four (4) hours (for employees with a 40 hour work schedule) to each Plaintiff's vacation leave account for each of the following dates on which Plaintiffs were employed by King County: June 30, 1999, December 31, 1999, June 30, 2000, December 31, 2000, June 30, 2001, December 31, 2001; June 30, 2002; December 31, 2002. Plaintiffs who are no longer King County employees at the time this provision is implemented will receive three and one-half (3.5) (for employees with a 35 hour work schedule) or four (4) hours (for employees with a 40 hour work schedule) of pay at the hourly rate in effect at the time the Plaintiff separated from employment for each of the following dates on which Plaintiffs were employed by King County: June 30, 1999, December 31, 1999, June 30, 2000, December 31, 2000, June 30, 2001, December 31, 2001, June 30, 2002, December 31, 2002. Plaintiffs who worked in a position that was not eligible for leave benefits will not receive either leave or pay under this Paragraph. Plaintiffs who worked in a part-time position will receive either leave or pay prorated to reflect his or her normally scheduled work week. Plaintiffs who receive vacation under this Paragraph and have reached their maximum vacation accrual amount shall have the maximum accrual amount raised by the amount of vacation received under this Paragraph for a period of three years following the date the additional time is added to their vacation balance. From any payment resulting from this Paragraph King County shall withhold the customary amount for federal income tax purposes and shall make deductions

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 3 of 11

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and contributions for FICA, Medicare, and retirement purposes as required by law.

5. Plaintiffs' counsel will calculate the individual payments described in Paragraph 2.1. The calculations will utilize payroll data and other documents provided by the County in discovery. Plaintiffs shall hold King County, its agents, officers and employees harmless for any inaccuracy in the calculation of the disbursements received by Plaintiffs.

6. As further consideration for the payment specified in this Agreement, Plaintiffs represent and warrant there are no lien holders or other persons or entities having any interest in the proceeds being paid in accordance with the settlement of this lawsuit and the conditions of this Agreement. If such liens or interests exist, Plaintiffs agree to fully indemnify, hold harmless, and defend King County from any claims of others to the proceeds of the settlement.

7. The disbursements referenced in Paragraphs 2.1, 2.2, and 4 of this Agreement shall be made directly to Plaintiffs within 60 days of the Court's final approval of the Agreement, within 60 days of the County's receipt of the Distribution Data identified in Paragraph 2.1, or within 30 days of the effective date of the appropriation ordinance, whichever is later. For those Plaintiffs who are either retired from or no longer employed by King County, such disbursements shall be made to Plaintiffs at their last known address. Plaintiffs who are no longer King County employees at the time of distribution of the disbursements referenced in Paragraphs 2.1, 2.2, and 4 will be required to verify their address prior to disbursement. Individual Plaintiffs must comply in a timely manner in order to receive payment. After disbursement of the Fund, no further claims against King County shall be considered or allowed.


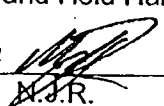



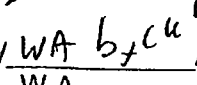
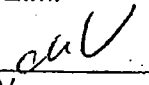
8. Plaintiffs shall have no more than 6 months from the date the check referenced in Paragraphs 2 and 4 of this Agreement is mailed to cash the check. In the event a Plaintiff's check is returned to King County as undeliverable due to an invalid address, King County will notify Plaintiffs' counsel. If Plaintiffs' counsel locate other address information the information will be provided to King County to re-mail the check. King County shall only be obligated to re-mail a check once. Any unclaimed settlement funds following eighteen (18) months from the date the original check is mailed shall be returned to King County.

9. Within 30 days following the effective date of the appropriation ordinance, the King County Sheriff's Office will require only one supervisor's approval on overtime requests.

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 4 of 1

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10. For as long as the King County Sheriff's Office is paid on a semi-monthly basis, Plaintiffs knowingly acknowledge that King County may reasonably pay as follows. For overtime and holiday pay for hours worked on the 1<sup>st</sup> through the 15<sup>th</sup> the employee will be paid by the 1<sup>st</sup> pay date of the following month and for hours worked from the 16<sup>th</sup> through the end of the month by the 2<sup>nd</sup> pay date of the following month. Compensatory time off will be credited in the same manner. An officer who on the 1<sup>st</sup> through the 15<sup>th</sup> of a month submits a request for compensation in accordance with King County Sheriff's Office policies for training pay allowed in Article 7, Section 14 of the Guild agreement or for acting pay will be paid his or her pay by the 1<sup>st</sup> pay date of the following month. If this request is submitted on the 16<sup>th</sup> through the end of the month, the pay will be paid on the 2<sup>nd</sup> pay date of the following month. This section shall not apply when there is a bona fide dispute as to the claimed pay.

11. Within 30 days following the effective date of the appropriation ordinance, the King County Sheriff's Office will designate an employee responsible for the investigation ("authorized employee") and resolution of employee complaints regarding the amount or timeliness of wage payments. Written complaints will be submitted in accordance with King County Sheriff's Office policies. A response will be provided to the employee within 10 business days from the date the complaint is received by the authorized employee. If the employee does not agree with the resolution of the complaint, the employee may submit the issue to the Payroll Review Board. The King County Sheriff's Office and the appropriate unions will determine the composition of the Payroll Review Board. If either the authorized employee or the Payroll Review Board finds that the employee complied with the King County Sheriff's Office policies regarding timely submission of their pay request, and timely resubmission as necessary, the authorized employee or the Board will award one hour of straight time pay for each incident of overtime that is paid one pay period beyond the date noted in Paragraph 10 of this Agreement. Either the authorized employee or the Board may issue an appropriate additional remedy for late payment beyond one pay period up to a total maximum amount equal to the underlying pay at issue. The remedies in this Paragraph do not apply if there is a bona fide dispute concerning the underlying pay at issue.

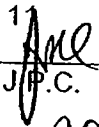




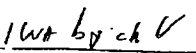

12. The King County Sheriff's Office will not unlawfully retaliate against Plaintiffs for their participation in this lawsuit.

13. By signing this Agreement, Plaintiffs fully release and promise not to sue, make any claim or initiate any action of any kind whatsoever regarding the claims in King County Superior Court Cause No. 02-2-08317-0 SEA, all actual or potential claims regarding the timeliness of any wage payments or wage related

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 5 of 11

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benefits, and any actual or potential claims regarding payment for 2088 hours of scheduled work in any year, including, but not limited to, any action pursuant to the Fair Labor Standards Act, the Washington Minimum Wage Act, the Washington Wage Rebate Act, the Wage Payment Act, County ordinances, or collective bargaining agreements, against the County, any of its subunits, its officers, agents, or employees, past, present, or future, for any event or occurrence in any manner related to either the above-referenced lawsuit against King County, or the timeliness of any wage payments, or to payment for 2088 hours of scheduled work, for any period of time up to and including December 31, 2003, whether such claims be based on statute, regulation, ordinance, contract, tort, or any other theory of law or damages whatsoever. Plaintiffs waive all rights to bring any claim which, in connection with their pending civil action under King County Superior Court Cause No. 02-2-08317-0 SEA, would have been the subject of mandatory joinder.

14. Plaintiffs, being of lawful age, for themselves, their heirs, executors, administrators and assigns, release, acquit and forever discharge King County, a municipal corporation, and its officers, agents and employees, from any and all actions, causes of action, claims or demands for damages, attorneys' fees, costs, loss of use, loss of services, loss of consortium, expenses, compensation, lost wages, back pay, front pay, employment rights, reemployment rights, leave benefits, medical/dental benefits, any other employment benefits, consequential damages or any other thing whatsoever on account of, or in any way arising out of, any and all known and unknown personal injuries, emotional distress and/or property damage resulting from or in any way related to the claims contained in the above-referenced lawsuit, and for any claims which would have been the subject of mandatory joinder in this lawsuit and for any claims regarding the timeliness of any wage payments or wage related benefits and for any claims regarding payment for 2088 hours of scheduled work in any year, for any period of time up to and including December 31, 2003, whether such claims be based on statute, regulation, ordinance, contract, tort, or any other theory of law or damages whatsoever.

15. This Agreement is contingent upon adoption by Public Safety Employees Local 519, the King County Court Protection Guild, and the King County Police Officers Guild of a memorandum of understanding with King County regarding the provisions of Paragraph 10 and Paragraph 11 of this Agreement by August 31, 2003.

16. This Agreement is a compromise of disputed claims and is the product of serious negotiation. The parties understand that this Agreement is a compromise and is not to be construed as an admission of liability on the part of

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 6 of 11

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any party. The compromise embodied in this Agreement is intended to fully and finally resolve the claims of Plaintiffs in this case.

17. This Agreement constitutes the ENTIRE AGREEMENT between the parties. There are no other or further agreements which modify or amplify the terms of this Agreement. The terms of this Agreement are contractual and not a mere recital.

18. Following the signing of this Agreement by all parties, the parties shall request the King County Superior Court to preliminarily approve this Agreement.

19. Class counsel shall prepare a proposed notice of settlement hearing and summary of this Agreement to be distributed to the class. The notice shall be as approved by the parties, or in the event of disagreement, as approved by the Court. The proposed notice shall be presented to the Court for its approval. The notice shall summarize the major terms of this Agreement, state the time, date, and place of the settlement hearing, and explain the procedures and deadlines for submitting written comments or objections. Plaintiffs' counsel shall send direct notice by mail to identifiable Plaintiffs. King County will provide notice by publication in the Sunday edition of the Seattle Times/Seattle Post Intelligencer to be published once a week for two consecutive weeks.

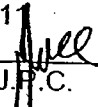

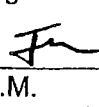


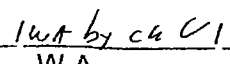
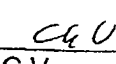
20. This Agreement is a product of substantial negotiation and compromises by the parties and thus this Agreement represents a unitary whole and each and every term herein is an integral part of the entire Agreement. Pursuant to CR 23, the Court determines whether this Agreement as a whole is fair and reasonable and determines whether to approve or reject the entire Agreement. The Court is not authorized to modify the terms of the negotiated settlement.

21. Class counsel shall be responsible for dismissing this case within 30 days following completion of the distribution process in Paragraph 2 of this Agreement. Each and every claim brought by Plaintiffs in connection with King County Superior Court Cause No. 02-2-08317-0 SEA shall be dismissed with prejudice and without costs or fees to either party. The order of dismissal shall include an order that withdraws the Court's previous orders on partial summary judgment. Prior to dismissal the parties agree that the litigation shall be stayed except as provided in this Agreement.

22. Plaintiffs acknowledge that they have carefully read the foregoing provisions and know the contents thereof, have had the opportunity to review this

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement  
Page 7 of 1

Initialed:

			
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Agreement with their attorneys, Aitchison & Vick, Inc. and sign the same as their own free act.

DATED this 4 day of August, 2003.

KING COUNTY

PLAINTIFFS

BY: [Signature]  
RON SIMS  
King County Executive

By: [Signature]  
JAMES PATRICK COVEY

BY: [Signature]  
DAVE REICHERT  
King County Sheriff

By: [Signature]  
NICHOLAS JAMES ROZNAESZKY

By: [Signature]  
JAY E. MOLONEY

By: [Signature]  
STAN SEO

By: [Signature]  
CHERI O'BRIEN

Approved as to form:

NORM MALENG  
King County Prosecuting Attorney

AITCHISON & VICK

By: [Signature]  
KAREN A. POOL NORBY  
Senior Deputy Prosecuting Attorney  
Attorneys for King County

By: [Signature]  
WILL AITCHISON  
Attorneys for Plaintiffs

By: [Signature]  
CHRIS VICK  
Attorneys for Plaintiffs

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 8 of 111

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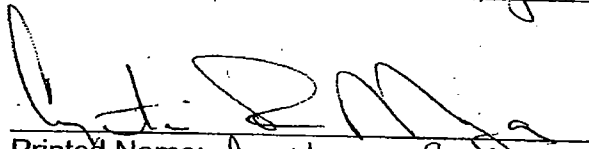
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, JAMES PATRICK COVEY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of August, 2003.

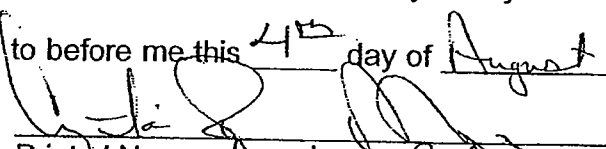
  
Printed Name: Cynthia R. Maya  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton.  
My Commission Expires: Aug 27, 2006

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, NICHOLAS JAMES ROZNAFSZKY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of August, 2003.

  
Printed Name: Cynthia R. Maya  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton.  
My Commission Expires: Aug 27, 2006

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement  
Page 9 of 11

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C.O. W.A. C.V.


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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, JAY E. MOLONEY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of August, 2003.

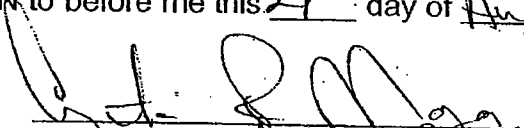
  
Printed Name: Cynthia R. Moya  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton.  
My Commission Expires: Aug 27, 2006

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, STAN SEO, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of August, 2003.

  
Printed Name: Cynthia R. Moya  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton.  
My Commission Expires: Aug 27, 2006

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 10 of 11

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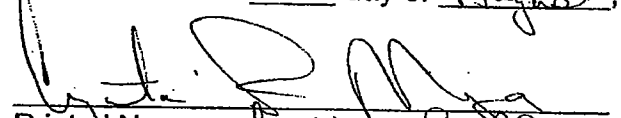
14782

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, CHERI O'BRIEN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

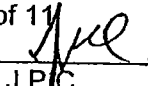


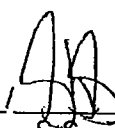
WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of August, 2003.

  
Printed Name: Cynthia R. Moya  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton.  
My Commission Expires: Aug 27 2006

Settlement Agreement, Release of All Claims,  
Covenant Not to Sue, and Hold Harmless Agreement

Page 11 of 11

Initialed:      
J.P.C. N.S.R. J.E.M. S.S.

CO WA CAVI CAV  
C.O. W.A. C.V.