



## Joint Venture Agreement

**Document 5041A**

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## JOINT VENTURE AGREEMENT

This JOINT VENTURE AGREEMENT (this “**Agreement**”), dated as of this \_\_\_ day of \_\_\_\_\_, 200\_ (the “**Effective Date**”) is entered into by and between [NAME OF PARTY1], a \_\_\_\_\_ [corporation] of [PRINCIPAL ADDRESS] (Tax ID: \_\_\_\_\_) (“**Party1**”) and [NAME OF PARTY2] a \_\_\_\_\_ [corporation] of [PRINCIPAL ADDRESS] (Tax ID: \_\_\_\_\_) (“**Party2**”).

### RECITALS

WHEREAS, [PARTY1] and [PARTY2] (collectively the “**Parties**”) desire to own, operate and conduct a business operation together (the “**Joint Venture**”); and

WHEREAS, the Parties are each willing to invest capital to finance the conduct of the business;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein, intending to be legally bound hereby, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

#### 1. **Certain Definitions.**

“**Action**” shall mean any claim, action, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation by or before any Governmental Authority.

“**Affiliate**” shall mean, any Person directly or indirectly controlling, controlled by or under common control with the Company (or such specified Person). For purposes of this definition, the term “**control**” including the terms “**controlling**”, “**controlled by**” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

“**Business**” shall mean the collective business of the Company as such business is currently conducted.

“**Certificate**” shall mean any outstanding certificate or other document representing an ownership interest in the Company.

“**Charter**” shall mean the certificate or articles of incorporation or organization or other charter documents, certificate of limited partnership or other organizational documents, including trust documents, of any Person (other than an individual), each as from time to time in effect.

“**Environmental Laws**” shall mean any federal, state or local law as in effect as of the date hereof relating to (i) releases or threatened releases of Hazardous Substances; and (ii) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances.

“**Generally Accepted Accounting Principles**” shall mean generally accepted accounting principles in the United States as in effect and applied in the preparation of Financial Statements.

“**Legal Requirement**” shall mean any material federal, state or local statute, ordinance, code, rule or regulation, or any material Governmental Order, or any material license, franchise, consent, approval, permit or similar right granted under any of the foregoing.

“**Losses**” shall mean any and all actual losses, damages, deficiencies, awards, assessments, amounts paid in good faith settlements, judgments, fines, penalties, costs and expenses (including, without limitation, reasonable legal costs and expenses and the costs of investigation to the extent reasonably necessary); provided, however, that the amount of any such Losses for the purposes of indemnification hereunder shall be determined net of (i) all reserves reflected on the Balance Sheet, (ii) the sum of any amounts reasonably recoverable by the Indemnitee under insurance policies with respect to such Loss; and (iii) the present value (based on a discount factor equal to the applicable federal rate as determined under Section 1274(d)(1) of the Code) of any Tax benefit reasonably expected to be realized by the Indemnitee (or any consolidated, combined or unitary group of which the Indemnitee is also a member) arising from the incurrence or payment of such loss.

“**Material Adverse Effect**” shall mean any change in or effect on the business of the Company which has, or would have a material adverse effect on the Business, assets and financial condition of the Company taken as a whole except to the extent that any such change in or effect on the business results from the announcement or consummation of the transactions contemplated thereby.

“**Ordinary Course of Business**” shall mean the ordinary course of business consistent with current custom and practice.

“**Person**” shall mean any individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity other than any Governmental Authority.

## **2. Scope and Description.**

2.1 Name. The Joint Venture shall be conducted under the name “[NAME OF BUSINESS]”.

2.2 Principal Address. The principal address of the Joint Venture shall be [PRINCIPAL ADDRESS].

2.3 Purpose. The purpose of the Partnership is [PURPOSE OF BUSINESS] and to engage in any other business which may be lawfully carried on under [CITE LAWS] whether or not related to those specifically stated.

2.4 Qualification in Other Jurisdictions. [*The Joint Venture shall not be registered in any other jurisdiction at this time.*] [*The Joint Venture may decide to register the Joint Venture in any other jurisdiction at any time.*]

2.5 Place of Business and Office; Resident Agent. The Joint Venture shall maintain a registered office at [REGISTERED OFFICE] and its principal office at [PRINCIPAL ADDRESS]. The Parties may at any time change the location of the Joint Venture's offices and may establish additional offices. The name of the Joint Venture's resident agent is [NAME OF REGISTERED AGENT], located at [RESIDENT AGENT ADDRESS].

2.6 Books and Records. [PARTY1 OR PARTY2] shall maintain or cause to be maintained a complete set of records, statements and accounts concerning the total operation of the Joint Venture, in which books shall be entered, fully and accurately, each transaction pertaining to the Joint Venture. All Joint Venture books shall be kept at the principal place of business and the Parties shall at all times have access to and may inspect and copy any of them.

2.7 Fiscal Year End. The fiscal year end of the Joint Venture shall be commence on \_\_\_\_\_ and shall close on \_\_\_\_\_ of each year of operation. All accounting based on fiscal year figures shall be completed within [NUMBER] days after the close of the fiscal year.

**3. Contributions and Capital Distribution.**

3.1 PARTY1 Contribution. [PARTY1] shall contribute personal property described as follows: \_\_\_\_\_ having the agreed upon value of [AMOUNT] Dollars (US \$\_\_\_\_\_) and its staff, expertise and skill as a [\_\_\_\_\_] for the duration of the Joint Venture, in good faith and for the purpose of ensuring the success of the Joint Venture.

3.2 PARTY2 Contribution. [PARTY1] shall contribute personal property described as follows: \_\_\_\_\_ having the agreed upon value of [AMOUNT] Dollars (US \$\_\_\_\_\_) and its staff, expertise and skill as a [\_\_\_\_\_] for the duration of the Joint Venture, in good faith and for the purpose of ensuring the success of the Joint Venture.

**OR**

3.1 The Parties shall, for the purpose of this joint venture, contribute the sum set forth beside each name as follows:

Name of Party	Contribution

Contributions of money, personal or real property shall be made on or before [DATE]. Failure of either party to complete its contribution on a timely basis shall result in [immediate termination] of this Agreement.

[3.2 or 3.3] Capital Commitment. The Parties agree and understand that the main Capital Commitment is [LIST CONTRIBUTIONS AND TERMS, if any].

[The Parties may agree to make an initial Capital Contribution in cash.] Based on the initial Capital Contribution of the Parties, the revenue and profits of the Joint Venture shall be divided [DESCRIBE MANNER BY WHICH PROFITS WILL BE DISTRIBUTED], providing no Party is in Default of this Agreement. *[Parties may determine at any time to make a distribution to the Parties, such distribution will be in [number or equal] parts, provided no Party is in Default of this Agreement.]*

[3.3 or 3.4] Title to Property. All legal title to property acquired by the Joint Venture, whether personal or real property shall be taken in the name of [NAME OF TRUSTEE], as trustee for the parties, and shall be held for their interest. The interest of each party in such property shall be proportionate to each party's share of the profits in the Joint Venture.

#### **4. Division of Profits and Apportionment of Losses.**

4.1 Profits. The net profits earned by the Joint Venture, calculated at the end of each fiscal year, shall be divided amount the Parties as follows:

- (a) [PARTY1] shall receive \_\_\_\_\_ percent (\_\_\_%).
- (b) [PARTY2] shall receive \_\_\_\_\_ percent (\_\_\_%).

No other remuneration shall be received by the Parties from the Joint Venture. The net profits will be calculated by first deducting all operating expenses from gross income of the Joint Venture.

4.2 Losses. The Parties shall bear any net loss sustained by the Joint Venture in any fiscal year as follows:

- (a) [PARTY1] shall bear \_\_\_\_\_ percent (\_\_\_%).
- (b) [PARTY2] shall bear \_\_\_\_\_ percent (\_\_\_%).

Any assessment against a party for a loss shall be payable to the Joint Venture no later than [NUMBER] days after the close of the fiscal year.

5. **Management of the Joint Venture.** [The management of the Joint Venture shall be vested in [PARTY1 OR PARTY2]. [PARTY1 OR PARTY2], acting singly, shall have the full power and authority to authorize, approve or undertake any action on behalf of the Joint Venture and to bind the Joint Venture without the necessity of a meeting [or consent of [PARTY1 OR PARTY2]]. In connection with the foregoing, the [PARTY1 OR PARTY2] is authorized and empowered:]

**OR**

[The management of the Joint Venture shall be vested jointly in the Parties. The Parties, acting jointly, shall have the full power and authority to authorize, approve or undertake any action on behalf of the Joint Venture and to bind the Joint Venture without the necessity of a meeting. In connection with the foregoing, the Parties are authorized and empowered:]

**OR**

[The management of the Joint Venture shall be vested in [NAME OF MANAGER] who shall be the “**Manager**” of the Joint Venture until such time, as the Parties appoint another person or entity to serve as Manager. Any vacancy in the office of the Manager shall be filled by the Parties. In connection with the foregoing, the Manager is authorized and empowered:]

(a) To appoint by written designation filed with the records of the Joint Venture, one or more persons to act on behalf of the Joint Venture as officers of the Company with such titles as may be appropriate including the titles of President, Vice President, Treasurer, Secretary and Assistant Secretary; and

(b) To delegate any and all power and authority with respect to the business and affairs of the Joint Venture to any individual or entity, including any officers or employees of the Joint Venture.

(c) Any person appointed as an officer of the Joint Venture with a title customarily held by an officer of a corporation shall have the same power and authority to act on behalf of the Joint Venture as an officer holding the same title would customarily have in a corporation organized under the laws of the [STATE].

(d) [NAME OF AUTHORIZED PERSON] is hereby designated as the authorized person to execute, deliver and file the Business Certificate of the Joint Venture, and together with other persons that may hereafter be designated, such other certificates as may be necessary for the Joint Venture to register to do business in any jurisdiction in which the Joint Venture may wish to conduct business.

## **6. Warranties and Representations Relating to the Parties.**

6.1 PARTY1. [PARTY1] hereby jointly and severally represent and warrant as follows:

6.1.1 Due Organization, Authorization and Good Standing. [PARTY1] is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. [PARTY1] is qualified to do business and is in good standing as a foreign Person, as the case may be, in each jurisdiction in which the ownership of its properties and the nature and extent of the activities transacted by it makes such qualification necessary, except where the failure to so qualify would not have a Material Adverse Effect. [PARTY1] has full corporate power and corporate authority to carry on its business, to own and use the properties owned and used by it and to perform its obligations under this Agreement.

6.1.2 Authority Relative to this Agreement. [PARTY1] has the requisite power and authority to enter into, execute, deliver and perform this Agreement, and to consummate all transactions contemplated thereby. The execution and delivery of this Agreement by [PARTY1] and the consummation by [PARTY1] of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate or partnership proceedings on the part of [PARTY1] are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement is the valid and legally binding

obligation of the [PARTY1], enforceable against the [PARTY1] in accordance with the terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability affecting the rights and remedies of creditors and to general principles of equity, regardless of whether enforcement is sought in proceedings in equity or at law.

### 6.1.3 No Violation or Approval.

(a) Except as set forth on Schedule 6.1 hereto, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of, or a default under the Charter or Bylaws of the [PARTY1], or any statute applicable to the [PARTY1] or any material agreement to which the [PARTY1] is a party or by which any of its properties are bound, any fiduciary duty or any order, judgment, decree, rule or regulation of any court or any Government Authority or body having jurisdiction over the [PARTY1] or its properties, except where such failure would not have a Material Adverse Effect. Except as set forth on Schedule 6.1 hereto, no consent, approval, order or authorization of, or negotiation, declaration or filing with, any Governmental Authority or entity or other party is required of, and has not been obtained or made by the [PARTY1] in connection with the execution and delivery of this Agreement or the consummation of any of the transaction contemplated hereby, except where such failure would not have a Material Adverse Effect.

(b) There is no Action pending against, affecting or, to the knowledge of the [PARTY1] Directors or Officers, threatened against the [PARTY1] or any of their respective properties before any court or arbitrator or any governmental body, agent or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement or would materially adversely effect the [PARTY1]'s ability to consummate the transactions contemplated hereby.

6.2 PARTY2. [PARTY2] hereby jointly and severally represent and warrant as follows:

6.2.1 Due Organization, Authorization and Good Standing. [PARTY2] is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. [PARTY2] is qualified to do business and is in good standing as a foreign Person, as the case may be, in each jurisdiction in which the ownership of its properties and the nature and extent of the activities transacted by it makes such qualification necessary, except where the failure to so qualify would not have a Material Adverse Effect. [PARTY2] has full corporate power and corporate authority to carry on its business, to own and use the properties owned and used by it and to perform its obligations under this Agreement.

6.2.2 Authority Relative to this Agreement. [PARTY2] has the requisite power and authority to enter into, execute, deliver and perform this Agreement, and to consummate all transactions contemplated thereby. The execution and delivery of this Agreement by [PARTY2] and the consummation by [PARTY2] of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate or partnership proceedings on the part of [PARTY2] are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement is the valid and legally binding

obligation of the [PARTY2], enforceable against the [PARTY2] in accordance with the terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability affecting the rights and remedies of creditors and to general principles of equity, regardless of whether enforcement is sought in proceedings in equity or at law.

### 6.2.3 No Violation or Approval.

(a) Except as set forth on Schedule 6.2 hereto, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of, or a default under the Charter or Bylaws of the [PARTY1], or any statute applicable to the [PARTY2] or any material agreement to which the [PARTY2] is a party or by which any of its properties are bound, any fiduciary duty or any order, judgment, decree, rule or regulation of any court or any Government Authority or body having jurisdiction over the [PARTY2] or its properties, except where such failure would not have a Material Adverse Effect. Except as set forth on Schedule 6.2 hereto, no consent, approval, order or authorization of, or negotiation, declaration or filing with, any Governmental Authority or entity or other party is required of, and has not been obtained or made by the [PARTY2] in connection with the execution and delivery of this Agreement or the consummation of any of the transaction contemplated hereby, except where such failure would not have a Material Adverse Effect.

(b) There is no Action pending against, affecting or, to the knowledge of the [PARTY2] Directors or Officers, threatened against the [PARTY2] or any of their respective properties before any court or arbitrator or any governmental body, agent or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement or would materially adversely effect the [PARTY2]'s ability to consummate the transactions contemplated hereby.

## 7. **Insurance and Surety Bonds.**

7.1 Insurance. The Joint Venture shall obtain insurance to cover the following items and types of losses: [LIST]. The premiums shall be recognized as an operational expense of the Joint Venture.

7.2 Bond. The Parties shall each post a bond in the amount of \_\_\_\_\_ Dollars (US \$\_\_\_\_) for the protection of the assets, and the premiums shall be recognized as an operational expense of the Joint Venture.

**8. Certain Tax Matters.** [PARTY1 OR PARTY2] and their duly appointed representatives shall have the exclusive authority to prepare and file any Tax Return. [PARTY1 OR PARTY2] shall allow [PARTY1 OR PARTY2] and its duly appointed representatives the opportunity to review and comment on such Tax Returns prior to filing. [PARTY1 OR PARTY2] shall, or shall cause the Joint Venture to, furnish income Tax information to [PARTY1 OR PARTY2] with respect to the Tax Return. [PARTY1 OR PARTY2] shall prepare or cause to be prepared all Tax Returns and shall allow the [PARTY1 OR PARTY2] and their duly appointed representatives the opportunity to review and comment on such Tax Return prior to filing. Except with the prior written consent of the [PARTY1 OR PARTY2] which shall not be unreasonably withheld,



[PARTY1 OR PARTY2] shall take no position inconsistent with past custom and practice on any Tax Return that could result in the [PARTY1 OR PARTY2] being required to make a payment.

## 9. Term.

9.1 Term. The term of the Joint Venture commences on the Effective Date and shall continue in full force and effect [indefinitely or until the Parties consent to discontinue business operations] [for a period of \_\_\_\_\_ years from that date, or until [SET FORTH TERMINATION CONDITIONS]]. Upon termination of this Agreement, for any cause whatsoever, the Joint Venture shall be wound up and dissolved in accordance with [CITE LAWS<sup>1</sup>].

9.2 Dissolution, Death or Incapacity of a Party. The dissolution, death or incapacity of a party shall cause the Joint Venture to be dissolved at the completion of that current fiscal year. The annual net profits and proceeds from the sale of assets shall be divided pro rata between the surviving party and the legal representative, guardian or trustee of the dissolved, deceased or incapacitated party.

## 10. General.

### 10.1 Arbitration.

(a) All disputes, claims, or controversies arising out of or relating to this Agreement or any other agreement executed and delivered pursuant to this Agreement or the negotiation, validity or performance hereof and thereof or the transactions contemplated hereby and thereby that are not resolved by mutual agreement shall be resolved solely and exclusively by binding arbitration to be conducted before [American Arbitration Association] or its successor (the “**Arbitrator**”). The arbitration shall be held in [LOCATION] before a single arbitrator and shall be conducted in accordance with the rules and regulations promulgated by the Arbitrator unless specifically modified herein.

(b) The parties covenant and agree that they will participate in the arbitration in good faith. In the case of temporary or preliminary injunctive relief any party may proceed in court without prior arbitration for the limited purpose of avoiding immediate and irreparable harm. The provisions of this Section shall be enforceable in any court of competent jurisdiction.]

(c) Each of the parties hereto irrevocably and unconditionally consents to the exclusive jurisdiction of the Arbitrator to resolve all disputes, claims or controversies arising out of or relating to this Agreement or any other agreement executed and delivered pursuant to this Agreement or the negotiation, validity or performance hereof and thereof or the transactions contemplated hereby and thereby. Each party further irrevocably waives any objection to proceeding before the Arbitrator based upon lack of personal jurisdiction or venue and further irrevocably and unconditionally waives and agrees not to make a claim in any court that arbitration before the Arbitrator has been brought in an inconvenient forum. Each of the parties hereto hereby consents to service of process at the address to which notices are to be given. Each of the parties hereto agrees that its submission to jurisdiction and its consent to service of process are made for the express benefit of the other party hereto.

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<sup>1</sup> Commercial Laws can be found at [LeapLaw's Corporate Connection](#).

10.2 Governing Law; Consent to Jurisdiction. This Agreement and all rights and remedies thereunder, shall be governed by and construed under the laws of the [STATE].

10.3 Assignment. This Agreement shall not be assigned by operation of law or otherwise, except that either party may assign all or any of its rights hereunder to any Person directly or indirectly controlling, controlled by or under common control with either party provided that no such assignment shall relieve the assigning party of its obligations hereunder.

10.4 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Company or to the PARTY2:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

if to the PARTY1:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

[with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_  
Attention: \_\_\_\_\_]

Each party may furnish an address substituting for the address given above by giving notice to the other party in the manner prescribed by this Section 10.4 (Notices). All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

**10.5 Confidentiality.** Each party shall maintain the confidentiality of non-public information regarding the Joint Venture received pursuant to this Agreement, or as a result of being a party to this Agreement.

**10.6 No Exclusivity.** Neither Party shall be obligated to offer any business opportunities with the other Party by virtue of this Agreement.

**10.7 Severability.** In the event that any provision of this Agreement is held to be unenforceable by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties so closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**10.8 Construction.** The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “**or**” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “**including**” has the inclusive meaning frequently identified with the phrase “**including but not limited to**” or “**including without limitation,**” and (e) references to “**hereunder,**” “**herein**” or “**hereof**” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

**10.9 Entire Agreement.** This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, undertakings and understandings (other

than the Confidentiality Letter), both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

10.10 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

10.11 Negotiation of Agreement. Each of the parties acknowledges that it has been represented by independent counsel of its choice throughout the negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intentions of the parties and this Agreement.

10.12 Counterparts. This Agreement may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Joint Venture Agreement to be executed as of the date first above written.

[PARTY1]:

[NAME OF PARTY1]

By: \_\_\_\_\_

Its:

[PARTY2]:

[NAME OF PARTY2]

By: \_\_\_\_\_

Its: