

**BUSINESS INCENTIVE AGREEMENT FOR RETENTION OF JOBS  
BETWEEN  
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION  
AND HEB GROCERY COMPANY, LP**

This Business Incentive Agreement for the Retention of Jobs (this "Agreement") is entered into between the Corpus Christi Business and Job Development Corporation, a Type A Corporation authorized under Chapter 504 of the Texas Local Government Code ("Corporation") and HEB Grocery Company, LP ("HEB"), a Texas limited partnership. (The Corporation and HEB are sometimes each individually referred herein as a "Party" and collectively as the "Parties").

**WHEREAS**, the Texas Legislature in Section 4A of Article 5190.6, Vernon's Texas Revised Civil Statutes (Development Corporation Act of 1979), now codified as Subtitle C1, Title 12, Texas Local Government Code, Section 504.002 et seq, (the "Act"), empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

**WHEREAS**, on November 5, 2002, residents of the City of Corpus Christi ("City") passed Proposition 2, New and Expanded Business Enterprises, which authorized the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-eighth of one percent to be imposed for 15 years;

**WHEREAS**, the 1/8th cent sales tax authorized by passage of Proposition 2 was subsequently enacted by the City Council and filed with the State Comptroller of Texas, effective April 1, 2003, to be administered by the Corporation;

**WHEREAS**, the Corporation exists for the purposes of encouraging and assisting entities in the creation and retention of jobs for the citizens of Corpus Christi, Texas;

**WHEREAS**, the Board of Directors of the Corporation ("Board"), on September 10, 2007, amended the Corporation's Guidelines and Criteria for Granting Business Incentives, which the City Council incorporated into the City of Corpus Christi Economic Development Incentive Policies 2009-2011 on November 17, 2009, and which were subsequently amended on November 9, 2010 (the "Type A Guidelines");

**WHEREAS**, Section 501.073 of the Act requires the City Council to approve all programs and expenditures of the Corporation;

**WHEREAS**, HEB manufactures, stores and distributes bread products at its facility located at 201 McCampbell Road, 222 McCampbell Road and 102 McBride Lane within the city limits of Corpus Christi (the "Manufacturing Facility");

**WHEREAS**, HEB proposes to invest approximately \$17.7 million to the Manufacturing Facility over a five year period;

**WHEREAS**, on May 21, 2012 the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to HEB, through this Agreement, to be used by HEB to improve McCampbell Road and other public infrastructure, from Agnes Street to a distance approximately 1,500 linear feet north of Agnes Street, using concrete road construction materials (the "McCampbell Road Project"), which will allow HEB to

upgrade its Manufacturing Facility thus permitting: (a) the retention of 388 existing full-time jobs at the Manufacturing Facility with an estimated annual average salary of \$32,275 and (b) an annual payroll, including wages paid and expenditures made for employee benefits, of not less than \$12,522,700 ("Annual Payroll").

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and HEB agree as follows:

1. **Effective Date.** The effective date of this Agreement (the "Effective Date") is the latest date that either party executes this Agreement.

2. **Term.** The term of this Agreement shall commence on the Effective Date and terminate on the later to occur of: (A) the date upon which all payments due to HEB from the Corporation pursuant to this Agreement have been paid; or (B) such date of termination as provided herein (the "Term").

3. **Economic Development Benefits.** HEB's planned capital investment, retained jobs and required payroll amounts are detailed in "Exhibit A," which is attached hereto and incorporated into this Agreement. The Parties agree that "Exhibit A" is provided for informational purposes only, and the obligations of the Parties hereto are specified in the body of this Agreement, only.

#### 4. **HEB Performance Standards.**

A. **Definition of Job and Full-Time Job.** A "job" is defined in the Type A Guidelines as a full-time employee, contractor, consultant, or leased employee who has a home address in the Corpus Christi MSA (a "Full-Time Job").

B. **Living Wage Requirement.** In order to count as a Full-Time Job, the wage received for each Full-Time Job must be an amount equal to or greater than the annual wage poverty level for a family of three, as established by the U.S. Department of Health and Human Services Poverty Guidelines, divided by 2,080 hours per year for that particular year during the Term of this Agreement.

C. **Annual Payroll Requirement.** HEB shall confirm and document to the Corporation that the Annual Payroll required as a result of funding provided by this Agreement is maintained throughout the Term by HEB (the "Annual Payroll Requirement").

D. **Health Insurance.** To qualify for the grants provided herein, HEB shall certify that it offers a health insurance program as a benefit option for its employees filling Full-Time Jobs at the Manufacturing Facility during the Term of this Agreement.

E. **Annual Report Requirement.** Each year, HEB shall provide Corporation with a sworn certificate by a designated official of HEB ("Annual Report") certifying (i) the actual payroll of the Manufacturing Facility; (ii) that those employees (both full-time and part-time) at the Manufacturing Facility collectively receive cash and employee benefits representing a total compensation equal to no less than \$12,522,700; and (iii) that the employees filling Full-Time Jobs were offered health insurance benefits as required herein. The Annual Report shall be current for the prior year ending on October 31, and shall be provided by HEB to the Corporation

between November 1 and December 31 of each respective year during the Term. HEB may provide each Annual Report in a form similar that attached hereto as "**Exhibit B.**" Within ten (10) business days following receipt of a written request of the Corporation, HEB shall provide the Corporation and/or its designee with access to view Records at the HEB Headquarters in San Antonio reasonably sufficient to confirm the accuracy of the Annual Report. For purposes of this Agreement, "Records" shall be limited to a listing of the positions at the Manufacturing Facility and the respective salary amounts paid during the prior period for which the certification was made.

- F. **McC Campbell Road Construction.** During the Term of this Agreement, HEB shall fund, design and construct the McC Campbell Road Project, subject to Force Majeure. Completion of the McC Campbell Road Project shall be evidenced by the acceptance of the road work by the City.
- G. **Utilization of Local Contractors and Suppliers.** HEB shall use Commercially Reasonable Efforts to utilize Local Contractors to construct the McC Campbell Road Project, subject to the requirements herein (the "Local Requirement"), with a goal of 50% of the total dollar amount of all construction contracts and material supply agreements being paid to Local Contractors. HEB further agrees to cause its general contractor for the McC Campbell Road Project to solicit bids and/or proposals for supplies or subcontracted services from Local Contractors. For the purposes of this Agreement, the term "Local Contractor(s)" as used to describe manufacturers, suppliers, contractors, and labor includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.
- H. **Utilization of Disadvantaged Business Enterprises ("DBE").** HEB shall use Commercially Reasonable Efforts to utilize DBE contractors and suppliers that are determined to be disadvantaged business enterprises, including minority business enterprises women-owned business enterprises and historically-underutilized business enterprises (each and collectively, "DBEs") to construct the McC Campbell Road Project, subject to the requirements herein (the "DBE Requirement"), with a goal of 30% of the total dollar amount of all construction contracts and material supply agreements being paid to DBEs, with a priority made for DBEs which are also Local Contractors. HEB further agrees to cause its general contractor for the McC Campbell Road Project to solicit bids and/or proposals for supplies or subcontracted services from DBEs. In order to qualify as a DBE hereunder, the firm must be certified by the City, the Regional Transportation Authority or another governmental entity in the jurisdiction of the home office of the business as complying with state or federal standards for qualification as such an enterprise.
- I. **Compliance Standards.** For purposes of this Section, "Commercially Reasonable Effort" shall mean the solicitation of bids and/or proposals to construct the McC Campbell Road Project from one or more contractors for the purpose of achieving the Local Requirement and the DBE Requirement.
- J. **Maintenance of Records.** HEB agrees, during the Term of this Agreement, to maintain written records documenting the efforts of HEB to comply with the Local Requirement and DBE Requirement, and to provide an annual report to the

Corporation which shall determine if HEB has complied with the Local Requirement and DBE Requirement.

5. **Corporation Performance Requirements.** Provided that HEB complies with the terms of this Agreement, the Corporation shall reimburse HEB for actual, documented expenses incurred to design and construct the McCampbell Road Project (the "Actual Project Expenses"). Subject to 5(B) herein, the Corporation's reimbursement of the Actual Project Expenses shall be made to HEB in five (5) annual payments (each a "Corporation Grant") up to a maximum amount of \$850,000 (the "Maximum Reimbursement Amount").

**A. Calculation of Corporation Grants after Construction Period.** Within sixty (60) days following the completion of the McCampbell Road Project, HEB shall deliver a report to the Corporation that documents the Actual Project Expenses (the "Project Expense Report"). The Project Expense Report shall be certified by a designated officer of HEB, and shall provide sufficient detail for the Corporation to reasonably verify the Actual Project Expenses. Within Thirty (30) business days following receipt of the Project Expense Report, the Corporation shall review said report and respond in writing either: (a) accepting the Project Expense Report as true and correct; (b) objecting to one or more expenses listed in the Project Expense Report; and/or (c) requesting additional records in order to verify the Project Expense Report. Should the Corporation not respond to HEB's submittal of the Project Expense Report in writing within this period, the certified Actual Project Expenses shall be deemed by both Parties as accurate for purposes of this Agreement. The amount of the Corporation Grants shall be determined by subtracting any Grant amounts already paid to HEB from the dollar amount of the Actual Project Expenses, and dividing the difference by the number of remaining years within the Term of this Agreement. For illustrative purposes only:

Actual Project Expenses	\$775,000	
Less: Grant amount already paid	(\$170,000)	(Year 1)
Difference	\$605,000	
Number of Remaining Years	4	
Amount of Corporation Grants	\$151,250	(Years 2 through 5)

**B. Reduction in Corporation Grant.** For each annual reporting period during the Term of this Agreement, if HEB achieves the Annual Payroll Requirement, the Corporation shall pay the Corporation Grant to HEB for that particular year (the "Expected Payment"). Should HEB fail to achieve the Annual Payroll Requirement in any annual reporting period during the Term of this Agreement (subject to Force Majeure), HEB shall receive a reduced percentage of the Expected Payment otherwise due for that particular year. Such reduction will be equal to the percentage that HEB's actual job retention is below the Annual Payroll Requirement. However, during any year, if HEB fails to retain at least seventy percent (70%) of the Annual Payroll Requirement, then Corporation may elect to withhold the Expected Payment for that particular year, only. By way of example: if HEB only retains eighty-five percent (85%) of the Annual Payroll Requirement in a particular reporting year, the Expected Payment shall be reduced by fifteen percent (15%).



**C. Payment Date.** The Corporation will disburse the Corporation Grant to HEB based on the requirements above, payable not later than January 31 of each year, subject to the terms and conditions of this Agreement.

**6. Warranties.** HEB warrants and represents to Corporation the following:

- A. HEB is a Texas limited partnership, duly organized, validly existing, and in good standing under the laws of the State of Texas, and has the necessary authority to carry on its business as presently conducted in Corpus Christi, Texas.
- B. HEB has the authority to enter into and perform and will perform the terms of this Agreement.
- C. The person executing this Agreement is duly authorized to execute this Agreement on behalf of HEB.
- D. HEB does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, HEB is convicted of a violation under U.S.C. Section 1324a(f), HEB shall repay the payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120<sup>th</sup> day after the date HEB receives notice from the City requesting such repayment.

**7. Compliance with Laws.** During the Term of this Agreement, HEB shall observe and obey all applicable laws, ordinances, regulations with respect to the Manufacturing Facility and the McCampbell Road Project.

**8. Non-Discrimination.** HEB covenants and agrees that HEB will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Manufacturing Facility, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

**9. Force Majeure.** If the Corporation and/or HEB are prevented, wholly or in part, from fulfilling either of their respective obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control ("Force Majeure"), then the obligations of the Corporation and/or HEB (as applicable) shall be temporarily suspended during continuation of the Force Majeure. If either party's obligation is affected by any of the causes of Force Majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the Force Majeure as soon as practical after the occurrence of the cause or causes relied upon.

**10. Assignment.** HEB may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the Corporation and City; provided, however that HEB may assign all or any part of its rights, privileges and duties to any successor or affiliate of HEB. Except as expressly permitted above, any attempted assignment without approval is void, and constitutes a breach of this Agreement.

11. **Indemnity.** *HEB covenants to fully indemnify, save, and hold harmless the Corporation, the City, their respective officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims, demands, and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage, which arise out of HEB activities conducted under this Agreement, except any injury, loss or damage caused by the sole or contributory negligence of any or all of the Indemnitees. HEB must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based on those claims and demands, and pay all charges of attorneys and all other cost and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.*

12. **Events of Default by HEB.** Notwithstanding other provisions herein, the following events shall constitute a default under this Agreement by HEB, subject to the Cure Period:

- A. Any representation or warranty on behalf of HEB contained in this Agreement or in any financial statement, certificate, report, or written opinion submitted to the Corporation in connection with this Agreement was deliberately misleading in any material respect when made;
- B. HEB makes an assignment of this Agreement for the benefit of creditors.
- C. HEB files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- D. If any property taxes owed by HEB on the Manufacturing Facility become delinquent, and HEB fails to timely and properly follow the legal procedures for protest or contest.
- E. HEB converts the Manufacturing Facility to another business use during the Term of this Agreement without the prior approval of the Corporation.

13. **Default by Either Party.** Should either Party fail to comply with the terms and conditions of this Agreement (subject to Force Majeure) and such failure is not cured and corrected within sixty (60) days following receipt of written notice from the non-defaulting Party (the "Cure Period"), such failure shall be deemed an "Event of Default."

14. **Results of Uncured Default by HEB.** After exhausting good faith attempts to address any default during the Cure Period or extended periods provided herein and taking into account any extenuating circumstances that might have occurred through no fault of HEB, as determined by the Corporation, the following actions may be taken for any default that remains uncured after the Cure Period.

- A. The Agreement may be terminated as the Corporation's sole remedy.
- B. HEB may not be held liable for any consequential damages.

15. **No Waiver.**

- A. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, by either Party constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.

B. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, by either Party justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement.

C. Any waiver or indulgence of default by either Party may not be considered an estoppel against the non-defaulting Party.

D. It is expressly understood that if at any time HEB is in default in any of its conditions or covenants of this Agreement, the failure on the part of the Corporation to promptly avail itself of the rights and remedies that the Corporation may have, will not be considered a waiver on the part of the Corporation, but Corporation may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

**16. Event of Default by Corporation.** HEB specifically agrees that Corporation shall only be liable to HEB for the actual amount to be paid to HEB pursuant to this Agreement, and shall not be liable to HEB for any actual or consequential damages, direct or indirect, or interest for any act of default by Corporation under the terms of this Agreement. Payment by the Corporation is strictly limited to those funds so allocated, budgeted, and collected solely during the grant term of this Agreement. Corporation shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one year be less than the total amount of grants to be paid to all contracting parties with Corporation for that year, then in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less Corporation's customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year. Any payments due to HEB under this Agreement that are not paid in full in any one year shall accrue and be payable in subsequent period, subject to the terms and conditions of this Agreement. In this event, the Corporation will provide all supporting documentation, as requested. Payments to be made shall also require a written request from HEB to be accompanied by all necessary supporting documentation.

**17. City Approval of Corporation Funding.** The Parties mutually agree and understand that funding under this Agreement is subject to annual appropriations by the City Council, that each Corporation fiscal year's funding must be included in the budget for that year; and the funding is not effective until approved by the City Council.

**18. Notices.**

a. Any required written notices shall be sent mailed, certified mail, postage prepaid, addressed as follows:

HEB:

HEB Grocery Company, LP  
Attn: Executive Vice President of Real Estate  
646 South Main Avenue  
San Antonio, TX 78204

With copy to:

Golden Steves Cohen & Gordon LLP  
Attn: Steven Golden  
300 Convent Street, Suite 300  
San Antonio, TX 78205

Corporation:

City of Corpus Christi  
Business and Job Development Corporation  
Attn: Executive Director  
1201 Leopard Street  
Corpus Christi, Texas 78401

b. A copy of all notices and correspondence must be sent the City at the following address:

City of Corpus Christi  
Attn: City Manager  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

c. Notice is effective upon deposit in the United States mail in the manner provided above.

**19. Incorporation of other documents.** The Type A Guidelines, as they relate to this Agreement, are incorporated into this Agreement. The Parties expressly agree that in the event that any term and/or condition of this Agreement conflicts, directly or indirectly, with any provision of the Type A Guidelines, the provisions of this Agreement shall govern.

**20. Amendments or Modifications.** No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

**21. Relationship of Parties.** In performing this Agreement, both the Corporation and HEB will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

**22. Captions.** The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

**23. Severability.**

A. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be



affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

B. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

24. **Venue.** Venue for any legal action related to this Agreement is in Nueces County, Texas.

25. **Sole Agreement.** This Agreement constitutes the sole Agreement between Corporation and HEB. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

26. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

**Corpus Christi Business & Job Development Corporation**

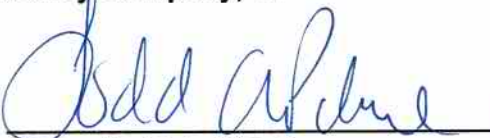
By: \_\_\_\_\_  
Robert Tamez  
President

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Armando Chapa  
Assistant Secretary

**HEB Grocery Company, LP**

By:  \_\_\_\_\_  
Name: Todd A. Piland  
Title: Executive Vice President

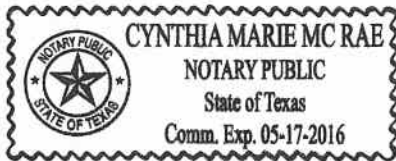
Date: \_\_\_\_\_

**THE STATE OF TEXAS**

**COUNTY OF BEXAR**

This instrument was acknowledged before me on December 21 2012, by Todd E. Piland acting as Executive Vice President of HEB Grocery Company, LP, a Texas limited partnership, on behalf of said limited partnership.

Cynthia Marie McRae  
Notary Public  
State of Texas



**EXHIBIT A**

**Retained Jobs, Required Payroll and Planned Investment**

HEB is expected, but not required, over the term of this Agreement, to retain 388 full-time jobs, with an average annual salary of \$32,275 but with a **required Annual Payroll, including wages and employee benefits, of not less than \$ 12,522,700**. HEB further expects, but is not required, to make a capital investment of approximately \$17,717,000 at the Manufacturing Facility over a five year period, as shown in the table below.

<b>Year</b>	<b>Number of New Jobs</b>	<b>Expected Number of Retained Jobs</b>	<b>Required Annual Payroll</b>	<b>Expected Capital Investment</b>
1	0	388	\$12,522,700	\$2,843,000
2	0	388	\$12,522,700	\$6,024,000
3	0	388	\$12,522,700	\$3,650,000
4	0	388	\$12,522,700	\$2,175,000
5	0	388	\$12,522,700	\$3,025,000

**EXHIBIT B**

Annual Report and Certification



## Annual Report and Certification

This annual report and certification is hereby presented to the Corpus Christi Business and Job Development Corporation (the "Corporation") by HEB Grocery Company, LP ("HEB") in connection with that certain Business Incentive Agreement entered into by the Parties on \_\_\_\_\_ 2012 (the "Agreement").

**Reporting Period: November 1, \_\_\_\_ through October 31, \_\_\_\_**

### Reported Information:

Number of full-time HEB workers (as determined by HEB) employed at the bakery and distribution facility located on McCampbell Road in Corpus Christi, TX (the "Manufacturing Facility") as of October 31.

Full-time Employees = \_\_\_\_\_

Total capital investment made by HEB in the Manufacturing Facility (including equipment) during the above reporting period.

Capital Investment, if any= \_\_\_\_\_

### Certified Information:

1. The total payroll (both full and part-time employees) of the Manufacturing Facility for the above described Reporting Period was \$ \_\_\_\_\_, including both wages and benefits paid to employees.
2. Full-time HEB employees of the Manufacturing Facility were offered or provided a health insurance program as a benefit.
3. All full-time employees of the Manufacturing Plant earned a salary or cash hourly wage which, on an annual basis, exceeds the Department of Health and Human Services Poverty Guidelines poverty level for a family of three during the preceding Reporting Period.

I DO HEREBY CERTIFY THAT ALL STATEMENTS MADE BY ME IN THIS REPORT UNDER THE HEADING "CERTIFIED INFORMATION" ABOVE ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, FURTHER, I UNDERSTAND THAT IN THE EVENT THAT I HAVE KNOWINGLY AND WILLFULLY MADE ANY FALSE STATEMENTS OR IF, UPON EXAMINATION OF THE RELEVANT RECORDS BY THE CITY OR DESIGNEE THE DATA IN THIS REPORT IS DETERMINED TO BE INACCURATE, HEB MAY BE HELD IN DEFAULT OF THE AGREEMENT.

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_