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CONDOMINIUM DECLARATION OF  
MOUNTAIN BAY CONDOMINIUM

This Declaration is made pursuant to the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes (hereinafter referred to as "the Act") this \_\_\_\_ day of July, 2000, by WHIRTHINGTON ESTATES, INC., a Wisconsin corporation, hereinafter referred to as "Declarant".

Section 1: Statement of Declaration

The purpose of the Declaration is to submit the lands hereinafter described and the improvements constructed or to be constructed thereon to the condominium form of ownership, in the manner provided by the Act and by this Declaration.

Declarant hereby declares that it is the sole fee simple owner of the real property described in Section 2 hereof, together with all buildings and improvements thereon, which is hereby submitted to the condominium form of ownership.

Section 2: Description of Real Estate

The real estate subject to this Declaration (hereinafter "Real Estate") is located in the Village of Howard, Brown County, Wisconsin, and is more particularly described on Exhibit "A" attached hereto.

Section 3: Name and Address of Condominium

The aforesaid Real Estate and all buildings and improvements thereon shall be known as MOUNTAIN BAY CONDOMINIUM. The address

of the condominium is and shall be 2579, 2575, 2571, 2567, 2543, 2539, 2535, 2531, 2523 and 2519 Telluride Trail, Green Bay, Wisconsin 54313.

Section 4: Description and Location of Buildings

The condominium shall consist of ten (10) buildings, four (4) of which are existing structures and six (6) are planned for construction upon the Real Estate. Said buildings shall contain a total of one hundred three (103) units, thirty-nine (39) of which will be located in the existing four (4) buildings. All said buildings comprising the condominium will have basements and will be two stories in height. Complete construction details are contained in the working plans and drawings available for inspection at the office of the Declarant. The buildings are to be located on the Real Estate as shown on the Condominium Plat attached hereto as Exhibit "B" and made a part hereof. The units are more fully described in the building and floor plans contained in the Condominium Plat. Declarant reserves the right to alter the layout and dimensions of the buildings and units shown on the Plat, which are not yet fully constructed, provided that such changes shall not substantially alter the nature and quality of the buildings and units. Declarant shall have the right to amend this Declaration, at its sole discretion, for the purpose of recording a plat or survey depicting any changes of the layout, location, unit numbers and/or dimensions of the

buildings and units as finally located and erected, and any such amendment shall be recorded in the office of the Register of Deeds for Brown County.

Section 5: Number and Identification of Units

5.1 Number. There shall be one-hundred-three (103) condominium units in MOUNTAIN BAY CONDOMINIUM.

5.2 Identification. A unit is that part of a building intended for individual or private use, comprised of one or more rooms within one or more vertical levels of space, having outer boundaries formed by the interior surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames of the building, as said unit boundaries are shown in the floor plans contained within the Condominium Plat, together with all fixtures and improvements therein contained.

The units are designated by five or six digit identifying numbers, and their location, approximate area, number of rooms, limited common elements to which the units have access and further details identifying and outlining the units are as set forth in the Condominium Plat and described and explained hereunder.

Section 6: Description of Common Elements

The common elements shall consist of all MOUNTAIN BAY CONDOMINIUM improvements and appurtenances, except the individual

units as defined herein, including without limitation: the land on which the buildings are located, bearing walls, floors and ceilings (except the interior surfaces thereof, which form the outer boundaries of the unit), roofs, foundations, hallways, lobbies, stairways, entrances and exits, pipes, ducts, electrical wiring and conduits, public utility lines, water and sewer laterals, outside walls, girders, beams and supports, structural parts of the buildings, sidewalks, access drives, parking spaces and landscaping.

Each unit owner shall have a valid, exclusive easement to the space between the interior and exterior walls for purposes of installing additional utility outlets, wall hangings, erection of non-bearing partition walls, and the like, where space between the walls may be necessary for such uses, provided that the unit owner shall do nothing to impair the structural integrity of the building or the soundproofing of common walls between the units, and providing further that the common elements be restored to their former condition by the unit owner, at their sole expense, upon completion or termination of the use requiring the easement. Easements are hereby granted and declared for the benefit of the unit owners and the Association of Unit Owners (hereinafter described) for the installation, maintenance and repair of common utility services in and on any part of the common elements or units.

Section 7: Description of Limited Common Elements

7.1 Description: A portion of the common elements is designated as "limited common elements", and said limited common elements are specifically indicated on the Condominium Plat. Such limited common elements consist of, and are the width of, the area in front of the garages and are a constant twenty (20) feet in depth. (Except Unit 2575-1, which is nine (9) feet in width, and Unit 2567-8, which varies in width to seven (7) feet on the north.) Also included as limited common elements, but not specifically designated as such on the Plat, are the patios, decks and balconies connected to some, but not all, of the units.

7.2 Use: The manner and use of the limited common elements shall be governed by the By-Laws of, and such rules and regulations as may be established by, the Association of Unit Owners, and no unit owner shall decorate, landscape or adorn any limited common elements, or permit such, in any manner contrary to such By-Laws, rules or regulations.

Section 8: Percentage of Ownership in Common Elements

Each unit owner shall own an undivided interest in the common elements and limited common elements as a tenant in common with all other unit owners and, except as otherwise limited in this Declaration, shall have the right to use and occupy the common elements and limited common elements for all purposes incidental to the use and occupancy of their unit as a place of

residence, and such other incidental uses permitted by this Declaration, which rights shall be appurtenant to and run with their unit.

The percentage of such undivided interest in the common elements and limited common elements appurtenant to each unit and its owner shall be, fractionally, (1/103rd) each. This fractional interest is based upon the fact that one hundred three (103) units shall be built within five (5) years from the date hereof.

Section 9: Residential Purpose and Limitation of Number of Owners

All buildings and units therein contained are intended for and restricted exclusively to the residential use as governed by the terms and conditions contained herein and the By-Laws of the Association. Not more than two (2) persons shall own one unit, provided, however, that a husband and wife shall be considered to be one person in determining the number of owners permitted, and this restriction shall not apply to heirs of a deceased owner.

Section 10: Registered Agent for Service of Process

The initial registered agent for service of process for the Unit Owners Association shall be Wade T. Micolety, 1249 Russett Court, Green Bay, Wisconsin 54313. Change of registered agent may be accomplished by resolution of the Board of Directors of the Unit Owners Association and upon proper filing of said name



and address with the Department of Financial Institutions of the State of Wisconsin.

Section 11: Association of Unit Owners

11.1 Duties and Obligations: All unit owners shall be entitled and required to be a member of an association of unit owners to be known as MOUNTAIN BAY CONDOMINIUM ASSOCIATION, INC. (hereinafter called "Association"), which shall be responsible for carrying out the purposes of this Declaration, including the exclusive management and control of the common elements and limited common elements. Each unit owner and the occupants of each unit shall abide by and be subject to all the rules, regulations, duties and obligations of this Declaration and the By-Laws and rules and regulations of the Association.

11.2 Voting Rights: The Association shall have two (2) classes of voting membership as follows:

(a) Class A - Class A members shall be all unit owners with the initial exception of the Declarant of the condominium, and shall have one vote for each unit owned; should a unit be owned by more than one person, the owners thereof are entitled collectively to only one vote;

(b) Class B - Class B members shall be the Declarant, who shall be entitled to three votes for each unit contemplated by this declaration, less units sold.

The Class B membership shall cease and be converted to Class A upon the earlier of: (a) three years from the date that the first unit is conveyed by the Declarant to any person other than the Declarant; or (b) thirty (30) days after conveyance of seventy-five (75%) percent of the common element interests to purchasers.

The respective rights and qualifications of the two (2) classes of voting members shall be as set forth in the By-Laws of the Association.

11.3 Association Personnel: The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable and may hire such other personnel as it shall determine to be necessary or advisable for the proper operation of the condominium. The Association may contract for lighting, heating, water, trash collection, sewer service, landscaping and snow or debris removal and such other common services as may be required for each unit.

## Section 12: Repairs and Maintenance

12.1 Common Elements: The Association shall be responsible for the management and control of the common elements and shall cause the same to be kept in good, clean, attractive and sanitary condition, order and repair. Without in any way limiting the foregoing, this shall include: (i) all painting, repairing and decorating of exteriors, (ii) maintenance and repair of sidewalks, parking areas and access routes and (iii) maintenance of all grounds, open spaces and landscaping thereon.

12.2 Individual Units and Limited Common Elements: Each unit owner shall be responsible for keeping the interior of their unit and all of its equipment, fixtures and appurtenances in good order, condition and repair and in a clean condition, and shall

be responsible for decorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of the unit. Without in any way limiting the foregoing, the unit owner shall maintain, repair and replace everything within the confines of the owner's unit, which is not to be maintained by the Association pursuant to subparagraph 12.1, including, but not limited to the following:

- (a) Interior paint, finish, covering, wallpaper and decoration of all walls, floors and ceilings;
- (b) All built-in shelves, cabinets, counters, storage areas and closets;
- (c) Any and all appliances and mechanical, ventilating, heating and air conditioning equipment contained within or serving the unit;
- (d) All bathroom fixtures, equipment and apparatus;
- (e) All electrical, plumbing, telephone and television fixtures, apparatus, equipment, outlets, switches, wires, pipes and conduits serving only the respective unit, and all electrical lines between the unit and its individual service panel or meter;
- (f) All interior doors, non-load bearing walls, partitions and room dividers;
- (g) All furniture, furnishings and personal property contained within the respective unit; and
- (h) All other maintenance or repair of or replacements involving a unit as contemplated and authorized hereunder.

Further, each unit owner shall keep the limited common elements appurtenant to his unit, as defined in Section 7 hereof and as described in the Condominium Plat, in good condition and repair, maintaining such as his own unit.

12.3 Prohibition Against Structural Changes by Owner: A unit owner shall not, without first obtaining the written consent of the Association, make or permit to be made any structural alterations, changes or improvements to their unit, or in or to the exterior of any building or any common or limited common elements. A unit owner shall not perform, or allow to be performed, any act or work which would impair the structural soundness or integrity of any building, or the safety of the property, or impair any easement granted herein, without the prior written consent of the Association.

12.4 Entry for Repairs: The Association may enter any unit at reasonable times and under reasonable conditions when necessary in connection with any maintenance, construction or repair of public utilities, and for any other matters for which the Association is responsible under this Declaration. Such entry shall be made with prior notice to the unit owner (except in the case of an emergency) and with as little inconvenience to the owner as is practical, and any damage caused thereby shall be repaired by the Association and treated as a common expense.

Section 13: Unit Owner's Rights With Respect to Interiors

Each unit owner shall have the exclusive right to paint, repaint, tile, panel, paper or otherwise refurnish and decorate the interior surfaces of the walls, ceilings, floors and doors within the unit boundaries, and to erect partition walls of a

non-structural nature, provided that such unit owner shall take no action which in any way shall materially change any common wall between units.

Section 14: Right of Declarant to Dispose of Units

Declarant shall have the right to sell or otherwise dispose of units by deed, land contract or other form of installment sale, or by such other means of conveyance as it may choose, and in the event that Declarant shall be forced to foreclose or otherwise recover possession of any unit as the result of the default of a purchaser under a land contract, installment sale or mortgage, Declarant shall be free to dispose of any such units by any means whatsoever. Nothing herein contained shall in any way restrict Declarant's right to lease any units not sold or otherwise disposed of.

Section 15: Destruction and Reconstruction

15.1 Unit Damage: This subsection shall apply in the event of any damage or destruction to all or any part of a unit from one or more occurrences:

- (a) Each unit owner shall be solely responsible for all repairs and reconstruction of their unit, and all of its facilities and contents, in the event of any damage of any kind resulting from any cause whatsoever, except that this provision shall not preclude or otherwise affect a unit owner's right to recover any such cost and expense from any person responsible for such loss. The Association shall be responsible, and shall reimburse the unit owner, for the cost of repairs or replacements required by reason of physical damage to a

unit or its contents, if (and only if) such damage is caused by the breakage, lack of repair or defective or damaged condition of any common element or by any insured fire or other casualty or occurrence for which the Association has insurance coverage, but then only to the extent of such coverage apportioned to that unit.

- (b) Any unit damaged by fire or other casualty or occurrence of any kind shall be promptly repaired or reconstructed by the unit owner, at their expense (following completion of repairs or rebuilding by the Association of the common elements necessary therefor). The proceeds of collectible insurance, if any, maintained by the Association shall be made available for the purpose of repairing and restoring those damaged portions of a unit so insured, upon submission of contractors' invoices and lien waivers for work performed.

15.2 Damage to Common Elements: This subsection shall apply in the event of any damage or destruction to all or any part of any common or limited common elements resulting from one or more occurrences. In case of any damage or destruction to all or any part of any common or limited common elements, the provisions in Wis. Stats. Section 703.18 shall control.

On reconstruction, the design, plan and specifications of any building or unit may vary from that of the original, upon approval of the Association, provided, however, that the number of square feet of any unit may not vary by more than five percent (5%) from the number of square feet for such unit as originally constructed, and the location of the buildings shall be substantially the same as prior to damage or destruction.

Section 16: Insurance

The Board of Directors of the Association shall provide and maintain fire and broad form extended coverage insurance on the buildings, and any portion thereof, in the amount left to the discretion of the Board. Such insurance shall be obtained in the name of the Association, as Trustee for each of the unit owners and their respective mortgagees, as their interest may appear. Premiums for said insurance policies shall be a common expense. To the extent possible, the insurance shall provide that the insurer waives its rights of subrogation as to any claim against any unit owner, the Association, and their respective servants, agents and guests, and that the insurance cannot be cancelled, invalidated or suspended on account of conduct of any one or more unit owners, or the Association, or their servants, agents, and guests, without thirty (30) days prior written notice to the Association, giving it opportunity to cure the defect(s) within that time. The amount of protection and the types of hazards to be insured against shall be reviewed by the Board of Directors at least annually, and the amount of coverage may be increased or decreased at any time it is deemed necessary as determined by the Board of Directors to conform to the requirements of full insurable value.

The Board of Directors of the Association shall also procure liability insurance covering the common elements and limited common elements in such amounts as may be determined at the

discretion of the Board of Directors from time to time. The Board of Directors may also procure worker's compensation insurance or fidelity bonds on such officers and employees and in such amounts as is determined by the Board of Directors to be necessary from time to time.

Section 17: Liability for Common Expenses

The costs of administration of the Association, insurance, repair, maintenance, landscaping and other expenses of the common elements and common services provided to the unit owners, shall be paid for by the Association. The Association shall make assessments against the unit owners, as well as against the units themselves, for such common expenses, in accordance with the percentage of the undivided interest in the common elements attributable to each unit, in the manner provided for in the By-Laws of the Association. No unit owner may exempt himself or his unit ownership from liability for his contribution toward the common expenses, by waiver of the use or enjoyment of any of the common or limited common elements or services, or by the abandonment of his unit; and no conveyance shall relieve the unit owner or his unit of such liability, and he shall be jointly and severally liable, along with his grantee in any such conveyance, for the common expenses incurred up to the date of closing of the transaction, until all common expenses charged to his unit have been paid.



All common expenses and assessments, when due, shall immediately become a personal debt of the unit owner and also a lien against the unit to which the expenses are charged, as provided in Chapter 703, Wisconsin Statutes, without the necessity of filing such a lien, and this provision shall constitute notice to all mortgagees and all successors of title to the units.

Section 18: Conveyance to Include Interest in Common Elements and Limited Common Elements

The percentage of the undivided interest in the common and limited common elements shall not be separated from the unit to which it appertains. No unit owner shall execute any deed, mortgage, lease or other instrument affecting title to such unit ownership without including therein both his interest in the unit and his corresponding percentage of ownership in the common and limited common elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one type of ownership without including the other shall be deemed and taken to include the interest so omitted, even though the omitted interest is not expressly mentioned or described therein.

Section 19: Easements, Reservations and Encroachments

19.1 Utility Easements: Easements are hereby declared and granted for the benefit of the unit owners and the Association

and reserved for the benefit of the Declarant for utility purposes, including the right to install, lay, maintain, repair and replace electrical lines, water mains and pipes, sewer lines, gas mains or lines, telephone wires and equipment, cable television lines, wires or equipment, over, under, along and on any part of the common elements or limited common elements.

19.2 Encroachments: In the event that by reason of the construction, reconstruction, settlement or shifting of any building, or the design or construction of any unit, any part of the common elements or limited common elements, encroaches or shall hereafter encroach upon any part of any unit, or any part of any unit encroaches or shall hereafter encroach upon any part of the common elements or limited common elements, or any portion of any unit encroaches upon any part of any other unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit, so long as all or any part of the building containing such unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit, or in favor of the owners of the common elements or limited common elements, if such encroachment occurred due to the willful conduct of said owner or owners.

19.3 Binding Effect: All easements and rights described herein are easements appurtenant and running with the land and are subject to the reasonable control of the Association. All

easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the undersigned, its successors and assigns, and on all unit owners, purchasers and mortgagees, and their heirs, executors, administrators, successors and assigns. The Association shall have the authority to execute all documents necessary to carry out the intent of this section.

Section 20: Failure of Association to Insist on Strict Performance Not Waiver

The failure, if any, of the Association to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver of any subsequent breach of the same term, covenant, condition or restriction contained herein. The receipt by the Association of payment of any assessment from a unit owner, with knowledge of the breach of any covenant hereof, shall not be deemed as a waiver of such breach, and no waiver by the Association of any provision hereof shall be deemed to have been made, unless expressed in writing and signed by the Association.

Section 21: Amendments to Declaration

This Declaration may be amended at a meeting duly held for such purpose by the written consent of the owners of at least seventy-five percent (75%) of the units. No amendment shall alter or abrogate the rights of Declarant, as contained in this Declaration.

Copies of each amendment shall be certified by the President and Secretary of the Association, or such other officers as the Board of Directors may designate, and shall not become effective until duly recorded in the office of the Register of Deeds for Brown County, Wisconsin. A copy of each amendment shall also be mailed or personally delivered to each unit owner at the address on file with the Association.

Section 22: Unit Owner Liability; Real Party in Interest

22.1 Unit Owner Liability:

(a) The owner of a unit shall be liable to third parties for his proportionate share (based upon that unit's undivided interest in the common elements) of all costs, damages, debts, obligations and other liabilities of the Association. By acceptance of a Deed or other conveyance or transfer of any legal or equitable interest in a unit, the owner, joint owner, and all other transferees, consent to personal liability to the extent of that unit's proportionate share (based upon its undivided interest in the common elements) of any judgment entered against the Association, without being made a party to the action in which such judgment is obtained, PROVIDED such liability shall be limited as provided under subsection 22.1(b).

(b) A unit owner shall not be liable (directly or indirectly) to any person, firm, corporation or

organization for any debt or other obligation of the Association, or of the other unit owners, beyond such owner's percentage ownership interest in the assets and liabilities of the Association. (Said percentage ownership interest previously set forth herein.) A unit owner shall not be liable for any personal injuries or damages arising out of any temporary or permanent condition or defect of any common elements, beyond such owner's percentage ownership interest in the assets and liabilities of the Association. A unit owner shall also not be liable for other damages or liabilities of any kind arising out of the operation or management of the Association, beyond his or her percentage ownership interest in the assets and liabilities of the Association.

22.2 Real Party in Interest: The Association shall represent and defend the unit owners and shall be the real party in interest to represent and defend or prosecute any claim on behalf of or against all of the unit owners in any suit, action or other proceedings: (a) for enforcement of any debt or other contractual obligation to or from the Association or all the unit owners; or (b) involving personal injuries or other damages of any kind arising out of any temporary or permanent condition or defect of any common elements; or (c) for damages of any kind arising out of the operation or management of the Association; or (d) for enforcement of the Act, this Declaration or the other Condominium Documents.

22.3 Indemnification: The Association shall indemnify and hold each unit owner harmless from all liabilities, costs, expenses and damages which are determined to be the enforceable obligations of the Association; provided that such unit owner

shall be liable to the Association for his or her percentage share of such common expenses.

Section 23: Indemnification by Unit Owner

In the event the Association is, for any reason, found liable for any damages, fines or penalties resulting, in whole or in part, from any unauthorized act of a unit owner or from any other act or omission of an owner in the management, operation, use or maintenance of his unit which violates the Act, this Declaration or the other Condominium Documents, or any applicable laws, ordinances or regulations, such unit owner shall indemnify and hold the Association harmless from all loss, liabilities, costs and expenses, including reasonable attorney's fees incurred by the Association, except to the extent that such loss, liability, costs or expenses are covered by insurance maintained by the Association or arise from good faith acts or omissions of such unit owner as an officer or director of the Association.

Section 24: Notices

24.1 Notice to Mortgagee: Notices to a mortgagee or other encumbrancer shall be deemed to have been duly given at the time of delivery or seventy-two (72) hours after mailing within the State of Wisconsin by registered or certified mail addressed to the business office specified in the records of the Association, regardless of actual receipt.

24.2 Notice to Association: Notices to the Association shall be deemed to have been duly given at the time of delivery to the Association's manager, if any, or seventy-two (72) hours after mailing within the State of Wisconsin by registered or certified mail to the President or Secretary of the Association, regardless of actual receipt.

24.3 Notice to Unit Owner: Notices due a unit owner shall be deemed to have been duly given, regardless of actual receipt, at the time of delivery to the unit (by posting on door or otherwise) or seventy-two (72) hours after mailing by first class or certified mail to the unit owner or designee.

Section 25: Expansion of Condominium

25.1 Reservation of Right: Declarant hereby reserves the right to expand the condominium by adding additional buildings and improvements to that declared under this Declaration.

25.2 Description of Additional Property: The additional property that may be added to this condominium consists of two (2) separate buildings, one containing twelve (12) additional units and the other containing sixteen (16) additional units, for a total of twenty-eight (28) additional units. The legal description of the land that is subjected to this Declaration will not change if the condominium is expanded per this section. Such additional property, as that term is defined in the Act, or portions of it, may be added in such phases as the Declarant may

determine from time to time. The added buildings are designated on the Condominium Plat as "expansion".

25.3 Number of Additional Units: The maximum number of units that the Declarant may add to the condominium is twenty-eight (28).

25.4 Calculation of Revised Percentage Interest:

- (a) If additional units are added by the Declarant pursuant to this Section, the respective percentage interest in the common elements, the liability for common expenses and the right to common surplus, if any, will change as follows: for each additional unit which is added to the condominium, the denominator of the fraction set forth in Section 8 of this Declaration will be increased by one (1);
- (b) If additional units are added to the condominium pursuant to this Section, the respective voting rights of the Association members will be changed. Each additional unit will be assigned one (1) vote, to be cast according to the provisions of the By-Laws of the Association.

25.5 Disclaimer: Expansion or enlargement of the condominium, pursuant to this Section, is at the Declarant's discretion. The Declarant is not obligated or committed to add any property or construct any additional units as part of the original condominium. The unit owners of the units declared in this Declaration have and are given no rights in this respect. The Declarant may, at its option, develop a portion only and not all of the additional property and units specified in this Section. Pursuant to the Act, the Declarant may take up to ten (10) years from the date of recording this Declaration to expand the condominium by adding additional property and units.



Section 26: Captions

The captions and section headings herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope or intent of the various provisions hereof.

Section 27: Severability

The invalidity or unenforceability of any term, condition or provision of this Declaration, or of any of the other Condominium Documents, shall in no way affect the validity or enforceability of any other term, condition or provision of this Declaration or of the other Condominium Documents, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, this Declaration of Condominium is executed by the Declarant this \_\_\_\_ day of July, 2000.

DECLARANT:

WHIRTHINGTON ESTATES, INC.

By: \_\_\_\_\_  
Wade T. Micoley, President

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, Brown County, WI  
My commission expires: \_\_\_\_\_.