

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-124**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING MINOR REVISIONS TO THE INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON, APPROVED ORIGINALLY PURSUANT TO RESOLUTION 2016-067, TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT IN THE NAME OF MULTIPLE CORPORATIONS CALLIANASA CORP, KEY VACA LLC, DRIFTWOOD LLC, CB SCHMITT REAL ESTATE COMPANY, INC., AND TWENTY-THIRD STREET, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) wishes to enter into an Interlocal Agreement with Monroe County (the “County”) for the purposes of Transferring affordable housing unit allocations; and

WHEREAS, the Monroe County requested minor and non-substantive modifications to the ILA approved by the City pursuant to Resolution 2016-067 and the City has made such minor modifications,

WHEREAS, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Revised Interlocal Agreement (ILA) attached hereto as Exhibit “A”, between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project in the name of several corporations, notably:

Callianasa Corp.
Key Vaca LLC
Driftwood LLC
CB Schmitt Real Estate Company, Inc., and
Twenty-Third Street, LLC

is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF DECEMBER, 2016.

THE CITY OF MARATHON, FLORIDA



Dr. Daniel Zieg, Mayor

AYES: Bartus, Coldiron, Cook, Senmartin, Zieg
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



David Migut, City Attorney

**INTERLOCAL AGREEMENT BETWEEN
MONROE COUNTY AND THE CITY OF MARATHON
TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this ____ day of _____, 2016, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”) and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”);

WITNESSETH:

WHEREAS, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

WHEREAS, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (ROGOs) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical State Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

WHEREAS, Chapter Five (5) of the City comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

WHEREAS, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer ROGOs; and

WHEREAS, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable allocations; and

WHEREAS, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01, *et. seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and

WHEREAS, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

WHEREAS, KEY VACA, LLC, a Florida limited liability company; CALLIANASA CORP., a Florida corporation; DRIFTWOOD, LLC, a Florida limited liability company; CB SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation; and TWENTY-THIRD STREET, LLC, a Florida limited liability company (collectively "Property Owners"), wish to deed restrict up to thirty-four (34) units that currently are market rate units as affordable housing, and

WHEREAS, the owner and legal descriptions of the units are as follows:

KEY VACA, LLC – Parcel ID No. 00327140-000100; Alt. Key No. 8758961
4800 Overseas Highway, Apts. 1, 2, 3, 4
Marathon, FL 33050

Situated in the County of Monroe and State of Florida and known as being a part of Lot 4 of Thompson and Adams Subdivision of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24, of Monroe County, Florida Public Records and more particularly described as follows:

Commencing on the northerly right-of-way line of Old State Highway 4-A at the southeasterly corner of Lot 4 of Thompson and Adams Subdivision as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the East line of said Lot 4, 230.29 feet to THE POINT OF BEGINNING of that portion of Lot 4 herein intended to be described, from said Point of Beginning bear northwesterly on the arc of a curve, deflecting to the left, 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue northwesterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point of tangency; thence bear North 342.55 feet; thence bear East 75.97 feet to a point on the East line of said Lot 4; thence bear south along the East line of said Lot 4, 418.55 feet back to the Point of Beginning, subject to Easements set forth in Grant of Easement of even date herewith, executed by Grantee in favor of Grantor.

CALLIANASA CORP. – Parcel ID No. 00340030-000000; Alt. Key No. 1417645
489 63rd Street, Apts. 1-8
Marathon, FL 33050

Lots 8 and 9, Block C, SHERYL SUBDIVISION #2, according to the Plat thereof as recorded in Plat Book 4, Page 43 of the Public Records of Monroe County, Florida, together with improvements thereon.

DRIFTWOOD, LLC – Parcel ID No. 00326380-000000; Alt. Key No. 1400416
10875 Overseas Highway, Apts. 201, 202, 203, 204
Marathon, FL 33050

All that tract or parcel of land situate in Section 6, Township 66 South, Range 33 East, being part of “KEY COLONY TRACT” as surveyed by John P. Goggin, P.E. & P.L.S., dated May 20, 1955 and filed August, 1955 at Plat Book 3, Page 108, bounded and described as follows:

BEGINNING at a point in the North line of said Key Colony Tract, 4.72 feet Easterly as measured along said North line, from the West line of said KEY COLONY TRACT; thence, Northerly 77 degrees, 51 minutes East, along the North line of said KEY COLONY TRACT, a distance of 182.80 feet to an iron rod; thence Southerly 11 degrees, 23 minutes, 07 seconds East, a distance of 71.96 feet to an iron rod; thence Southerly 4 degrees, 39 minutes 26 seconds West, a distance of 14.35 feet to an iron rod; thence southerly 47 degrees, 35 minutes, 34 seconds West, a distance of 123.35 feet to an iron rod; thence southerly 77 degrees, 12 minutes, 16 seconds West, a distance of 96.09 feet to an iron rod; thence Southerly 64 degrees 43 minutes West, a distance of 61.36 feet to an iron rod; thence Northerly 48 degrees, 38 minutes, 40 seconds West, a distance of 20.60 feet to an iron rod; thence Northerly 30 degrees, 48 minutes West, a distance of 19.25 feet to an iron rod; thence Northerly 6 degrees 25 minutes 47 seconds West a distance of 72.50 feet to an iron rod, back to the POINT OF BEGINNING.

C B SCHMITT REAL ESTATE COMPANY, INC.
Parcel ID No. 00334490-000200; Alt. Key No. 8902026
11085 1st Ave., Gulf, East and West
Marathon, FL 33050

A portion of:

The Northerly 100 feet of Lot 1, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Southerly 33.85 feet of the Northerly 133.85 feet of Lot 1, and the Southerly 58.85 feet of the Northerly 133.85 feet of Lot 2, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 2, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 3, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 4, Block 1, KEY COLONY SUBDIVISION #3, according to the plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

TWENTY THIRD STREET, LLC – Parcel ID No. 00320860-000000; Alt. Key No. 1395170
152 23rd Street, Ocean, Units 1 through 5
Marathon, FL 33050

Lot 3, Block 2, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

TWENTY THIRD STREET, LLC – Parcel ID No. 00320840-000100; Alt. Key No. 1395153
150 23rd Street, Ocean, Units 1 through 3
Marathon, FL 33050

Situated on Key Vaca in the County of Monroe, State of Florida, and known as being a part of Lot 1, Block 2, SOMBRERO SUBDIVISION NO. 1, within Government Lot No. 1, Section 9, Township 66 South, Range 32 East, as shown by Plat recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida, and bounded and described as follows:

BEGINNING at the southwesterly corner of Lot 1, Block 2, of said SOMBRERO SUBDIVISION NO. 1, bear North along the West line of said Lot 1 of Block 2, 40.91 feet; thence bear East 60.00 feet to a point on the Easterly line of said Lot 1; thence bear South 40.91 feet along the said Easterly line of Lot 1 to the Southeasterly corner thereof; thence bear West along the Southerly line of said Lot 1, 60.00 feet back to the POINT OF BEGINNING.

TWENTY THIRD STREET, LLC – Parcel ID No. 00320730-000000; Alt. Key No. 1395030
393 23rd Street, Ocean, Units 1 through 5
Marathon, FL 33050

Lot 5, Block 1, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

TWENTY THIRD STREET, LLC – Parcel ID No. 00320730-000000; Alt. Key No. 1395030
169, 171, & 167 23rd Street, Ocean
Marathon, FL 33050

Lot 2, Block 1, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

WHEREAS, County hereby agrees to transfer to City thirty-four (34) affordable housing allocations to allow Marathon to secure the above properties as deed restricted affordable housing.

WHEREAS, the parties have determined that this Agreement is in the best interests of the public.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. TRANSFER: The parties agree to permit the transfer of up to thirty-four (34) affordable housing ROGO allocations from Monroe County to the City of Marathon, and subject to the conditions contained therein, including but not limited to:

a. The filing of a 99 year Affordable Housing Deed Restriction on all of the thirty-four (34) affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida and the applicable provisions of the the Florida Building Code.

b. The affordable housing shall be solely in the categories of low income housing. Renters of said units shall qualify as earning at least 70% of their income within Monroe County.

c. The transfer of the market rate rights from the properties to a receiver site(s) approved by the City of Marathon under a separate agreement with the Property Owners.

Section 2. ASSIGNMENT: Monroe County has assigned its rights to the affordable allocations to the City, and the thirty-four (34) affordable housing allocations are to be issued by the City to be used specifically by KEY VACA, LLC, a Florida limited liability company, at the development in Marathon known as 4800 Overseas Highway, Marathon, FL 33050; CALLIANASA CORP., a Florida corporation, at the development in Marathon known as 489 63rd Street, Ocean, Marathon, FL 33050; DRIFTWOOD, LLC, a Florida limited liability company, at the development in Marathon known as 10875 Overseas Highway, Marathon, FL 33050; CB SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation, at the development in Marathon known as 11085 Overseas 1st Ave., Gulf, Marathon, FL 33050; and TWENTY-THIRD STREET, LLC, a Florida limited liability company, at the development in Marathon known as 152 23rd Street, Ocean, Apts. 1-5, Marathon, FL 33050, 150 23rd Street, Ocean, Apts. 1-3, Marathon, FL 33050, 393 23rd Street, Ocean, Apts. 1-5, Marathon, FL 33050, and 167, 169, and 171 23rd Street, Ocean, marathon, FL 33050.

Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until fully performed by the parties and Property Owner. If Any of the affordable allocations transferred to the City through this ILA are not transferred to the properties identified herein they shall be returned to the County within and not to exceed one year from the date of the approval of this ILA.

Section 4. NOTIFICATION: The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to KEY VACA, LLC, a Florida limited liability company; CALLIANASA CORP., a Florida corporation; DRIFTWOOD, LLC, a Florida limited liability company; CB SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation; and TWENTY-THIRD STREET, LLC, a Florida limited liability company; for the duration of the ROGO allocations described in **Section 1. (“Transfer”)** above, and (2) shall notify Monroe County of any assignment(s) and successor(s) in interest or title to the ROGO allocations described in **Section 1. (“Transfer”)** above at least thirty (30) days prior to the date of such transfer or succession by certified U. S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director.

All such notices under this Section (**“Section 4.”**) shall be sent to the following addresses:

Monroe County County Administrator
1100 Simonton Street
Key West, FL 33040

Planning & Environmental Resources Department
Attn: Senior Director
2978 Overseas Highway
Marathon, FL 33050

Section 5. GOVERNING LAWS/VENUE: This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney’s fee and costs. This Agreement is not subject to arbitration.

Section 6. NONDISCRIMINATION: The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101-6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. ss. 290 dd-3 and 290 ee03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating

to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

Section 7. CODE OF ETHICS: The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

Section 8. NO SOLICITATION/PAYMENT: The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

Section 9. SUBORDINATION: This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

Section 10. INCONSISTENCY: If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility and liability.

Section 11. PUBLIC ACCESS TO RECORDS: The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

Section 12. NON-RELIANCE BY NON-PARTIES: Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Section 13. NO PERSONAL LIABILITY: No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable

personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 14. NOTICES: All notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr., County Administrator
Monroe County Historic Gato Building
1100 Simonton Street
Key West, Florida 33040

Planning & Environmental Resources Department
Attn: Senior Director
2798 Overseas Highway
Marathon, FL 33050

With a copy to: Robert B. Shillinger, Jr., Esquire
Monroe County Attorney's Office
P.O. Box 1026
Key West, Florida 33041-1026

If to City: Charles Lindsay
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

George Garrett
Planning Director
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

With a copy to: David Migut, Esquire
City Attorney
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

Thomas D. Wright, Esq.
Law Offices of Thomas D. Wright, Chartered
9711 Overseas Highway
Marathon, FL 33050
Attorney for Property Owners

Michael Halpern, Esq.
Michael Halpern, P.A.
209 Duval St., 2 Fl D
Key West, FL 33040
Attorney for Property Owners

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered, or sent by overnight delivery service.

Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT: This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

Section 16. MISCELLANEOUS: Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

Section 17. COUNTERPARTS: This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

Section 18 SEVERABILITY: The provisions of this ILA are declared to be severable, and if any sentence, section, clause or phrase of this ILA shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 19. EFFECTIVE DATE: This Agreement shall take effect on the date set forth above.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

ATTEST: AMY HEAVILIN, CLERK

By: _____
Deputy Clerk

By: _____
Mayor/Chairperson

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA



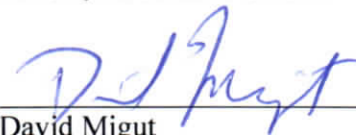
DIANE CLAVIER
City Clerk

By:  19 Dec 2016

Mayor Daniel Zieg Date

(City Seal)

APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF THE CITY OF
MARATHON, FLORIDA ONLY:

By: 

David Migut
City Attorney

We hereby consent to this Agreement and agree to abide by all terms and requirement herein.

KEY VACA, LLC,
a Florida limited liability company

By: _____
DENISE H. HOLLAND
Manager

Date: _____

CALLIANASA CORP.,
a Florida corporation

By: _____
DENISE H. HOLLAND
President

Date: _____

DRIFTWOOD, LLC,
a Florida limited liability company

By: _____
DENISE H. HOLLAND
Manager

Date: _____

C B SCHMITT REAL ESTATE COMPANY, INC.,
a Florida corporation

By: _____
BRIAN C. SCHMITT
President

Date: _____

TWENTY THIRD STREET, LLC
a Florida limited liability company

By: _____
DENISE H. HOLLAND
Manager

Date: _____