RESOLUTION NO. 2012 - $\frac{138}{}$

A RESOLUTION BY THE **BOARD OF** COUNTY COMMISSIONERS OF ST. **JOHNS** COUNTY, FLORIDA. **AUTHORIZING** THE **COUNTY** ADMINISTRATOR. DESIGNEE, TO EXECUTE AGREEMENT WITH THE PGA TOUR, INC. FOR USE OF COUNTY PROPERTY FOR PARKING **DURING ANNUAL TOURNAMENTS**

RECITALS

WHEREAS, St. Johns County ("County"), a political subdivision of the State of Florida, by and through the Board of County Commissioners ("Board"), is contracting for acquisition of certain real property located in St. Johns County, Florida and more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, the County, upon successful acquisition, ultimately intends to develop the Property into a community Park; and

WHEREAS, the PGA Tour, Inc. ("Tour") is the organization of professional tournament golfers of worldwide stature that, among other things, sanctions, owns and operates (i) an annual golf tournament on the PGA TOUR known as THE PLAYERS Championship and (ii) an annual golf tournament on the Nationwide Tour known as the Winn-Dixie Jacksonville Open presented by Planters (collectively, the "Tournaments"), both held at TPC Sawgrass in Ponte Vedra Beach, Florida; and

WHEREAS, the Tournaments provide significant benefit to the County through national promotion, positive economic impact, and attracting a large number of spectators to the County; and

WHEREAS, the attraction of spectators results in a need for adequate parking facilities; and

WHEREAS, the Tour seeks to use part of the Property annually for parking during the Tournaments; and

WHEREAS, subject to the County's successful acquisition of the Property, the parties wish to enter into an Agreement memorializing the terms and conditions regarding the Tour's annual use of the Property for parking; and

WHEREAS, entering into such an Agreement serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

- **Section 1**. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.
- Section 2. The County Administrator, or designee, is hereby authorized to enter into and execute an Agreement with the Tour, governing use of the Property for annual parking during the Tournaments.
- Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.
- Section 4. This Resolution shall be effective upon execution by the Chair of the Board.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 15th day of _______, 2012.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

Chair

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ATTEST: Cheryl Strickland, Clerk

Deputy Clerk

RENDITION DATE 5/3/12

USE AGREEMENT

THIS USE	AGREEMENT ("Agreement") is made and entered into as of the
	, 2012, by and between PGA TOUR, INC., a
Maryland not for	profit corporation (the "TOUR") and ST. JOHNS COUNTY,
FLORIDA, a politi	cal subdivision of the State of Florida (the "County").

RECITALS:

- A. County is contracting to be the owner of certain real property which is located in St. Johns County, Florida and more particularly described on <u>Exhibit A</u> attached hereto (the "**Property**").
- B. The County intends to develop the Property into a community park ("Park") in the future.
- C. TOUR is the organization of professional tournament golfers of worldwide stature that, among other things, sanctions, owns and operates (i) an annual golf tournament on the PGA TOUR known as THE PLAYERS Championship (the "PLAYERS Tournament") and (ii) an annual golf tournament on the Nationwide Tour known as the Winn-Dixie Jacksonville Open presented by Planters (the "Winn-Dixie Tournament" and together with the PLAYERS Tournament, collectively, the "Tournaments"), both held at TPC Sawgrass in Ponte Vedra Beach, Florida. The Tournaments, which provide a significant benefit to the County through national promotion and positive economic impact, attract a large number of spectators resulting in a need for various areas to provide vehicular parking.
- D. TOUR desires to use part of the Property for parking for the Tournaments ("Parking") once the property has been appropriately developed for parking as set forth herein.
- E. The parties hereto are entering into this Agreement to memorialize TOUR's annual use of the Property.
- **NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TOUR and County agree as follows:
- 1. **TERM.** Subject to the County's successful final acquisition of the Property, the term of this Agreement shall be for a period commencing upon execution of this Agreement and continuing for thirty (30) years ("Term"); provided, however, that each party shall be obligated to fulfill its obligations which are accrued but unpaid or not performed as of the date of termination.
- 2. EXTENSION OF AGREEMENT. TOUR may request up to two (2) thirty (30) year extensions of this Agreement by submitting a written request to the County, at least 180 days prior to the Term expiration date. Should the County wish to extend this

Agreement, then the County may do so, by approving an extension to this Agreement, and such approval will not be unreasonably withheld.

3. PROPERTY AND ROADWAY DEVELOPMENT.

County, in its sole discretion, has the right and intention to develop the Property as a park (the "Park"), which would include, without limitation, the necessary ingress/egress to and from the Property (collectively, the "Roadways"), as well as sufficient area(s) where patrons can park their vehicles (collectively, the "Parking **Area**"). In addition, pursuant to <u>Section 4</u> below, TOUR, in its sole discretion, shall be permitted to build the Parking Area and the Roadways on the Property – even before County constructs the Park. For any improvement of the property to be made by the TOUR, the TOUR shall be required to obtain the County's prior written approval of all construction plans and expenses, which approval will not be unreasonably withheld or delayed. Regardless of which party initiates construction of the Parking Area and the Roadways, the parties shall share equally the costs associated with the Roadways and the Parking Area that the parties in good faith determine meet the needs of both parties (the "Shared Costs"). If, however, either party desires improvement(s) to the Property that are in excess of what is collectively and minimally required for the parties' to enjoy its intended use of the Property ("Excess Improvements"), the party desiring the improvement shall fully fund the cost of any such improvement(s).

4. PARKING RIGHTS.

- (a) Exclusive Use. For thirty-five (35) days each year of the Term following the construction of the Parking Area ("Parking Period") County shall make the Parking Area exclusively available to TOUR for Parking and the preparation and clean-up associated therewith, regardless of whether the Property is actually used in such manner on each such day of the Parking Period. Notwithstanding the foregoing, in no event shall TOUR be required to use the Property for such purposes, and if TOUR does not use the Property as permitted hereunder, TOUR shall not be responsible for any expense related to or liability in connection with the Property. For any period of exclusive use and as a condition therewith TOUR shall provide County with written notice at least sixty (60) days prior to intended use.
- (b) Modification to Property. After the development of the Property, County shall permit TOUR (or its affiliate(s)) at the TOUR's or its affiliate(s)' sole expense, to make certain permanent modifications to the Property to make the Property suitable for the Parking, including the permission of access for bus turnarounds and parking and vehicular ingress and egress to/from a publicly dedicated road, provided that such modifications are not inconsistent with the use of the Property (or portions thereof) as a Park; provided, however, that TOUR (or its affiliate(s)) obtain any and all necessary governmental approvals and/or permits. Additionally, during the Parking Period, County shall permit TOUR to rope and/or fence (chain or barricade) the Property and to place directional signage for the parking of cars on the Property. County shall also permit TOUR to erect shade canopies, portable restrooms, and/or place portable lighting on the Property as TOUR deems appropriate during the Parking

Period. TOUR shall be solely responsible for configuring the Property for use during the Parking Period.

- (c) **Tournament Access.** County shall permit TOUR to retain the services of a car parking service to park vehicles during the Tournaments, as TOUR deems appropriate. Any such service shall be at TOUR's sole expense.
- (d) **Repair and Restoration.** TOUR shall be responsible for repair or restoration of the Property after each Parking Period to its condition immediately preceding that year's Parking Period, normal wear and tear excepted.
- (e) *Insurance*. Except during the Parking Period and so long as County holds title to the Property, County shall be responsible for obtaining and maintaining all appropriate insurance for the Property.

5. TOUR OBLIGATIONS.

- (a) **Expenses.** Except as otherwise specifically set forth herein, TOUR shall be responsible for all expenses associated with TOUR's use and operation of the Property during each Parking Period (e.g., installation and removal of any and all ropes, barricades, restroom facilities, signage, lighting, etc.) and for restoration of the Property as set forth in Section 5(d) above.
- (b) Insurance. During the Parking Period, TOUR shall properly insure the Property as part of TOUR's tournament liability policy for the Tournaments, which will include commercial general liability insurance covering claims for injuries to people or damage to property. Upon request by County, TOUR shall provide County a certificate of insurance evidencing such coverage. TOUR shall name the County as an additional insured on all comprehensive general liability insurance policies required herein, and shall issue certificates evidencing such insurance policies to the County no less than thirty (30) days prior to the time that use and access has been granted. TOUR agrees to maintain insurance policies as follows:
- (i) Workers' compensation insurance in an amount no less than is required by Florida law; and
- (ii) Commercial general liability insurance, to include property damage and bodily injury, with a minimum policy coverage of \$1,000,000.0
- (c) **Permits/Licenses.** TOUR shall be responsible for obtaining all government assistance and approvals necessary to use or develop the Property as contemplated herein and such use will be in accordance with all applicable laws and regulations. County agrees to assist TOUR in such matters upon reasonable request of TOUR.

(d) Staffing/Use.

- (i) **Security/Collection of Fees.** At its expense, TOUR, in TOUR's sole discretion, shall provide all security and parking management staff for the Property during the Parking Period. TOUR shall be solely responsible for collecting and shall retain a fee, if any, as TOUR deems appropriate from each vehicle parked on the Property during each of the Tournaments and shall retain any and all proceeds from such fees.
- (ii) **Trash.** At its expense, TOUR shall ensure the Property has adequate trash receptacles and that such receptacles are emptied on a daily basis during the Parking Period.
- (e) **Access.** Other than County representatives, TOUR shall be solely responsible for determining and granting access to the Property during the Parking Period, including authorized personnel of the Tournaments, emergency services personnel (e.g., police, fire and medical), and persons holding valid admission badges, tickets or passes issued and as determined by TOUR.
- barricades, restroom facilities, etc.) used for the Parking will be erected in a manner that will not permanently damage the Property. TOUR shall be responsible for ensuring that the Property remains in good repair during its use by TOUR as permitted hereunder and will return the Property at the end of the Parking Period to its condition prior to such period, normal wear and tear associated with such activity excepted; provided, however, that any extensive damage (i.e., damage which requires more than twenty-four (24) hours to repair and/or is in excess of Ten Thousand Dollars (\$10,000)) shall require good faith discussion between TOUR and County as to the scope of such damage and the proposed method and timeline for repairs. County acknowledges and agrees that TOUR may obtain video tape of the Property preceding each Parking Period and following each Parking Period to be used in the determination of the scope of damage, if any, to the Property caused by the Parking.
- 6. INDEMNIFICATION. The TOUR shall defend, hold harmless, and indemnify the County from and against any and all claims, actions, damages, liability, cost, and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the TOUR, its agents, employees or contractors. To the extent permissible by law, and as limited by section 768.28 of the Florida Statutes, County shall indemnify and save TOUR harmless from any and all loss and liability on account of any damages or injury and from all liens, claims and demands caused by any negligent acts or omissions of County, its agents or employees pertaining to the County's use of the Property as provided in this Agreement.
- 7. NOTICE OF DEFAULT AND RIGHT TO CURE. Should either party default (fail to perform) under the terms of this Agreement, the non-defaulting party shall provide written notice to the defaulting party, which notice shall include a timeframe of no fewer than sixty (60) calendar days in which to cure the default. In the event the defaulting party fails to cure the default within the timeframe provided in the original notice of default (or any such other amount of time mutually agreed to by the parties in

writing), the non-defaulting party may exercise any or all of its administrative or legal remedies.

8. TERMINATION. In the event TOUR no longer desires to use the Property for Parking, TOUR, in its sole and absolute discretion, may terminate this Agreement by providing written notice to County. The County may terminate this Agreement without further notice if the TOUR defaults and does not effect a timely cure as provided in Section 7.

9. MISCELLANEOUS.

- (a) Governing Law and Venue. This Agreement is to be governed by and interpreted in accordance with the laws of the State of Florida, United States of America. Venue for any action pertaining to this Agreement shall be in St. Johns County.
- (b) **Entire Agreement.** This Agreement constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein and each party agrees that it has not relied on and is not entitled to rely on any statements, promises or representations other than those set forth herein in entering into this Agreement. This Agreement may not be modified or amended except by the mutual written agreement of the parties.
- (c) **Assignment.** The provisions hereof shall inure to the benefit, and be binding upon the successors, legal representatives and assigns, of the parties hereto; provided, however, that no party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties, which shall not be unreasonably withheld; provided further, however, that, notwithstanding the foregoing, TOUR may assign this Agreement to an affiliated entity or subsidiary for tax planning purposes without prior approval of County.
- (d) Limitation of Liability. In no event shall any party be liable to the other for special, incidental, punitive or consequential damages arising out of this Agreement.
- (e) **Waiver.** Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision of this Agreement. Any waiver must be in writing and signed by the party against whom the waiver is sought.
- (f) *Invalidity*. The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provisions were omitted insofar as the primary purpose of this Agreement is not frustrated.

(g) **Notices.** All notices, demands, requests or other communications relating to this Agreement shall be in writing and shall be mailed, first class, or transmitted by hand delivery, overnight delivery service, or telecopy (with acknowledgment of receipt), addressed as set forth below. Notice will be deemed effective as of the date of receipt, if sent by hand delivery, overnight delivery or facsimile, and five (5) calendar days following posting if sent by mail.

TOUR:

PGA TOUR, Inc.

100 PGA TOUR Boulevard Ponte Vedra Beach, FL 32082

Attn: General Counsel
Telephone: (904)285-3700
Fax: (204) 285-3700

Fax: (904) 285-9793

COUNTY:

St. Johns County, Florida 500 San Sebastian View St. Augustine, Florida 32084 Attn: County Administrator Telephone: (904) 209-0530

Fax: (904) 209-0531

- (h) **Relationship of the Parties.** The parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership or joint venture, or other fiduciary or confidential relationship between TOUR and County.
- (i) *Inurement*. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective heirs, executors, administrators, personal representatives and/or successors, and shall not inure to any other party.
- (j) **Counterparts.** This Agreement may be executed in any number of counterparts, including facsimile, and each counterpart shall be deemed an original.
- (k) **Sophistication of the Parties.** Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. No ambiguity or omission shall be construed or resolved against either party on grounds that this Agreement or any provision thereof was drafted or proposed by such party.
- (l) **Exhibits.** The parties agree that all Exhibits to the Agreement are hereby incorporated into and shall form an integral part of this Agreement.
- (m) Force Majeure / Cancellation. The term "Force Majeure" shall mean acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, riots, labor disturbances, public enemy, war, landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any

court, tribunal or judicial authority of competent jurisdiction and any other similar circumstances beyond the reasonable control of a party. Each party acknowledges and agrees that TOUR shall have the right to cancel or reschedule either of the Tournaments as a result of a Force Majeure event. In such event, (i) TOUR shall not be responsible to reimburse any expenses of County in connection with such cancellation or rescheduling and (ii) if one of the Tournaments is rescheduled, County shall use commercially reasonable efforts to cooperate with TOUR regarding use of the Property during the rescheduled dates at TOUR's sole expense.

(n) **Duties/Obligations**. The Parties' duties and obligations contained in this Agreement shall be contingent upon the County's successful final acquisition of the Property.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date and year first above written.

ST. JOHNS COUNTY	, FLORIDA
a political subdivision o	of the State of
Florida	

PGA TOUR, INC.

A Maryland not for profit corporation

	By:
By:	Name:
Name:	Title:
Title:	
ATTEST: Cheryl Strickland, Clerk	
By:	
Deputy Clerk	

Exhibit A

PROPERTY

January 26, 2012 Nocatee/St. Johns County Park Site Work Order No. 12-014.00 File No. 122A-17.00B

County Park Site

A portion of Sections 30 and 31, Township 4 South, Range 29 East, St. Johns County, Florida, also being a portion of those lands described and recorded in Official Records Book 1462, page 711, of the Public Records of said county, being more particularly described as follows:

For a point of Reference, commence at the Southwesterly corner of said Section 31; thence North 01°06'12" West, along the Westerly line of said Section 31, a distance of 3692.48 feet to its intersection with the Northerly right of way line of Nocatee Parkway, a variable width right of way as presently established, said right of way line being a curve concave Southerly having a radius of 6200.00 feet; thence Easterly, departing said Westerly line and along said curved Northerly right of way line, through a central angle of 08°52'03", an arc length of 959.55 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South 89°25'56" East, 958.60 feet; thence South 84°59'54" East, continuing along said Northerly right of way line, 963.56 feet to the Point of Beginning.

From said Point of Beginning, thence North 30°20'11" East, departing said Northerly right of way line, 41.73 feet; thence North 79°55'20" East, 46.01 feet; thence North 28°01'20" East, 51.07 feet; thence South 39°48'55" East, 10.62 feet; thence South 82°26'24" East, 70.66 feet; thence North 09°14'10" East, 34.18 feet; thence North 28°51'17" West, 31.58 feet; thence North 52°15'44" East, 58.49 feet; thence North 38°33'20" East, 78.05 feet; thence South 78°08'11" East, 76.16 feet; thence North 70°54'13" East, 70.77 feet; thence North 61°33'32" East, 68.29 feet; thence North 53°38'47" East, 76.55 feet; thence North 11°15'33" West, 52.43 feet; thence North 68°55'00" East, 83.22 feet; thence North 02°52'47" West, 29.75 feet; thence North 52°43'39" East, 86.55 feet; thence South 63°43'04" East, 45.40 feet; thence North 36°21'41" East, 78.85 feet; thence North 28°09'38" East, 72.15 feet; thence North 84°39'03" East, 52.51 feet; thence North 74°31'11" East, 30.99 feet; thence North 66°07'23" East, 61.10 feet; thence North 16°20'21" East, 94.86 feet; thence North 19°02'56" East, 52.66 feet; thence North 23°52'28" East, 101.17 feet; thence North 01°33'44" East, 98.79 feet; thence North 38°06'16" East, 34.84 feet; thence North 02°46'57" East, 56.30 feet; thence North 14°08'10" East, 73.90 feet; thence North 17°23'20" East, 100.61 feet; thence North 20°53'45" East, 49.17 feet; thence North 21°03'22" East, 41.81 feet; thence North 41°24'27" West, 40.15 feet; thence South 34°20'09" West, 111.69 feet; thence South 46°01'45" West, 59.02 feet; thence South 86°57'14" West, 79.72 feet; thence South 75°24'17" West, 54.04 feet; thence North 29°37'25" West, 63.34 feet; thence North 47°47'22" West, 25.09 feet; thence North 08°19'59" East, 35.87 feet; thence North 19°28'58" East, 82.53 feet; thence North 15°42'01" East, 77.71 feet; thence South 19°23'50" East, 74.78 feet; thence South 58°28'15" East, 67.20 feet; thence North 71°10'44" East, 75.16 feet; thence North 02°58'43" East, 69.17 feet; thence North 33°28'13" East, 80.46

feet; thence North 26°00'59" East, 64.57 feet; thence North 02°09'27" West, 77.14 feet; thence North 29°23'41" East, 62.46 feet; thence North 16°22'28" East, 34.73 feet; thence North 42°42'17" East, 73.75 feet; thence North 33°41'34" East, 26.09 feet; thence North 03°49'47" East, 80.52 feet; thence North 10°49'53" West, 88.87 feet; thence North 03°14'34" West, 85.79 feet; thence North 32°21'52" West, 83.60 feet; thence North 14°14'23" East, 55.16 feet; thence North 14°21'51" West, 91.51 feet; thence North 19°23'46" West, 24.32 feet; thence North 87°27'49" East, 45.31 feet; thence South 44°07'48" East, 63.98 feet; thence South 63°51'36" East, 90.93 feet; thence South 47°59'08" East, 78.63 feet; thence South 48°19'30" East, 61.35 feet; thence South 27°08'47" East, 64.69 feet; thence South 50°49'21" East, 68.55 feet; thence South 65°18'41" East, 66.76 feet; thence South 46°38'23" East, 74.63 feet; thence South 28°38'20" East, 102.69 feet; thence South 05°16'40" East, 74.68 feet; thence South 19°19'26" East, 62.46 feet; thence South 21°47'30" East, 57.73 feet; thence South 01°37'37" West, 75.20 feet; thence South 07°39'11" East, 88.07 feet; thence South 08°56'26" East, 105.75 feet; thence South 27°02'23" East, 66.06 feet; thence South 03°35'51" West, 75.52 feet; thence South 27°04'28" West, 64.76 feet; thence South 19°45'27" West, 82.96 feet; thence South 36°01'21" East, 81.68 feet; thence South 48°30'02" East, 83.21 feet; thence South 80°44'19" East, 50.52 feet; thence South 34°55'14" East, 49.26 feet; thence South 10°17'31" West, 93.12 feet; thence South 14°56'49" West, 58.59 feet; thence South 36°27'16" East, 98.25 feet; thence South 32°55'04" East, 58.22 feet; thence South 24°09'49" East, 52.94 feet; thence South 50°38'15" East, 41.00 feet; thence South 68°17'47" West, 572.70 feet; thence South 39°50'51" East, 36.00 feet; thence South 89°34'13" East, 33.86 feet; thence South 21°44'08" East, 66.15 feet; thence South 06°31'22" West, 48.68 feet; thence South 13°51'39" East, 78.37 feet; thence South 11°46'13" East, 103.85 feet; thence South 21°24'13" East, 51.31 feet; thence North 72°20'28" West, 16.88 feet, thence South 36°31'21" East, 45.10 feet; thence South 16°57'53" East, 73.98 feet; thence South 16°07'44" East, 16.59 feet to a point lying on said Northerly right of way line of Nocatee Parkway; thence Westerly along said Northerly right of way line the following 4 courses: Course 1, thence Westerly along the arc of a curve concave Northerly having a radius of 4882.00 feet, through a central angle of 00°38'25", an arc length of 54.55 feet to the point of tangency of said curve, said are being subtended by a chord bearing and distance of North 86°25'55" West, 54.55 feet; Course 2, thence North 86°05'43" West, 1042.41 feet; Course 3, thence North 87°14'32" West, 194.71 feet; Course 4, thence North 84°59'54" West, 312.55 feet to the Point of Beginning.

Containing 41.41 acres, more or less.

SKETCH TO ACCOMPANY DESCRIPTION OF

A PORTION OF SECTIONS 30 AND 31, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, ALSO BEING A PORTION OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1462, PAGE 711, OF THE PUBLIC RECORDS OF SAID COUNTY,

BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.

