

**FOURTH AMENDMENT, MODIFICATION, ASSIGNMENT, AND
ASSUMPTION AGREEMENT**

THIS FOURTH AMENDMENT, MODIFICATION, ASSIGNMENT, AND ASSUMPTION AGREEMENT (the “Amendment”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **SPECTOR DEVELOPMENT, LLC**, a Colorado limited liability company, whose address 910 Santa Fe Drive, Suite 12, Denver, Colorado 80204 (“Spector”), and **TUGBOAT, LLC**, a Colorado limited liability company, whose address is 910 Santa Fe Drive, Suite 12, Denver, Colorado 80204 (“TugBoat”), each individually a “Party” and collectively the “Parties.”

RECITALS:

WHEREAS, the City and Spector entered into that certain Loan Agreement dated June 17, 2003 (the “Original Loan Agreement”) involving a loan of federal Home Investment Partnerships Program (“HOME Program”) funds in the principal amount of \$415,000.00 and a loan of Affordable Housing Funds (“AHF Program”) in the principal amount of \$60,000.00 to provide funding for soft costs and lead-based paint abatement associated with the development of a mixed-use project that included five (5) affordable housing units; and

WHEREAS, Spector executed that certain Deed of Trust for the benefit of the City, dated July 15, 2003, and recorded on July 15, 2003 at Reception No. 2003145320 of the records of City and County of Denver, State of Colorado (the “Deed of Trust”), and encumbering the following property (the “Property”):

Lots 13 to 17 and a portion of Lots 18 and 19, Block 7, Smith's Addition to the City of Denver, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the Southwest corner of said Lot 20, thence North along the West line of said Lots 20 and 19, a distance of 34.10 feet to the True Point of Beginning; thence continuing North along the West line of said Lots 19 to 13, a distance of 165.90 feet to the Northwest corner of Lot 13; thence East along the North line of said Lot 13, a distance of 105.07 feet to the Northeast corner of Lot 13; thence South along the East line of said Lots 13 to 17, a distance of 125.00 feet to the Southeast corner of Lot 17; thence West along the South line of said Lot 17, a distance of 64.89 feet; thence South parallel with the East line of said Lots 18 and 19, a distance of 40.90 feet; thence West parallel with the South line of said Lot 20, a distance of 40.20 feet to the Point of Beginning.

Together with:

The West 27 feet of Lots 21, 22 and 23, Block 7, Smith's Addition to the City of Denver,
City and County of Denver,
State of Colorado,

also known and numbered as 910 and 928 Santa Fe Drive and 815 West 9th Avenue, Denver, Colorado.

WHEREAS, the Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note dated July 15, 2003 (the "Note"); and

WHEREAS, the affordability restrictions associated with the Original Loan Agreement are evidenced by that certain Covenant dated July 15, 2003, and recorded on July 15, 2003 at Reception No. 2003145319 of the records of City and County of Denver, State of Colorado (the "Original Covenant"); and

WHEREAS, the Property was subject to that certain Declaration for the Santa Fe Arts Center, a Condominium Community, recorded on February 27, 2004 at Reception Number 2004056540, as amended, and that certain Condominium Map of Santa Fe Arts Center recorded on February 27, 2004 at Reception Number 2004056541, as amended, of the records of City and County of Denver, State of Colorado (collectively, the "Condo Documents"); and

WHEREAS, the Condo Documents created twenty-five (25) separate condominium units at the Property; and

WHEREAS, the Original Loan Agreement contemplated that upon condominiumization of the Property, the City's security would be revised so that the security for the Note would only

be the five (5) affordable housing units; however, the underlying Deed of Trust was never amended or modified to carry out that intent;

WHEREAS, the City and Spector entered into that certain Amendment and Modification Agreement dated April 21, 2004 (the “First Amendment”) to modify the terms and conditions of the Original Loan Agreement, Note, and Deed of Trust to modify the repayment terms and clarify the Parties’ intention with respect to the City’s security for its housing loan; and

WHEREAS, the City and Spector entered into that certain Second Amendment and Modification Agreement dated August 22, 2006 (the “Second Amendment”) to modify the terms and conditions of the Original Loan Agreement, Note, and Deed of Trust to increase the loan amount to \$660,000.00 (the “Total Loan Amount”) and provide revised terms for its repayment and amend the security provisions; and

WHEREAS, the City and the Spector entered into that certain Third Amendment and Modification Agreement dated July 3, 2012 (the “Third Amendment”) to modify the terms and conditions of the Original Loan Agreement, Note, Deed of Trust, and Covenant to revise the affordability restrictions attached to the Property; and

WHEREAS, the affordability restrictions associated with the Third Amendment are evidenced by that certain Rental and Occupancy Covenant dated May 1, 2012, and recorded on February 8, 2013 at Reception No. 2013018667 of the records of City and County of Denver, State of Colorado, (the “Rental Covenant”), and encumbering the Property; and

WHEREAS, the Original Loan Agreement, First Amendment, Second Amendment, and Third Amendment are collectively referred to herein as the “Loan Agreement”; and

WHEREAS, the Loan Agreement, Promissory Note, Deed of Trust, Original Covenant, and Rental Covenant are collectively referred to herein as the “Loan Documents”; and

WHEREAS, the current unit and affordability mix pursuant to the Loan Documents consist of two (2) affordable ownership units (the “For Sale Units”) and three (3) affordable rental units (the “Rental Units”); and

WHEREAS, the For Sale Units, which are known as Unit 8 and Unit 19 in the Condo Documents, were sold to income qualified households in 2006 and 2007, respectively; and

WHEREAS, the Rental Units, which are known as Unit 7, Unit 9, and Unit 24 in Condo Documents, were transferred and conveyed by Spector to TugBoat on or about November 29, 2018; and

WHEREAS, the Parties now desire to amend, modify and assign the terms of the Loan Agreement as set forth herein; and

WHEREAS, since the execution of the Loan Agreement, the City has reorganized the responsibilities of its departments and has transferred the responsibility for overseeing housing loans from the Division of Housing & Neighborhood Development Services (“HNDS”) to the Department of Housing Stability (“HOST”).

NOW THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. All of the recitals above are hereby confirmed and incorporated herein as part of this Amendment.

2. All references to “Division of Housing & Neighborhood Development Services” and “HNDS” in the Loan Documents shall be replaced to read “Department of Housing Stability” and “HOST,” respectively.

3. The City hereby consents to the prior transfer of the Rental Units from Spector to TugBoat.

4. Spector hereby assigns, and TugBoat hereby assumes and agrees to perform all of the obligations of Spector as provided in the Loan Documents. TugBoat agrees to be bound by the terms of the Loan Documents as though the Loan Documents had originally been made, executed, and delivered by TugBoat.

5. Upon execution of this Amendment, the City shall forgive \$240,000.00 of the Total Loan Amount, which is the amount allocated to the For Sale Units. Upon forgiveness, the remaining principal balance of the Total Loan Amount shall be \$420,000.00 (the “Remaining Principal Balance”), which is the amount allocated to the Rental Units.

6. The Remaining Principal Balance shall accrue simple interest at a rate of 1% commencing on the first day of the month following the month this Amendment is fully executed. Monthly installment payments of \$350.00 shall be made on the first day of each month beginning on the first day of the second month following the month this Amendment is fully executed. The

entire unpaid balance of principal and accrued interest shall be due and payable on or before September 1, 2051 (the “Maturity Date”). Payments shall be made at the City’s offices to the Department of Housing Stability, Attn: Loan Repayment, 201 W. Colfax Ave, Dept. 615, Denver, Colorado 80202 or at such other place the City designates.

7. The affordability and occupancy restrictions for the Rental Units contained in Section 7.B. and 7.C of the Loan Agreement shall be revised as follows:

The Rental Units shall have rents not exceeding 30% of the adjusted income of a family whose annual income equals 80% of the median income for the Denver area, as published by the Colorado Housing and Finance Authority (“CHFA”), with adjustments for number of bedrooms in the unit. The City shall determine maximum monthly allowances for utilities and services annually in accordance with CHFA requirements. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities, any non-optional fees including HOA dues, and services. By executing this Amendment, TugBoat acknowledges the maximum rent guidelines. It shall be TugBoat’s responsibility to obtain updated guidelines each year.

The Rental Units shall be occupied by tenants whose incomes are at or below 80% of the median income for the Denver area as published by CHFA, with adjustments for family size. By executing this Amendment, TugBoat acknowledges the maximum income guidelines. It shall be the TugBoat’s responsibility to obtain updated guidelines each year.

8. TugBoat agrees to execute an Amended and Restated Rental and Occupancy Covenant (the “Amended Rental Covenant”) in a form satisfactory to the City. The Amended Rental Covenant will eliminate all references and obligations that require the property owner to comply with the HOME Program requirements, but the Amended Rental Covenant will include the rental and occupancy limitations as specified in this Amendment. The term of the Amended Rental Covenant will expire on September 1, 2051. The Executive Director of HOST, or the Executive Director’s designee (the “Director”), is authorized to countersign the Amended Rental Covenant to memorialize the City’s express written consent to the amendment of the Rental Covenant, as required by Section 3 of the Rental Covenant. Upon the recording of the Amended Rental Covenant, all parties shall be released from and have no obligation to comply with the

HOME Program rules and regulations and the provisions of the Loan Agreement applicable to the HOME Program.

9. Upon the recording of the Amended Rental Covenant, the City shall forgive any default interest that has been or could have been assessed against Spector as of the date of this amendment.

10. Upon the recording of the Amended Rental Covenant, the City shall conditionally waive any late fees and accrued interest that has been or could have been assessed against Spector as of the date of this Amendment. The Parties agree that the dollar amount associated with this waiver consists of late fees equal to \$2,230.82 and accrued interest equal to \$114,490.63. The conditional waiver of late fees and accrued interest is conditioned upon TugBoat performing as agreed with the Amendment terms and the Amended Rental Covenant. If HOST determines that TugBoat is in default on the Amendment terms or the Amended Rental Covenant, the late fees of \$2,230.82 and accrued interest of \$114,490.63 will be added to the Remaining Principal Balance. If TugBoat complies with the payment and performance obligations in this Amendment and the Amended Rental Covenant, the City will forgive the conditionally waived late fees and accrued interest at the Maturity Date. For the avoidance of doubt, the City does not waive its rights to pursue any remedies or impose late fees or assess the default interest after the date this Amendment is executed for any default under or breach of the Loan Documents, this Amendment, or any other document that is executed pursuant to this Amendment.

11. The City agrees to file and record a partial release of its Deed of Trust to release all condominium units at the Property except for the Rental Units; provided, however, that concurrently TugBoat must execute and record a modification or amendment to the Deed of Trust, in a form approved by the City, to specifically identify the Rental Units as the City's collateral for the Note. The Director of HOST is authorized to execute the necessary instruments to carry out the intent of this section, so long as the instruments are in a form approved by the City Attorney. The legal description for the Rental Units is as follows:

UNIT 7, SANTA FE ARTS CENTER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS DEFINED AND DESCRIBED IN THE DECLARATION FOR SANTA FE ARTS CENTER, RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056540, AND THE FIRST SUPPLEMENTAL DECLARATION

RECORDED JULY 19, 2006 UNDER RECEPTION NO. 2006115587, AND THE SECOND SUPPLEMENTAL DECLARATION RECORDED AUGUST 14, 2012 AT RECEPTION NO. 2012108404, AND THE LIMITED AMENDMENT TO THE DECLARATION RECORDED ON JANUARY 7, 2019 AT RECEPTION NO. 2019001630 AND AS DEPICTED ON THE CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056541, AND SUPPLEMENTED AND AMENDED BY THE FIRST SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JULY 19, 2006 AT RECEPTION NO. 2006115588, AND BY THE SECOND SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED MAY 22, 2012 AT RECEPTION NO. 2012066467 AND CORRECTION RECORDED DECEMBER 18, 2014 AT RECEPTION NO. 2014154335, AND BY THE SECOND SUPPLEMENT OF CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JANUARY 7, 2019 AT RECEPTION NO. 2019001631 OF SAID COUNTY RECORDS TOGETHER WITH EXCLUSIVE RIGHT TO USE PARKING SPACE 12, CITY AND COUNTY OF DENVER, STATE OF COLORADO (ALSO KNOWN BY STREET AND NUMBER AS: 910 SANTA FE DRIVE #102, DENVER, CO 80204)

UNIT 9, SANTA FE ARTS CENTER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS DEFINED AND DESCRIBED IN THE DECLARATION FOR SANTA FE ARTS CENTER, RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056540, AND THE FIRST SUPPLEMENTAL DECLARATION RECORDED JULY 19, 2006 UNDER RECEPTION NO. 2006115587, AND THE SECOND SUPPLEMENTAL DECLARATION RECORDED AUGUST 14, 2012 AT RECEPTION NO. 2012108404, AND THE LIMITED AMENDMENT TO THE DECLARATION RECORDED ON JANUARY 7, 2019 AT RECEPTION NO. 2019001630 AND AS DEPICTED ON THE CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056541, AND SUPPLEMENTED AND AMENDED BY THE FIRST SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JULY 19, 2006 AT RECEPTION NO. 2006115588, AND BY THE SECOND SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED MAY 22, 2012 AT RECEPTION NO. 2012066467 AND CORRECTION RECORDED DECEMBER 18, 2014 AT RECEPTION NO. 2014154335, AND BY THE SECOND SUPPLEMENT OF CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JANUARY 7, 2019 AT RECEPTION NO. 2019001631 OF SAID COUNTY RECORDS TOGETHER WITH EXCLUSIVE RIGHT TO USE PARKING SPACE 14, CITY AND COUNTY OF DENVER, STATE OF COLORADO (ALSO KNOWN BY STREET AND NUMBER AS: 910 SANTA FE DRIVE #104, DENVER, CO 80204)

UNIT 24, SANTA FE ARTS CENTER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS DEFINED AND DESCRIBED IN THE DECLARATION FOR SANTA FE ARTS CENTER, RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056540, AND THE FIRST SUPPLEMENTAL DECLARATION RECORDED JULY 19, 2006 UNDER RECEPTION NO. 2006115587, AND THE

SECOND SUPPLEMENTAL DECLARATION RECORDED AUGUST 14, 2012 AT RECEPTION NO. 2012108404, AND THE LIMITED AMENDMENT TO THE DECLARATION RECORDED ON JANUARY 7, 2019 AT RECEPTION NO. 2019001630 AND AS DEPICTED ON THE CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED FEBRUARY 27, 2004 AT RECEPTION NO. 2004056541, AND SUPPLEMENTED AND AMENDED BY THE FIRST SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JULY 19, 2006 AT RECEPTION NO. 2006115588, AND BY THE SECOND SUPPLEMENTAL CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED MAY 22, 2012 AT RECEPTION NO. 2012066467 AND CORRECTION RECORDED DECEMBER 18, 2014 AT RECEPTION NO. 2014154335, AND BY THE SECOND SUPPLEMENT OF CONDOMINIUM MAP OF SANTA FE ARTS CENTER RECORDED JANUARY 7, 2019 AT RECEPTION NO. 2019001631 OF SAID COUNTY RECORDS TOGETHER WITH EXCLUSIVE RIGHT TO USE PARKING SPACE 18, CITY AND COUNTY OF DENVER, STATE OF COLORADO (ALSO KNOWN BY STREET AND NUMBER AS: 910 SANTA FE DRIVE #302, DENVER, CO 80204)

12. The City acknowledges that TugBoat is in the process of refinancing the first mortgage on the Rental Units. If one or more of the Rental Units are refinanced, TugBoat agrees that 100% of any net proceeds from a refinance of any of the Rental Units will be used to pay down the principal amount of the Remaining Principal Balance. For the avoidance of doubt, any such payment or payments shall not impact the requirement to make any required monthly installment payments while any amount of the Remaining Principal Balance remains outstanding.

13. The Director of HOST shall be authorized to subordinate the lien of the Deed of Trust, so long as prior encumbrances on the Rental Units do not exceed \$1,900,000.00 and the subordination agreement is in a form approved by the City Attorney.

14. The City agrees that one (1) of the Rental Units may be sold at a market, non-affordable sales price with the prior written consent of HOST; provided, however, that at closing 100% of the net sales proceeds must be paid to the City after prorated paydown of the first mortgage, if any is required. TugBoat must provide a written request to HOST for HOST's approval. HOST must respond to the request within forty-five (45) days of being notified by TugBoat of its intent to sell one (1) of the Rental Units. If HOST fails to provide written consent within the forty-five (45) day period, the request shall be deemed approved and TugBoat may proceed with the sale. HOST may withhold its consent if the proposed sales price is inconsistent with the market sales prices of reasonably similar units. The City shall apply any funds received

pursuant to such a sale to the outstanding principal balance of the Remaining Principal Balance. Upon sale of the unit, the City will release the unit from the Amended Rental Covenant and Deed of Trust if (i) TugBoat requests HOST's prior written consent for such a sale and HOST provides such consent or fails to respond to the request and (ii) the required payment of net sales proceeds is paid to the City. The Director of HOST is authorized to execute the necessary instruments to carry out the intent of this section, so long as the instruments are in a form approved by the City Attorney. For the avoidance of doubt, any such payment shall not impact the requirement to make any required monthly installment payments while any amount of the Remaining Principal Balance remains outstanding.

15. Two (2) of the Rental Units may be converted at the same time to affordable ownership units with prior written approval from HOST. To convert the two (2) Rental Units, TugBoat must provide a written request to HOST for HOST's approval, which approval shall be at the reasonable discretion of HOST. HOST must respond to the request within forty-five (45) days of being notified by TugBoat. If HOST fails to provide written consent within the forty-five (45) day period, the request shall be deemed approved and TugBoat may convert the two (2) Rental Units to ownership units. In the event the two (2) Rental Units are converted to affordable ownership units, the units must each be (i) sold to households whose incomes are at or below 100% of median income for the Denver area as determined by HUD at a price that is approved by HOST and which does not exceed 100% of the median purchase price for that type of single-family housing for the jurisdiction as determined by HUD; or (ii) sold at an price approved by HOST to a non-profit entity that will keep the units as affordable rental units to households whose incomes are at or below 80% of median income for the Denver area as published by CHFA. The sale of the two Rental Units will require that a new covenant be recorded against the property for a term of 99-years to ensure that the units will remain affordable. The covenant must be in a form approved by the City and recorded at or before the conveyance to a purchaser. Upon sale of one or both of the Rental Units, the City will release the unit from the Amended Rental Covenant and Deed of Trust if (i) TugBoat requests HOST's prior written consent for such a sale and HOST provides such consent or fails to respond to the request and (ii) a new covenant in a form approved by the City is recorded against the property. The Director of HOST is authorized to execute the necessary instruments to carry out the intent of this section, so long as the instruments are in a form approved by the City Attorney.

16. In the event the Rental Units are not sold in accordance with Sections 14 and 15 of this Amendment, the Rental Units will remain subject to the Amended Rental Covenant.

17. Borrower's written requests required pursuant to Sections 14 and 15 of this Amendment must be (i) sent via email, and (ii) hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, to the City at the addresses below:

Chief Housing Officer, Department of Housing Stability
201 W. Colfax Ave. Dept. 615
Denver, CO 80202

With an email copy to: britta.fisher@denvergov.org;
renee.gallegos@denvergov.org; and
housingstability@denvergov.org

A request hand delivered or sent by overnight courier is effective upon delivery. A request sent by certified mail is effective upon receipt. The City may designate substitute addresses where or persons to whom requests are to be mailed or delivered.

18. The Loan Documents are hereby modified to reflect the amended terms of the Loan Agreement.

19. Except as herein amended, the Loan Documents continue in effect, and are affirmed and ratified in each and every particular.

20. This Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number: HOST-202161652-04 / GE3A040-04
Contractor Name: SPECTOR DEVELOPMENT, LLC
TUGBOAT, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202161652-04 / GE3A040-04
SPECTOR DEVELOPMENT, LLC
TUGBOAT, LLC

SPECTOR DEVELOPMENT, LLC
a Colorado limited liability company

By: See attached signature page _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____

Contract Control Number:
Contractor Name:

HOST-202161652-04 / GE3A040-04
SPECTOR DEVELOPMENT, LLC
TUGBOAT, LLC

TUGBOAT, LLC,
a Colorado limited liability company

By: See attached signature page

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

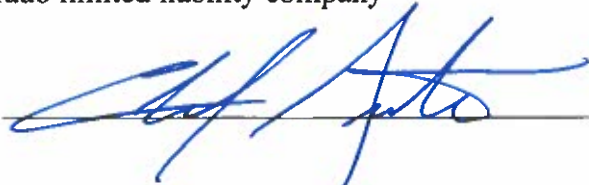
Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

HOST-202161652-04 / GE3A040-04
SPECTOR DEVELOPMENT, LLC
TUGBOAT, LLC

SPECTOR DEVELOPMENT, LLC
a Colorado limited liability company

By:  _____

Name: Cheryl Spector
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____

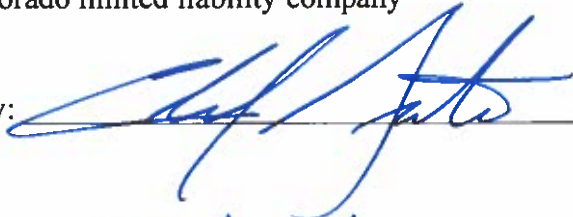
Name: _____
(please print)

Title: _____

Contract Control Number:
Contractor Name:

HOST-202161652-04 / GE3A040-04
SPECTOR DEVELOPMENT, LLC
TUGBOAT, LLC

TUGBOAT, LLC,
a Colorado limited liability company

By:  _____

Name: Cheryl Spector
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)