



Interoffice Memorandum

Date February 28, 2017

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Mark V. Massaro P.E., Director, Public Works Department

**CONTACT PERSON: Diana M. Almodovar, P. E., Manager
Development Engineering Division**

PHONE NUMBER: (407) 836-7974

SUBJ: Use Agreement between Dayalal G. Bharadva and Orange County

Mr. Dayalal G. Bharadva, homeowner of the property located at 9900 Kilgore Road, Orlando, FL 32836 desires to enter into a Use Agreement with Orange County to obtain a Right-of Way Utilization Permit from the County, whereby the homeowner, subject to the terms and conditions of this Agreement, may be permitted to keep and maintain the paver driveway and path, the concrete apron of the driveway, a portion of a septic tank drainfield, the retaining wall, the light poles, and landscaping.

The Public Works Engineering Division, Risk Management, and the County Attorney's Office have reviewed the agreement and find the terms acceptable.

Action Requested: **Approval and execution of Use Agreement by and between Dayalal G. Bharadva and Orange County for Pavers, Landscaping, Irrigation, Retaining Wall, Light Poles and a Portion of a Septic Tank Drainfield. District 1.**

MVM/DMA/sa

Attachments

BCC Mtg. Date: March 7, 2017

Prepared by and after recording return to:

Nicole Latham Carolan, Esq.
Winderweedle, Haines, Ward
& Woodman, P.A.
329 Park Avenue North, Second Floor
Winter Park, FL 32789

Tax parcel ID No.: 04-24-28-0000-00-011

**USE AGREEMENT BETWEEN
DAYALAL G. BHARADVA AND ORANGE COUNTY**

THIS AGREEMENT (the "Agreement"), is entered into by and between DAYALAL G. BHARADVA, an individual and property homeowner ("Homeowner") with a mailing address at 9900 Kilgore Road, Orlando, FL 32836, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("County") with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

WHEREAS, Homeowner has constructed a single-family residence, garage and improvements on a certain parcel of real property (the "Property"), which he owns in fee simple, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, and it is located in the unincorporated area of Orange County;

WHEREAS, a portion of the real property subject to the Right-of-Way Agreement dated January 14, 1948, and recorded in Official Records Book 781, Page 690, Public Records of Orange County, Florida (the "Right-of-Way Agreement") transverses the eastern portion of the Property in the area shown on the sketch and legal description on **Exhibit "B"** attached hereto and incorporated herein by reference (the "Use Agreement Area");

WHEREAS, Homeowner has filed a petition with County to vacate the remainder of the real property subject to the Right-of-Way Agreement that transverses the Property and that lies outside the Use Agreement Area, and such petition to vacate is known as PTV No. 15-04-11;

WHEREAS, PTV 15-04-11 is subject to review and approval by the Orange County Board of County Commissioners at a public hearing;

WHEREAS, Homeowner has also filed a request with County for zoning variances for the Property as described in Case No. VA-17-01-190;

WHEREAS, the variances described in Case No. VA-17-01-190 are subject to review and approval by the Board of County Commissioners at a public hearing;

WHEREAS, Homeowner desires to obtain a Right-of-Way Utilization permit (the "Permit") from County, whereby Homeowner, subject to the terms and conditions of this Agreement, may be permitted to keep and maintain and, to the extent deemed necessary, repair and/or replace, the following improvement(s), or portions thereof, that lie within the Use Agreement Area: the paver driveway and path, the concrete apron of the driveway, the septic tank drainfield, the retaining wall, the light poles, and the trees, all as reflected on the As Built Survey attached hereto as **Exhibit "C"** and incorporated herein by reference (the "Survey"), as well as any irrigation lines and sprinkler heads, low voltage lighting, and other landscaping existing as of the date of this Agreement that are not reflected on the Survey (collectively, the "Improvements");

WHEREAS, County requires that Homeowner perpetually and continuously maintain, and to the extent deemed necessary, repair and replace such Improvements, and be solely responsible for the fulfillment of certain commitments and covenants to assure the perpetual and

continuous maintenance, repair and replacement of any such Improvements, which commitments and covenants are more particularly set forth herein;

WHEREAS, Homeowner retains the right to remove and not repair or replace any Improvement at his sole discretion; and

WHEREAS, because in the past Homeowner and County have had dispute as to the interpretation of the Right-of-Way Agreement and to the ownership and rights of either party to the property subject to the Right-of-Way Agreement, Homeowner shall execute and deliver to County a General Release in the form attached hereto as **Exhibit "D"** and incorporated herein by reference.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and form a material part of this Agreement.

2. **RIGHT-OF-WAY UTILIZATION PERMIT.** Any such Permit issued by County to Homeowner shall be subject to the terms of this Agreement. Homeowner shall not, while maintaining, repairing, removing or replacing any of the Improvements, materially damage or disturb any portion of the Use Agreement Area without County's prior written approval and County's prior written approval of a plan to restore the damaged or disturbed portion of the Use Agreement Area.

3. **IMPROVEMENTS.** Any improvements not included within the description of Improvements in the recital hereinabove, such a fence or wall within the Use Agreement Area fronting Kilgore Road, shall not be permitted under this Agreement unless such description of Improvements is expanded or revised by an amendment or modification to this Agreement. Also,

the Improvements shall be maintained, repaired, removed and replaced in such a manner as will not create a safety hazard in the Use Agreement Area, with County determining in its reasonable discretion whether a safety hazard has been created. If County determines, in its reasonable discretion, that any of the Improvements, including the maintenance, repair, removal or replacement thereof, presents a safety hazard, then Homeowner, at its sole expense and at no cost to County, shall eliminate the safety hazard, to the reasonable satisfaction of County.

4. **REMOVAL/RELOCATION AT REQUEST OF COUNTY.** If, in the reasonable opinion of County, any of the Improvements interfere with any construction, reconstruction, alteration, improvements, or maintenance which County desires to perform on, around, or under the Use Agreement Area pursuant to the Right-of-Way Agreement, or if County requests removal for any reason provided for in this Agreement, then Homeowner, upon receipt of a written notice from County, shall remove or relocate the Improvements as requested by County, and to County's reasonable satisfaction, within ninety (90) days of receipt of such notice. Any such removal or relocation or removal of the Improvements shall be at the sole expense of Homeowner.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, Homeowner shall defend, indemnify, and hold harmless County from and against all claims, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of, or resulting from, the Improvements and the performance of Homeowner's rights, responsibilities and operations under this Agreement. Homeowner shall indemnify and hold harmless County (and any governmental body or utility authority properly using the Use Agreement Area) from and against all expenses, costs, or claims for any damages to the Improvements that may result from the use of the right-

of-way by County or other governmental body or authority due to maintenance, construction, installation, or other proper use within the Use Agreement Area.

6. **INSURANCE.** Throughout the duration of this Agreement, including the initial period and any extensions thereto, Homeowner shall obtain and possess Homeowner's insurance coverage, with personal liability coverage, for all responsibilities and operations under this Agreement. The personal liability limits shall be not less than \$300,000.00 Combined Single Limits (CSL) or its equivalent. Prior to the date of approval of this Agreement by County, Homeowner shall provide Certificates of Insurance to County to verify such coverage. The name of the Property and the type and amount of coverage provided shall be clearly stated on the face of the Certificate of Insurance. Also, the insurance coverage shall name "Orange County, Florida" as an additional insured, and shall contain a provision that forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to County. Moreover, Homeowner shall require and ensure that each of its contractors and subcontractors maintains insurance until the completion of their work under any contract associated with Homeowner's responsibilities and operations under this Agreement. Failure of Homeowner to maintain insurance coverage for himself or for any other persons or entities for whom he is responsible or to ensure that his contractors and subcontractors maintain coverage shall not relieve Homeowner of any contractual responsibility, obligation, or liability.

7. **RECORDING.** This Agreement shall be recorded by County in the Public Records of Orange County, Florida within thirty (30) days of its execution by County. Promptly upon his execution of this Agreement, Homeowner shall tender a payment to County in an amount equal to the cost of recording this Agreement.

8. **COVENANTS RUNNING WITH THE LAND.** The provisions, restrictions and covenants of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, and their heirs, personal representatives, successors, and assigns. Homeowner declares that the Property described in this Agreement and any portion thereof shall be held, sold, and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by County and its respective legal representatives, successors, and assigns.

9. **DURATION; TERMINATION.** The provisions, restrictions, and covenants of this Agreement shall run with and bind the land for a period of twenty-five (25) years from the date this Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless and until a written instrument agreeing to revoke said provisions, restrictions, and covenants is approved by the Orange County Board of County Commissioners and Homeowner or his successor in title. No such agreement to revoke shall be effective until such written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida. This Agreement and the Permit may be terminated and revoked by the Board of County Commissioners if Homeowner or his successor in title fails or refuses to fulfill his responsibilities under this Agreement, provided that, before terminating or revoking the Agreement and Permit, County shall provide written notice to Homeowner or his successor in title informing him of the nature of the breach and allowing Homeowner thirty (30) days to cure the breach.

10. **AMENDMENT.** The terms, provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by the Board of County Commissioners and Homeowner or his successor in title. No such modification or amendment shall be effective until such written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.

11. **COMPLIANCE WITH APPLICABLE LAWS.** Homeowner shall comply with all applicable laws, statutes and ordinances, including the Orange County Right-of-Way Utilization Regulations.

12. **DISCLAIMER OF COUNTY RESPONSIBILITY.** Nothing contained herein shall create any obligation on the part of County to maintain, repair, remove, or replace any of the Improvements, or to participate in the maintenance, repair, removal or replacement of any of the Improvements.

13. **EFFECTIVE DATE.** This Agreement shall take effect only upon the granting of PTV No. 15-04-11 by the Board of County Commissioners (in its sole discretion), the approving of the zoning variances requested in Case No. VA-17-01-190 by the Board of County Commissioners (in its sole discretion), and Homeowner's execution and delivery to County of a General Release in the form attached hereto as **Exhibit "D."**

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

COUNTY

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners



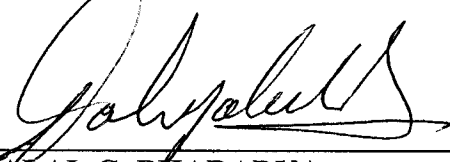
By: *Teresa Jacobs*
Teresa Jacobs,
Orange County Mayor

Date: *March 8*, 2017

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

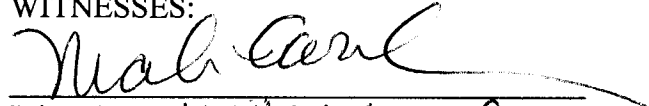
By: *Jessica Vaupel*
for Deputy Clerk

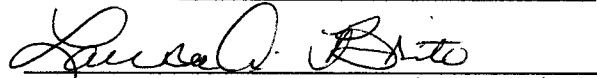
HOMEOWNER


DAYALAL G. BHARADVA

Date: FEB/27/, 2017

WITNESSES:



Print Name: NICOLE LATHAM CAROLAN


Print Name: LAURA A. BRITO

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by DAYALAL G. BHARADVA, who is known by me to be the person described herein and who executed the foregoing, this 27th day of February, 2017. S/he is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 27th day of February, 2017.


Notary Public
Print Name: NICOLE LATHAM CAROLAN

My Commission Expires: 9/6/18



Exhibit "A"

Legal Description for Property

That part of the Southeast Quarter of Section 4, Township 24 South, Range 28 East, Orange County, Florida, being described as follows: From a point on the East line of and 537.72 feet North 00 degrees 22 minutes 00 seconds East of the Southeast corner of said Southeast Quarter; run West 277.25 feet to the Point of Beginning; said point being on the Westerly Right of Way line of Kilgore Road; thence continue West 72.00 feet; thence South 00 degrees 22 minutes 00 seconds West 178.86 feet; thence run East 163.91 feet to the aforesaid Westerly Right of Way line of Kilgore Road, thence run Northwesterly along said Right of Way line 200.43 feet to the Point of Beginning. Together with a private easement and privilege in common with others which shall run with the above described land forever for the respective appropriate purposes of road, picnics, fishing, boating and swimming over the following described land and water, to-wit: Begin 203.86 feet North (North 00 degrees 22 minutes East) and 1119.25 feet West of the Southeast corner of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 4, Township 24 South, Range 28 East, run East 842 feet to county road; thence Northwesterly along said road to a point situated 100 feet South of North line of South Half of the Southeast Quarter of the Southeast Quarter of said Section; thence West parallel with said North line to the West line of the Southeast Quarter of the Southeast Quarter of said Section; thence South to a point situated 101.93 feet North of the Southwest corner of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of said Section; thence East parallel with said South line to a point situated South 54 degrees 09 minutes West from the Point of Beginning; thence North 54 degrees 09 minutes East to the Point of Beginning, with bearings based on said South line as true East and West.

Exhibit "B"

Legal description and sketch of description for the Use Agreement Area

Sketch and Description
Proposed Right-of-Way Remainder
Parcel at 9900 Kilgore Road,
Orlando, Florida

Sheet 1 of 2

Property Description

A strip of land being 17.00 feet wide and also being a portion of a 66.00 foot wide right of way described in that certain Right-of-Way Agreement recorded in Deed Book 781, Page 690, Public Records of Orange County, Florida that lies within a parcel of land described in that certain Warranty Deed recorded in Official Records Book 10914, Page 8205, Public Records of Orange County, Florida, lying in the Southeast 1/4 of Section 4, Township 24 South, Range 28 East, Orange County, Florida.

Being more particularly described as follows:

COMMENCE at the Southeast corner of Section 4, Township 24 South, Range 28 East, Orange County, Florida; thence North 00°22'00" East, along the East line of the Southeast 1/4 of said Section 4, a distance of 537.72 feet to a point of intersection with the Easterly extension of the North line of said parcel of land described in Warranty Deed recorded in Official Records Book 10914, Page 8205; thence, departing the East line of the Southeast 1/4 of said Section 4, North 90°00'00" West, along the Easterly extension of and the North line of said parcel of land, a distance of 349.25 feet to the Northwest corner of said parcel of land; thence South 90°00'00" East, along the North line of said parcel of land, a distance of 53.94 feet to a point on a line that is 16.00 feet easterly of and parallel to said Westerly right-of-way line of Kilgore Road according to said Right-of-Way Agreement recorded in Deed Book 781, Page 690 and the POINT OF BEGINNING; thence continue South 90°00'00" East, along the North line of said parcel of land, a distance of 18.06 feet to the Northeast corner of said parcel of land; thence South 26°54'03" East, along the Easterly line of said parcel of land, a distance of 200.56 feet to the Southeast corner of said parcel of land; thence North 90°00'00" West, along the South line of said parcel of land, a distance of 18.06 feet; thence North 26°54'03" West a distance of 200.56 feet to the POINT OF BEGINNING.

Contains 3,232 square feet or 0.072 acres more or less.

Notes

1. THIS IS NOT A BOUNDARY SURVEY. The purpose of this sketch and description is to depict and describe a portion of a 66.00 foot wide right of way described in that certain Right-of-Way Agreement recorded in Deed Book 781, Page 690, Public Records of Orange County, Florida that lies within a parcel of land described in that certain Warranty Deed recorded in Official Records Book 10914, Page 8205, Public Records of Orange County, Florida.

2. Bearings shown hereon are based on the East line of the Southeast quarter of Section 4, Township 24 South, Range 28 East being North 00°22'00" East according to the parcel of land described in that certain Warranty Deed recorded in Official Records Book 10914, Page 8205, Public Records of Orange County, Florida.

3. This sketch meets the Standard of Practice set forth in Florida Administrative Code Rule 5J-17, pursuant to Florida Statute Chapter 472.

4. Legend and Abbreviations

R/W - denotes Right of Way

O.R. - denotes Official Records Book

• - denotes change of direction

P.B. - denotes Plat Book

Pg. - denotes page

D.B. - denotes Deed Book



Benchmark Surveying & Mapping, LLC
Certificate of Authorization Number - LB 7874

Post Office Box 771065, Winter Garden, Florida 34777-1065
3110 Red Fox Run, Kissimmee, Florida 34746
(407) 654-6183 - www.benchmarksurveyingandmapping.com

985.01RW REMAINDER

Project #

09/19/16

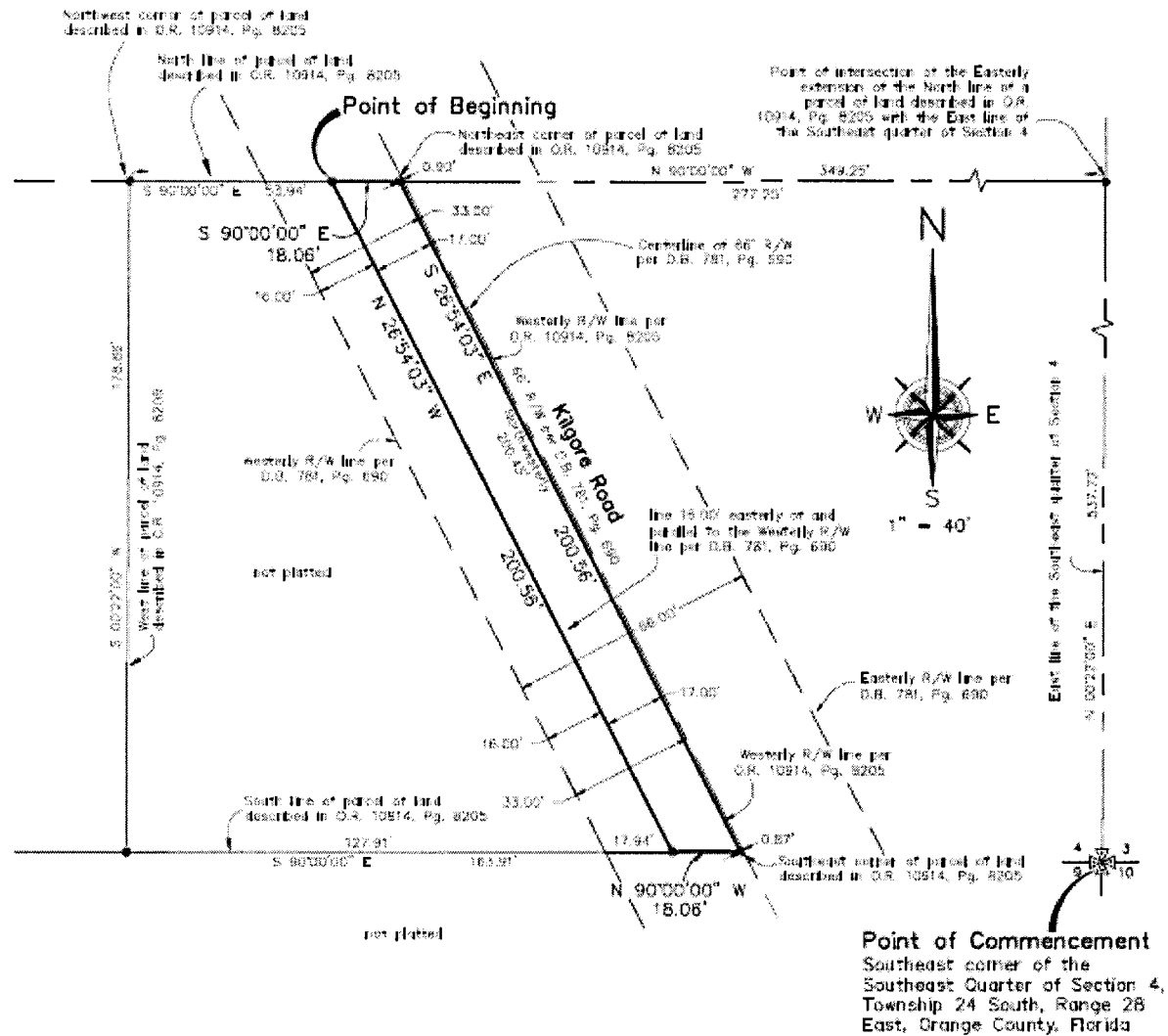
Date


Prepared For:
Old Republic Insurance Group

Prepared By:

Billy Joe Jenkins, Jr.
Billy Joe Jenkins, Jr. PSM # 5205
Professional Surveyor and Mapper

Sheet 2 of 2



 Benchmark Surveying & Mapping, LLC Certificate of Authorization Number — LB 7674 Post Office Box 771065, Winter Garden, Florida 34777-1065 3110 Red Fox Run, Kissimmee, Florida 34746 (407) 654-6183 — www.benchmarksurveyingandmapping.com	985.01RW REMAINDER
	Project # 09/19/16 Date

AS BUILT SURVEY

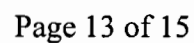


Exhibit "D"

GENERAL RELEASE FORM

KNOW ALL MEN BY THESE PRESENTS:

THAT, DAYALAL G. BHARADVA (hereinafter referred to as "Releasor"), on behalf of himself, for and in consideration of the sum of TEN DOLLARS (\$10.00) received from ORANGE COUNTY, a charter county and political subdivision of the State of Florida (hereinafter collectively referred to as the "Released Party"), and other good and valuable consideration, the receipt whereof is hereby acknowledged,

RELEASOR HEREBY remises, releases, acquits, satisfies, and forever discharges the Released Party and its officers, directors, employees, agents, successors and assigns, of and from any and all manners of action and actions, causes of action and actions, suits, debts, dues, sums of money, accounts, reckonings, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, executions, claims and demands whatsoever, in law or equity, which Releasor has or may have against the Released Party, for, upon or by reasons of any matter directly or indirectly related to the parties' ownership and use of the land pursuant and subject to the Right-of-Way Agreement recorded in Official Records Book 781, Page 690, Public Records of Orange County, Florida (the "Agreement"), except (a) the rights, obligations and liabilities of the parties to that certain Use Agreement between Dayalal G. Bharadva and Orange County dated on even date herewith, and (b) the rights of Releasor arising from Orange County's vacation of that certain land that was vacated by Orange County pursuant to that certain Petition to Vacate # 15-04-011.

This release shall be binding upon and inure to the benefit of the parties and their officers, directors, shareholders, employees, successors assigns, executors, administrators, personal representatives and heirs.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2017.

DAYALAL G. BHARADVA

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me this _____ day of _____, 2017, by DAYALAL G. BHARADVA. He is personally known to me or has produced _____ as identification and did / did not take an oath.

NOTARY PUBLIC

Sign: _____
Printed Name: _____
My commission Expires: _____