ROADWAY EASEMENT AGREEMENT

THE STATE OF TEXAS	§ 8	KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON	§	

This Roadway Easement Agreement (this "Agreement") is effective as of the ______ day of May, 2012 (the "Effective Date"), by and between HEB GROCERY COMPANY, LP, a Texas limited partnership (successor by merger with H.E. Butt Grocery Company, a Texas corporation) (herein called "Grantor"), whose address is 646 South Main Avenue, San Antonio, Texas 78204, and its successors and assigns, and WILLIAMSON COUNTY (herein called "Grantee"), whose mailing address is 710 Main Street, Suite 101, Georgetown, Texas 78626.

WHEREAS, Grantor is the owner of an approximately 13.114 acre parcel of land located near the intersection of R.M. 620 and O'Connor Drive, in Round Rock, Williamson County, Texas, as more particularly described on Exhibit "A" attached hereto (the "HEB Property");

WHEREAS, Grantee intends to construct certain roadway improvements, including without limitation certain medians to be located within R.M. 620 (the "Medians"), and as a result of such Medians, ingress and egress to and from the HEB Property may be adversely impacted;

WHEREAS, Grantee has agreed to construct (the "Work") a roadway (the "Roadway"), as depicted on the site plan attached hereto as <a href="Exhibit" C" and more particularly described on <a href="Exhibit" C" and more particularly described on <a href="Exhibit" C" and (ii) on the property located adjacent to the HEB Property, being more particularly described in <a href="Exhibit" E" (the "Adjacent Property"), thereby connecting the HEB Property to Smyers Lane and mitigating any adverse impact the Medians may have on the HEB Property; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration in hand paid, and in consideration of the mutual agreements herein made, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Roadway Easement. Subject to the terms, provisions and conditions set forth herein, Grantor does hereby GRANT, SELL and CONVEY unto Grantee a non-exclusive easement on the Easement Property (as defined below) for the construction, operation, maintenance, replacement, upgrade, repair and removal of a roadway, in, upon, over, under, on, and across the Easement Property, together with the right and privilege at reasonable times to enter the Easement Property, or any part thereof, for the purpose of constructing, operating, maintaining, replacing, upgrading, repairing and removing said roadway:

See Exhibit "B" attached hereto and made a part hereof for all intents and purposes hereunto and in any wise pertaining, being a 0.078 acre tract of land (the "Easement Property") and

See "Sketch to Accompany Description" attached hereto as <u>Exhibit</u> "B" and made a part hereof for all intents and purposes hereunto and in any wise pertaining, showing such Easement Property.

- 2. <u>Terms of Agreement</u>. The easement right granted herein is subject to the following terms, provisions and conditions:
- (a) <u>Grantee's Responsibilities</u>. In performing the Work, Grantee and its representatives, contractor(s) and agents shall:
 - (i) Not injure or otherwise cause bodily harm to Grantor's agents, guests, invitees, contractors and employees;
 - (ii) Use proper work and safety procedures and comply with all code requirements and other applicable laws;
 - (iii) Not permit any mechanics' liens, vendors liens or any other liens to attach to the HEB Property and/or the Easement Property by reason of the exercise of its rights hereunder;
 - (iv) Promptly repair any damage to HEB's Property (including the subsurface thereof) resulting from the entry by Grantee or its agents, employees, contractors and representatives or from performing any such Work;
 - (v) All work shall be performed in an efficient and workmanlike manner so as to minimize interference with Grantor and its agents, guests, invitees, contractors and employees;
 - (vi) The Work shall be performed on or within the Easement Property, as set forth on Exhibit "B" attached hereto;
 - (vii) Perform the Work at the Grantee's cost, without cost to Grantor;
 - (viii) Grantee shall use commercially reasonable efforts to diligently pursue to completion the Roadway following commencement of the Work; and
 - (ix) Grantee shall have completed the Roadway prior to the commencing any work on the Medians.
- (b) Plan Approval. Prior to commencing the Work, Grantor shall have the right to review and approve in writing the plans and specifications for the Roadway connecting the HEB Property to Smyers Lane (the "Proposed Plans"). Grantor shall have fifteen (15) days following its receipt of the Proposed Plans to either approve or disapprove the Proposed Plans, in its reasonable discretion, by delivering written notice to Grantee of its approval or disapproval of the Proposed Plans ("Approval Notice" or "Disapproval Notice", as applicable). If Grantor disapproves the Proposed Plans, then Grantor shall give specific reasons therefor in the Disapproval Notice, whereupon Grantee shall have ten (10) days following its receipt of the Disapproval Notice to submit to Grantor revised plans and specifications for the construction of the Roadway (the "Revised Plans"). Grantor shall have ten (10) days following its receipt of the Revised Plans to either approve or disapprove the Revised Plans, in its reasonable discretion, by delivering written notice to Grantee of its approval or disapproval of the Revised Plans. The foregoing process shall continue until the Proposed Plans (or the Revised Plans) have been finally approved by Grantor in an Approval Notice. The approved Proposed Plans (or Revised Plans) are referred to in this Agreement as the "Plans". Any changes or alterations to the Plans shall be subject to prior comment and approval by Grantor. Once the Plans have been approved by Grantor as set forth

herein, Grantee shall give written notice to Grantor of Grantee's intent to commence construction and installation of the Roadway in accordance with the Plans.

- (c) <u>No Business Interruption and Coordination</u>. Prior to commencing any Work on the Easement Property, Grantee, its representatives, agents and contractor(s) shall have a preconstruction meeting with Grantor and its representatives and agents to coordinate all such Work. Further, Grantee will coordinate all Work with Grantor's store manager to assure that the Work will not interrupt or interfere with Grantor's business operations. At least 24 hours prior to commencing any Work, Grantee will notify Grantor's store manager to coordinate such activities.
- (d) <u>Work Schedule</u>. Grantee shall not perform, or cause to be performed, any Work or other related activities on HEB's Property or the Easement Property between the dates of November 1st and January 1st of each year and other major holidays at Grantor's request.
- 3. <u>Reservation of Rights</u>. Grantor and Grantor's heirs, successors, and assigns reserve the right to use and enjoy all or part of the Easement Property as long as such use by Grantor and Grantor's heirs, successors, and assigns does not unreasonably interfere with the use of the easement by Grantee.
- 4. <u>Maintenance</u>. Grantee and its successors and assigns shall be responsible for performing, or causing to be performed, all maintenance and repair of the Easement Property, including but not limited to the installation, repair and replacement of any asphalt and concrete areas, landscaping, and resurfacing, as necessary.
- 5. <u>Insurance</u>. Grantee agrees that in its contract with any third party ("the "Contractor") that Grantee engages to perform any of the construction work on the Easement Property, Grantee will require that the Contractor has insurance meeting the requirements set forth in subsections (i) and (ii) below. Prior to the Contractor performing any activity on the Easement Property, Grantee or the Contractor will provide Grantor a certificate of insurance evidencing that: (i) the coverage names Grantor as an additional insured, and (ii) the insurance coverage includes commercial general liability insurance pertaining to Contractor's activities on the Easement Property with combined single limit coverages of no less than \$2,000,000.
- 6. <u>Indemnity</u>. To the extent permitted by texas law, grantee hereby agrees to indemnify, defend, and hold harmless grantor, and its respective partners, employees, permittees, contractors, invitees, and agents, from and against any loss, cost, damage, attorney fees, expenses, or claims, actual or threatened, attributable to breach or default of any provision of this agreement by grantee, grantee's use of the easement property pursuant to this easement, or any damage or liability for which grantee is obligated to insure. This indemnity shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- 7. <u>Permitted Exceptions</u>. This conveyance of the easement is made subject to all restrictions, covenants, conditions, rights-of-way, easements, mineral reservations and royalty reservations of record, if any, in the Real Property Records of Williamson County, Texas, (the "Permitted Exceptions").
- 8. <u>Term.</u> This conveyance and the rights granted to Grantee hereunder shall commence and be effective on the Effective Date and shall terminate upon the earlier of (i) the dedication of the Roadway in accordance with the terms, provisions and conditions of this Agreement to Grantee or other

applicable governmental entity, the effect of which would create a public street on the easement area so dedicated, with maintenance and repair responsibilities transferring to Grantee or other governmental entity, as applicable, or (ii) five (5) years following the Effective Date provided that Grantee has not commenced construction of the Roadway. The Easement granted herein shall automatically terminate and expire without further documentation being required.

9. Dedication.

- (a) Nothing herein contained shall be deemed to be a gift or dedication of any portion of the HEB Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof.
- (b) Notwithstanding the foregoing, following the completion of the Roadway, Grantor shall use commercially reasonable efforts to cause the Easement Property to be dedicated to Grantee or other applicable governmental entity, the effect of which would create a public street on the Easement Property, with maintenance and repair responsibilities transferring to Grantee, or other governmental entity as applicable. Grantee represents and warrants that the Adjacent Property, upon which the Roadway will be constructed, has been dedicated to Grantee or other applicable governmental entity, thereby creating a public street or right-of-way on the Adjacent Property.
- 10. <u>Miscellaneous</u>. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the parties hereto, including but not limited to Grantor, and their respective successors and assigns. Executed in multiple counterparts, each of which shall be an original, which together shall constitute but one and the same instrument.

TO HAVE AND TO HOLD the rights and interests described unto Grantee and its successors and assigns forever, subject to the terms and conditions hereof; and Grantor does hereby bind itself, its successors and assigns and legal representatives to warrant and forever defend, all and singular, the above-described easement and rights and interests unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim same, or any part thereof, to the extent that such claim arises by, through, or under Grantor but not otherwise, subject to the Permitted Exceptions.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this ______ day of May, 2012.

GRANTOR:

HEB GROCERY COMPANY, LP a Texas limited partnership

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

ACKNOWLEDGMENT

THE STATE OF TEXAS

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COUNTY OF BEXAR

This instrument was acknowledged before me on this the ______ day of May, 2012, by Todd A.
Piland, Executive Vice President of HEB Grocery Company, LP, a Texas limited partnership, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that

he/she executed the same as the act and deed of and on behalf of said entity and in the capacity and for the

DEBRA L. SALDANA
Notary Public, State of Texas
My Commission Expires

March 12, 2014

purposes and consideration therein expressed.

Notary Public, State of Texas

AGREED AND ACCEPTED TO BY:

GRANTEE:

	GRANTEE
	Williamson County By: Name: DAM A GATTIN Title: Title:
THE STATE OF TEXAS	§
COUNTY OF WILLIAMSON	§ § §
This instrument was acknowledged bereby,,,	fore me on this the day of, 2012, of, known ibed to the foregoing instrument, and acknowledged to me eed of and on behalf of said entity and in the capacity and ressed.
	Notary Public, State of Texas
After recording please return to:	
Sheets & Crossfield, P.C. 309 East Main Street	

Round Rock, Texas 78664

EXHIBIT A GRANTOR'S PROPERTY

Lot One (1), Block "A", HEB/620 SUBDIVISION NO. 2, a subdivision in Williamson County, Texas, according to the map or plat thereof, recorded in Cabinet P, Slide(s) 238-239 of the Plat Records of Williamson County, Texas.

EXHIBIT B EASEMENT PROPERTY

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EXHIBIT "A"

County: Williamson
Parcel No. Lot 1, Block A, HEB/620 SUBDIVISION NO. 2
Righway: R.M. 620 at Smyers Lane
Limits: West side R.M. 620 at Smyers Lane

CSJ:

DESCRIPTION FOR H. E. BUTT GROCERY COMPANY TRACT

DESCRIPTION OF A 0.078-ACRE TRACT OF LAND, SITUATED IN THE JACOB M. HARRELL SURVEY, ABSTRACT NO. 284, WILLIAMSON COUNTY, TEXAS, HEING A PORTION OF LOT 1, BLOCK A, HEB/620 SUBDIVISION NO. 2, A SUBDIVISION RECORDED IN CABINET P, SLIDES 230 - 239, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.078-ACRE TRACT OF LAND, AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a 1/2" iron rod found monumenting the most easterly corner of said Lot 1, Block A, HEB/620 Subdivision No. 2, same being on the most southerly corner of Lot 2, Block A, King of Kings Addition as recorded in Cabinet N, Slides 53 - 55, Plat Records of Williamson County, Texas, same being on a point in the curving westerly right-of-way line of R.M. 620 (right-of-way width varies), same being on a point in the curving westerly boundary line of a called 10.94-acre tract of land conveyed to the State of Texas as recorded in Volume 337, Page 291, Deed Records of Williamson County, Texas;

THENCE departing said westerly right-of-way line of R.M. 620 and said westerly boundary line of said 10.94-acro State of Texas tract, with the common boundary line of said Lot 1, Block A, HEB/620 Subdivision No. 2, and Lot 2, Block A, King of Kings Addition, N19°37'57'W for a distance of 84.08 feet to a 1/2" iron rod sat with cap marked "Diamond Surveying", monumenting the southeast corner and POINT OF BEGINNING hereof;

THENCE through the interior of said Lot 1, Block A, $\rm HEB/620$ Subdivision No. 2, the following three (3) courses and distances:

- 847°20'43"W for a distance of 42.95 feet to a PK NAIL SET in top of concrete curb, monumenting the southwest corner hereof;
- N42°21'17"W for a distance of 61,00 feet to a 1/2" iron rod set with cap marked "Diamond Surveying", monumenting the northwest corner hereof;
- 3. N47°20′43″E for a distance of 68.55 feet to a 1/2″ iron rod set with cap marked "Diamond Surveying", monumenting the northoast corner hereof, same being on a point in the aforementioned common boundary line of said Lot 1, Block A, HEB/620 Subdivision No. 2, and Lot 2, Block A, King of Kings Addition, and from which a 1/2″ Iron rod found monumenting the northwest corner of said Lot 2, King of Kings Addition, same being on a point in the easterly boundary line of said Lot 1, Block A, HEB/620 Subdivision No. 2, boars N19°37′57″W for a distance of 128.82 feet;

HEB/620 SUBDIVISION NO. 2 TRACT

Page 2 of 4

THENCE with the common boundary line of said Lot 1, Block A, HEB/620 Subdivision No. 2, and Lot 2, Block A, King of Kings Addition, 819°37'57"E for a distance of 66.28 feet to the POINT OF REGINNING and containing 0.078 acre of land more or lass.

All bearings shown hereon are grid bearings based on Toxas State Plane System, NAD-83(1993), Central Zone. All distances are surface distances based on a combined surface adjustment factor of 1.00011.

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON §

That I, Shane Shafer, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Georgetown, Williamson County, Texas, this the 24th day of January, 2012 A.D.

SHANE SHAFER

5281

SURV

DIAMOND SURVEYING, INC.

116 SKYLINE ROAD, GEORGETOWN, TX 78628 (\$12) 931-3100 Shane Shafe

Registered Professional Land Surveyor

No. 5281 - State of Texas

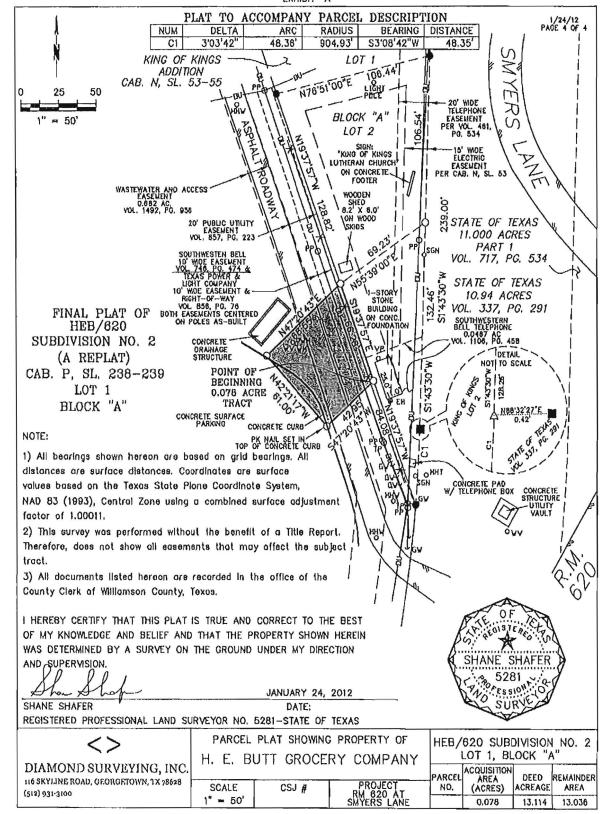


EXHIBIT C SITE PLAN OF ROADWAY

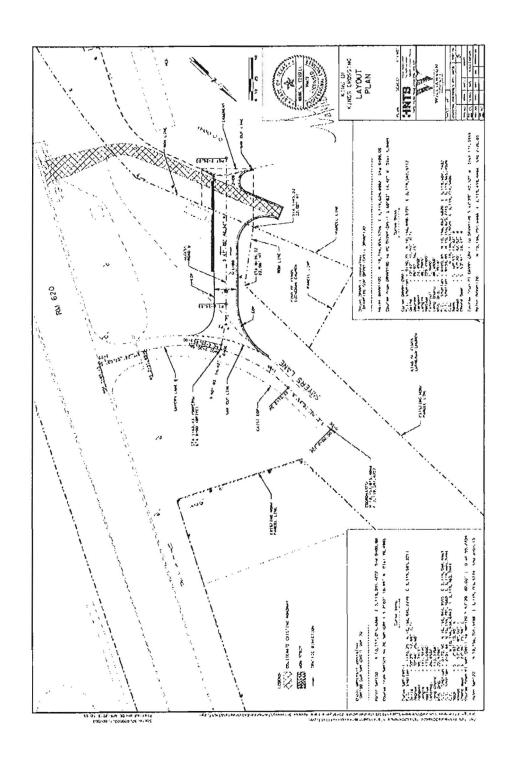


EXHIBIT D

LEGAL DESCRIPTION OF ROADWAY

The "Roadway" consists of (i) the Easement Property being more particularly described on Exhibit B attached hereto and incorporated herewith, and (ii) the Adjacent Property being more particularly described on Exhibit E attached hereto and incorporated herewith.

EXHIBIT E ADJACENT PROPERTY

Page 1 of 4

County: Williamson Parcel No. Lot 2, Block A, King of Kings Addition Highway: R.M. 620 at Smyers Lane Limits: West side R.M. 620 at Smyers Lane

C9J:

DESCRIPTION FOR KING OF KINGS LUTHERAN CHURCH TRACT

DESCRIPTION OF A 0.111-ACRE TRACT OF LAND, SITUATED IN THE JACOB M. HARRELL SURVEY, ABSTRACT NO. 284, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF LOT 2, BLOCK A, KING OF KINGS ADDITION, A SUBDIVISION RECORDED IN CABINET N, SLIDES 53 - 55, PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.104-ACRE TRACT OF LAND, AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found monumenting the most southerly corner of said Lot 2, King of Kings Addition. same being on the most easterly corner of Lot 1, Block A, Final Plat of NEB/620 Subdivision No. 2 (A Replat), recorded in Cabinet P, Slides 238 - 239, Plat Records of Williamson County, Texas, same being on a point in the curving westerly right-of-way line of R.M. 620 (right-of-way width varies), same being on a point in the curving westerly boundary line of a called 10.94-acre tract of land conveyed to the State of Texas as recorded in Volume 337, Page 291, Dead Records of Williamson County, Texas, monumenting the most southerly corner and POINT OF BEGINNING hereof;

THENCE departing said westerly right-of-way line of R.M. 620 and said westerly boundary line of said 10.94-acre State of Texas tract, with the common boundary line of said Lot 2, King of Kings Addition and said Lot 1, Final Plat of HEB/620 Subdivision No. 2, N19°37'57"W for a distance of 150.36 feet to a 1/2" iron rod set with cap marked "Diamond Surveying", monumenting the northwest corner hereof, and from which a 1/2" iron rod found on the northwest corner of said Lot 2, King of Kings Addition, same being the southwest corner of Lot 1, Block A, of said King of Kings Addition, bears N19°37'57"N for a distance of 128.82 feet;

THENCE through the interior of said Lot 2, King of Kings Addition the following two (2) courses and distances:

- 876°08'37"E for a distance of 11.99 feet to a 1/2" iron rod set with oap marked "Diamond Surveying" monumenting an angle point in the northerly boundary line hereof;
- 2) N47°20′43″E for a distance of 61.89 feet to a 1/2″ iron rod set with cap marked "Diamond Surveying", on a point in the easterly boundary line of seid Lot 2, King of Kings Addition, same being on a point in aforementioned westerly boundary line of the 10.94-acre State of Texas tract, same being on a point in said westerly right-of-way line R.M. 620, monumenting the northeast corner hereof, and from which a 1/2″ iron rod found on the northeast corner of said Lot 2, King of Kings Addition, same being on the southeast corner of said Lot 1, King of Kings Addition, bears N1°43′30″E for a distance of 106.54 feet;

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THENCE with the easterly boundary line of said Lot 2, King of Kings Addition, same being with said westerly boundary line of the 10.94-acre State of Texas tract, same being with said westerly right-of-way line of R.M. 620 the following two (2) courses and distances:

- \$1°43'30"W for a distance of 132.46 feet to a calculated unmonumented boundary point on the beginning of a curve to the right, from which a concrete highway monument found out of place, bears N88°32'27"E for a distance of 0.42 feet;
- 2. with the arc of said curve to the right having a delta angle of 3°03'42", an arc length of 48.36 feet, a radius of 904.93 feet, and a chord which bears S3°08'42"W for a distance of 48.35 feet to POINT OF BEGINNING hereof, and containing 0.111 acre of land more or less.

All bearings shown hereon are grid bearings based on Texas State Plane System, NAD-83(1993), Central Zone, All distances are surface distances based on a combined surface adjustment factor of 1.00011.

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON §

That I, Shane Shafer, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Georgetown, Williamson County, Toxas, this the 11th day of November, 2011 A.D.



> DIAMOND SURVEYING, INC.

116 SKYLINE ROAD, GEORGETOWN, TX 78628 (512) 931-3100 Shane Shafer

Registered Professional Land Surveyor

No. 5281 - State of Texas

EXHIBIT "A"

