



CFN:99216530

11-04-99 02:43 pm

OR Book/Page: 4087 / 2699

**Sandy Crawford**

Clerk Of Courts, Brevard County

#Pgs: 9

#Names: 2

Trust: 5.00

Rec: 37.00

Serv: 0.00

Deed: 0.70

Excise: 0.00

Mtg: 0.00

Int Tax: 0.00

Prepared by and please return to:  
Curtis R. Mosley, Esq. (cur)  
Mosley, Wallis & Whitehead, P.A.  
1221 E. New Haven Avenue  
Melbourne, FL 32901

**BEACH ACCESS EASEMENT AGREEMENT**

**THIS BEACH ACCESS EASEMENT AGREEMENT** (the "EASEMENT AGREEMENT") is made and entered into this 1<sup>st</sup> day of November, 1999, by and between **SOLANA SHORES, INC.**, a Florida corporation whose address is 710 North Plankinton Avenue, Suite 1200, Milwaukee, Wisconsin 53203 (the "GRANTOR"), and **SOLANA DEVELOPMENT, INC., a Florida Corporation**, whose address is 1600 North Atlantic Avenue, Suite 201, Cocoa Beach, Florida 32931 (the "GRANTEE").

**WITNESSETH:**

**WHEREAS**, the GRANTOR is the owner of those lands located in Cape Canaveral, Brevard County, Florida described on the attached Exhibit A as depicted on attached Exhibit "B" (the "BURDENED LANDS"); and

**WHEREAS**, The GRANTEE is the owner of those certain lands in Cape Canaveral, Brevard County, Florida described on the attached Exhibit "C" as depicted on Exhibit "D" (the "BENEFITTED LANDS"); and

**WHEREAS**, The GRANTOR has agreed to grant to the GRANTEE an exclusive 6-foot wide easement for purposes of allowing pedestrian access along and over a 6-foot wide easement area, which shall run over and along the southern boundary of the BURDENED LANDS to and from the western boundary thereof which is the eastern boundary of the BENEFITTED LANDS to and from the eastern boundary of the BURDENED LANDS (the "BEACH ACCESS EASEMENT AREA" or "EASEMENT AREA") to and from the beach on the Atlantic Ocean which Beach Access Easement is described on the attached Exhibit "A" as depicted on the attached Exhibit "B"; and

**NOW, THEREFORE**, for good, valuable and sufficient consideration, receipt of which is acknowledged by the parties hereto, including but not limited to the covenants herein contained, it is agreed as follows:

1. Recitals as Covenants. The foregoing recitals are true and are incorporated herein by reference as covenants of this EASEMENT AGREEMENT.
2. Grant of Easement. The GRANTOR hereby gives, grants, bargains and assigns to the GRANTEE a permanent and perpetual exclusive easement (other than the reserved rights of GRANTOR to use the EASEMENT AREA as set forth in Article 7 below), appurtenant to the GRANTEE'S LANDS for pedestrian traffic purposes for ingress and egress on foot, by bicycle or wheelchair, but not by any motorized bicycle or other vehicle, other than a motorized wheelchair, in, to, upon and over the BEACH ACCESS EASEMENT AREA to and from the beach on the Atlantic Ocean.
3. Construction Upon and Improvement of the BEACH ACCESS EASEMENT AREA. The GRANTOR will, at its sole cost, construct a pedestrian path over the BEACH

ACCESS EASEMENT AREA along the southern boundary of GRANTOR'S lands from the western boundary of the GRANTOR'S lands to the beach area. The design and construction of the BEACH ACCESS EASEMENT AREA shall be in GRANTOR'S sole discretion.

4. Fencing of Beach Access Easement Area. The GRANTOR will construct fencing along all of the BEACH ACCESS EASEMENT AREA and will provide a gate at the western boundary and at a site on the northern boundary to be selected by GRANTOR in its sole discretion, which northern boundary gated access shall provide an exclusive access to the BEACH ACCESS EASEMENT AREA for GRANTOR. The type, material, manufacturer, style, color and size of the fencing to be erected by the GRANTOR, shall be determined by the GRANTOR, in its sole discretion. The fencing constructed by the GRANTOR shall be gated as deemed appropriate by the GRANTOR in its sole discretion. The entranceway to the BEACH ACCESS EASEMENT AREA from the Atlantic Ocean may be gated in such a manner as not to interfere in any manner with the GRANTEE'S free use and enjoyment of the BEACH ACCESS EASEMENT AREA.
5. Maintenance of Improvements. The GRANTEE shall at all times maintain in good condition all improvements that the GRANTOR constructs upon and along the BEACH ACCESS EASEMENT AREA. However, GRANTOR shall be responsible for payment of any repairs required to the BEACH ACCESS EASEMENT AREA including fencing and gates resulting from the intentional or negligent acts of GRANTOR that result in damage to the improvements in the BEACH ACCESS EASEMENT AREA. In the event that GRANTEE shall fail at all times to maintain in good condition all improvements that have been constructed upon and along the BEACH ACCESS EASEMENT AREA, GRANTOR shall have the right to make such repairs and replacements as are required to place the improvements in good condition and shall have the right to recover from GRANTEE the costs of these repairs and replacements, which obligation to pay costs shall be the personal obligation of GRANTEE. The obligation hereunder of GRANTEE to GRANTOR shall include interest, costs and attorneys' fees arising from the collection of the assessment, whether suit is filed or not.
6. Mortgage or Deed of Trust on BEACH ACCESS EASEMENT AREA. Any mortgage or deed of trust placed on the BEACH ACCESS EASEMENT AREA by GRANTOR shall be subordinated to the easement interests of the GRANTEE herein granted by GRANTOR. The GRANTEE acknowledges and agrees that the grant of this EASEMENT AGREEMENT is subject to any existing easements or restrictions of record on the BEACH ACCESS EASEMENT AREA to which the GRANTOR has taken title subject to.
7. Use of the BEACH ACCESS EASEMENT AREA by GRANTOR. The GRANTOR shall be entitled to use the BEACH ACCESS EASEMENT AREA for pedestrian traffic purposes for ingress egress on foot or wheelchair as set forth in Article 2 above. The GRANTOR reserves the full right and entitlement to erect and construct such utilities, including but not limited to water, sewer, electric, stormwater, gas, telephone, tv, cable, conduits, sewer lines and other utility pipes, mains, lines and other improvements necessary to support future development of the BURDENED LANDS. These utility facilities may be constructed only underground.
8. Benefit. This EASEMENT AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their heirs, estates, personal representatives, trustees, successors and assigns. This EASEMENT AGREEMENT shall also be binding upon and inure to the benefit of all persons, parties and entities acquiring any interest in or to the GRANTEE'S LANDS, including but not limited to their guests, business invitees, condominium unit owners and condominium associations. The Right to Use this Easement Agreement shall not be assigned to any non-owner of the





BENEFITTED LANDS.

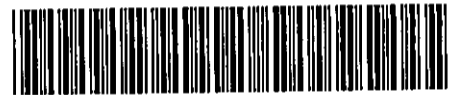
9. Covenant Running with the Land. This EASEMENT AGREEMENT shall be deemed a covenant running with the land for the use and benefit of all of persons and entities described in Paragraph 8 above.
  
10. Litigation. In the event that there is any litigation arising out of this EASEMENT AGREEMENT, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, for any mediation, arbitration, administrative proceeding, litigation, bankruptcy or any other proceeding, including appellate costs. The parties hereby agree to and stipulate that the venue and jurisdiction for any such actions with respect to this EASEMENT AGREEMENT and the rights and obligations thereunder brought by any party hereto or any of their heirs, estates, personal representatives, trustees, successors or assigns shall be commenced solely in Brevard County in the Circuit Court for Brevard County, Florida or in the U.S. District Court located in Orlando, Florida.
  
11. Private Easement Area. The easements, licenses, rights and privileges established, created and granted by the provisions of this EASEMENT AGREEMENT shall be for the benefit of and restricted solely to the GRANTOR and GRANTEE and the other parties referred to in Paragraph 8 above. This EASEMENT AGREEMENT is not intended to create, nor shall it be construed as creating, any rights in and for the benefit of the general public or any rights in or to any portion of the EASEMENT AREA other than as expressly set forth herein.
  
12. Miscellaneous.
  - (a) Each of the parties hereto, on their own behalf, and for the persons and entities referred to in Paragraph 8 hereof, hereby agree to indemnify and hold harmless the other and their successors and assigns, tenants, guests, licensees, business invitees, employees, agents and independent contractors from and against all claims, losses, liabilities and expenses (including, without limitation, attorneys' fees) incurred as a result of any work or activity by such indemnifying party or the failure of a party to otherwise comply with all the provisions hereof or the failure of their respective agents, personal representatives, employees, invitees, lessees and/or independent contractors to so comply, or as a result of the use of any easements or other grants herein contained.
  
  - (b) In the event of a breach or threatened breach by any party hereto of any of the terms, covenants, restrictions or conditions hereof, the other party shall be entitled forthwith to full and adequate relief for injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.
  
  - (c) In addition to all of the other remedies available at law or in equity, upon the failure of either party to cure a breach of this EASEMENT AGREEMENT within thirty (30) days following the written notice thereof by the non-defaulting party [unless, with respect to any such breach of a nature which cannot be reasonably cured within such thirty (30) days, the defaulting party commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion], the non-defaulting party shall have the right to perform such obligation on behalf of the defaulting party and be reimbursed by the defaulting party upon demand for the reasonable cost thereof, together with interest at the prime rate established and published in the *Wall Street Journal* or any successor or comparable publication, plus two percent (2%), not to exceed the maximum rate of interest allowed by law. The remedies specified herein shall be cumulative and in addition to all the remedies permitted at law or in equity.

(d) The GRANTEE shall have the option exercisable in GRANTEE'S sole discretion to expand, reconfigure and/or reduce the BENEFITTED LANDS, except for Solana Shores Phase II, so long as such action is taken only with respect to contiguous lands owned by the GRANTEE and/or a sister or affiliated company of GRANTEE. The GRANTEE may exercise such option by delivery to GRANTOR or GRANTOR'S successors or assigns, to wit: Solana Shores Condominium Association, Inc., a copy of an amendment to this EASEMENT AGREEMENT containing a revised description of the BENEFITTED LANDS, which amendment shall be promptly executed by such GRANTOR or its successors and assigns and returned to GRANTEE.

- 13. Insurance. GRANTOR and GRANTEE shall maintain comprehensive general liability insurance coverage covering all of the EASEMENT AREA and improvements or property thereon owned by GRANTOR. Coverage limits shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the EASEMENT AREA. Such policies shall provide that they may not be canceled or substantially modified by any party, without at least ten (10) days prior written notice to the GRANTOR and GRANTEE.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first written above.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:



CFN:99216530

OR Book/Page: 4087 / 2702

GRANTOR:

SOLANA SHORES, INC., a  
Florida corporation

By:

James B. Young, Vice President

GRANTEE:

SOLANA DEVELOPMENT, INC., a  
Florida Corporation

By:

James B. Young, Vice President

Lori Sable  
Print Name: Lori SABLE

Debbie Boeder  
Print Name: Debbie Boeder

Lori Sable  
Print Name: Lori SABLE

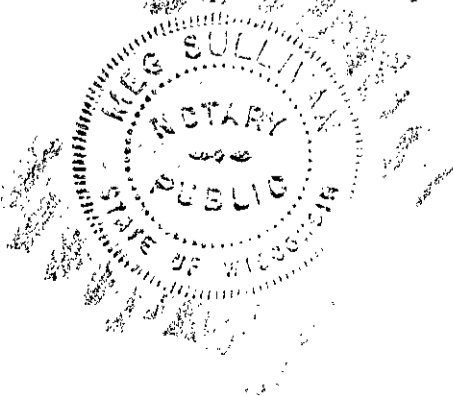
Debbie Boeder  
Print Name: Debbie Boeder

STATE OF WISCONSIN )  
COUNTY OF MILWAUKEE )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of November, 1999 by **James B. Young**, Vice President of **SOLANA SHORES, INC.**, a Florida corporation, on behalf of the corporation who is personally known to me, or has produced \_\_\_\_\_ as identification.

Meg Sullivan  
NOTARY

My commission expires: 3/30/2003



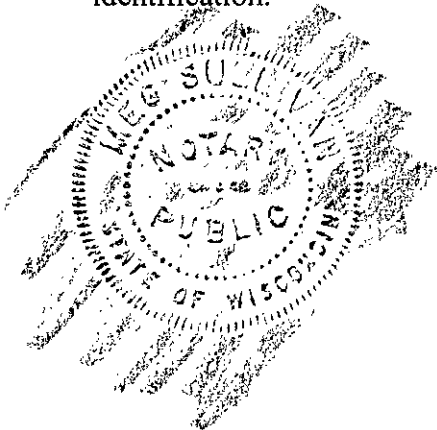


CFN:99216530

OR Book/Page: 4087 / 2703

STATE OF WISCONSIN )  
COUNTY OF MILWAUKEE )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of November, 1999 by **James B. Young, Vice President of SOLANA DEVELOPMENT, INC.**, a Florida corporation, on behalf of the corporation who is personally known to me or has produced \_\_\_\_\_ as identification.



*Meg Sullivan*  
NOTARY

My commission expires: 3/30/2003

# DESCRIPTION

NOT A BOUNDARY SURVEY  
BURDENED LANDS



CFN:99216530

OR Book/Page: 4087 / 2704

## BEACH ACCESS EASEMENT AREA

### BURDENED LANDS DESCRIPTION:

A PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 24 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 6.00 FEET OF THE SOUTH 336.00 FEET OF GOVERNMENT LOT 1 OF SAID SECTION 14.

**ALLEN**  
**Engineering, Inc.**

SURVEYORS - ENGINEERS  
106 BREEZE LAKE (P.O. BOX 321221)  
COCONA BEACH, FLORIDA 32932-1221  
PHONE: 407/763-7443 FAX: 407/763-3802

**EXHIBIT "A"**

SEE EXHIBIT "B" FOR THE SKETCH TO  
ACCOMPANY THIS DESCRIPTION

PREPARED AND CERTIFIED FOR:

TOWNE REALTY

1.	
2.	
3.	
JOB NO. 980129	DATE: 10-14-99

# SKETCH TO ACCOMPANY DESCRIPTION

NOT A BOUNDARY SURVEY  
BURDENED LANDS



CFN:99216530

OR Book/Page: 4087 / 2705

ATLANTIC OCEAN

EROSION CONTROL LINE  
SURVEY BOOK 2, PAGES 6-11



SCALE: 1"=200'

6.00'

1557.93'

COASTAL CONSTRUCTION  
CONTROL LINE

TRACT 5

N89°46'33"E

N. LINE OF THE S. 330'  
OF GOVERNMENT LOT 1

SHOREWOOD, A CONDOMINIUM

SEE EXHIBIT "A" FOR THE DESCRIPTION

**ALLEN**  
Engineering, Inc.

SURVEYORS - ENGINEERS  
106 BOXER LANE (P.O. BOX 221321)  
Cocoa Beach, Florida 32922-1321  
PHONE: 407/763-7443 FAX: 407/763-0002

W. LINE OF GOVERNMENT LOT 1

EXHIBIT "B"

PREPARED AND CERTIFIED FOR:

TOWNE REALTY

1.	
2.	
3.	
DATE: 10-14-99	DRAWN BY: KSC
JOB NO. 980129	SCALE: 1"=200'

# DESCRIPTION

NOT A BOUNDARY SURVEY



CFN:99216530

OR Book/Page: 4087 / 2706

## BENEFITTED LANDS DESCRIPTIONS:

A portion of Section 14, Township 24 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 14; thence N89°43'34"E, along the North line of the Northwest one-quarter of said Section 14, a distance of 2,639.94 feet to the North 1/4 corner of said Section 14; thence N89°45'43"E, along the North line of the Northeast one-quarter of said Section 14, a distance of 1,319.16 feet, to the Northwest corner of Government Lot 1 in said Section 14; thence S01°29'01"E, along the West line of said Government Lot 1, a distance of 500.12 feet, to the POINT OF BEGINNING of the herein described parcel; thence continue S01°29'01"E, along said West line, a distance of 1,020.14 feet, to a point on the North line of lands described in Deed Book 177, page 118, of the Public Records of Brevard County, Florida; thence S89°45'43"W, along said north line, a distance of 456.45 feet to the Northwest corner of said lands; thence S00°26'53"W, along the West line of said lands, a distance of 102.77 feet, to a point on the North line of the Villages of Seaport, A Condominium according to declaration of Condominium recorded in Official Records Book 2598, page 135 of said Public Records; thence S89°52'21"W, along said North line, a distance of 603.15 feet; thence N01°29'01"W, a distance of 1,121.77 feet; thence N89°45'43"E, a distance of 1,063.04 feet, to the POINT OF BEGINNING; Containing 26.31 acres, more or less.

Together With:

### SOLANA SHORES PHASE 2:

A portion of Section 14, Township 24 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 14; thence N89°43'34"E, along the North line of the Northwest one-quarter of said Section 14, a distance of 2,639.94 feet, to the North one-quarter corner of said Section 14; thence N89°45'43"E, along the North line of the Northeast one-quarter of said Section 14, a distance of 1,319.16 feet, to the Northwest corner of Government Lot 1 of said Section 14; thence S01°29'01"E, along the West line of said Government Lot 1, a distance of 799.09 feet, to the Northwest corner of Solana Shores, A Condominium; thence N89°46'33"E, a distance of 31.11 feet, to a point of intersection with a non-tangent curve, concave Northeasterly, having a radius of 35.40 feet and a central angle of 106°19'44"; thence Southeasterly, along the arc of said curve to the left, a distance of 65.70 feet (said arc subtended by a chord bearing S54°00'44"E, a distance of 56.67 feet), to a point of intersection with a non-tangent curve, concave Southwesterly, having a radius of 63.73 feet and a central angle of 77°45'08"; thence Southeasterly, along the arc of said curve to the right, a distance of 86.49 feet (said arc subtended by a chord bearing S66°11'54"E, a distance of 80.00 feet), to a point of intersection with a non-tangent curve, concave Northeasterly, having a radius of 116.07 feet and a central angle of 12°09'23"; thence Southeasterly, along the arc of said curve to the left, a distance of 24.63 feet (said arc subtended by a chord bearing S36°14'05"E, a distance of 24.58 feet), to a point of intersection with a non-tangent line; thence N89°47'42"E, a distance of 233.42 feet, to a point of intersection with a non-tangent curve, concave Westerly, having a radius of 147.43 feet and a central angle of 45°35'53"; thence Northerly, along the arc of said curve to the left, a distance of 117.33 feet (said arc subtended by a chord bearing N19°58'58"E, a distance of 114.26 feet), to a point of intersection with a non-tangent line; thence N89°48'06"E, a distance of 161.58 feet; thence N00°13'27"W, a distance of 271.75 feet; thence N89°46'33"E, a distance of 124.01 feet, to the POINT OF BEGINNING of the herein described parcel; thence continue N89°46'33"E, a distance of 311.10 feet, to a point on the Coastal Construction Control Line as recorded in Survey Book 2A, Pages 29 through 42 of the Public Records of Brevard County, Florida; thence S68°20'23"E, a distance of 606.35 feet, to a point on the North line of Solana Shores, A Condominium, Phase 1; thence S89°46'39"W, along said North line, a distance of 874.38 feet; thence N00°04'05"W, a distance of 225.98 feet, to the POINT OF BEGINNING; Containing 3.08 acres, more or less.

EXHIBIT 'C'

SEE EXHIBIT 'D' FOR THE SKETCH TO ACCOMPANY THIS DESCRIPTION

3.	
2.	
1.	
JOB NO. 980129	DATE: 10-12-99

PREPARED AND CERTIFIED FOR:

TOWNE REALTY



# SKETCH TO ACCOMPANY DESCRIPTION

NOT A BOUNDARY SURVEY

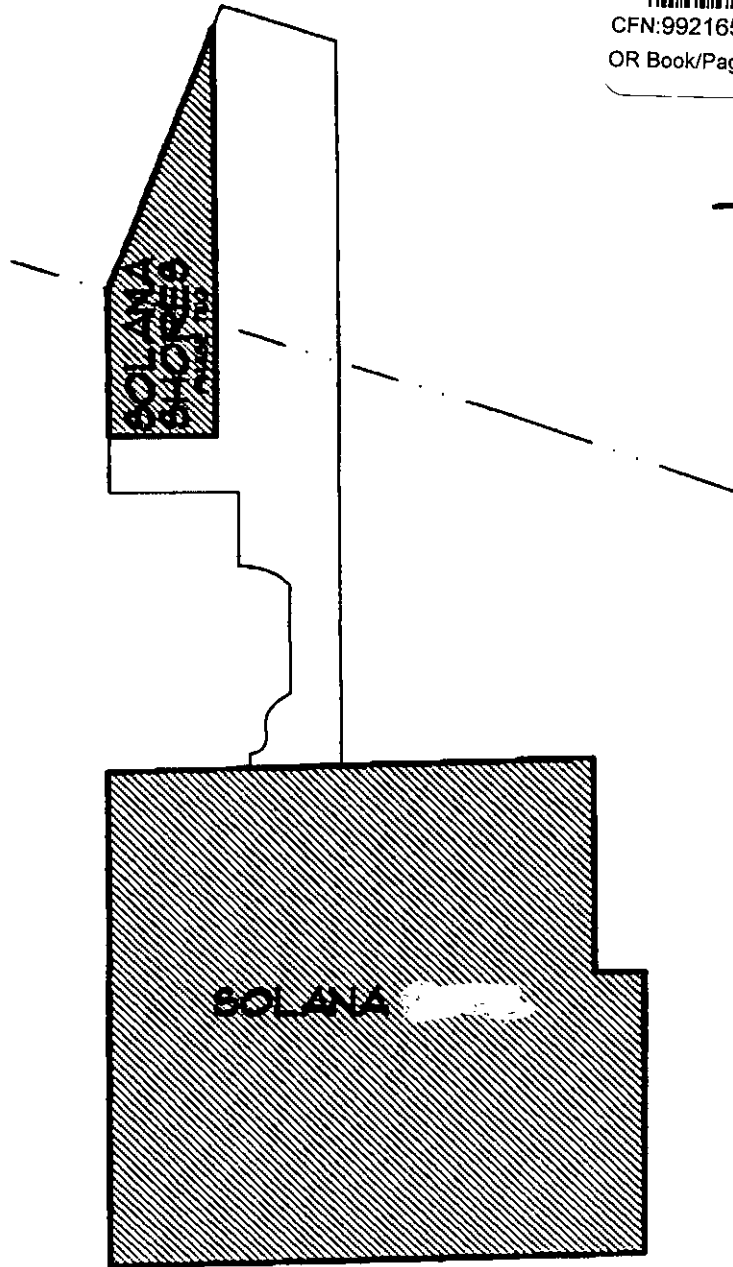


CFN:99216530

OR Book/Page: 4087 / 2707



SCALE: 1"=400'



## EXHIBIT 'D'

PREPARED BY:

**ALLEN**  
Engineering, Inc.  
SURVEYORS - ENGINEERS

108 DIXIE LANE (P.O. BOX 321321)  
COCOA BEACH, FLORIDA 32932-1321

TELEPHONE: (407)783-7443 FAX: (407)783-5902  
E-MAIL: alleneng@digital.net



INDICATES  
BENEFITTED LANDS

SEE EXHIBIT 'C' FOR THE DESCRIPTION

PREPARED AND CERTIFIED FOR:

TOWNE REALTY

3.	
2.	
1.	
DATE: 10-12-99	DRAWN BY: DJG
JOB NO. 980129	SCALE: 1"=400'