# CITY OF PLANO
# COUNCIL AGENDA ITEM

| CITY SECRETARY'S USE ONLY | |
|---|---|
| ☐ Consent ☐ Regular ☐ Statutory | |

| | |
|---|---|
| Council Meeting Date: | 01/24/11 |
| Department: | Finance |
| Department Head | Denise Tacke |
| | |
| Agenda Coordinator (include phone #): | **Katherine Crumbley x7479** |

## CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amended Tax Abatement Agreement by and between Air System Components, Inc. and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

## FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

| FISCAL YEAR: **10-11** | **Prior Year (CIP Only)** | **Current Year** | **Future Years** | **TOTALS** |
|---|---|---|---|---|
| Budget | 0 | 0 | 0 | **0** |
| Encumbered/Expended Amount | 0 | 0 | 0 | **0** |
| This Item | 0 | 0 | 0 | **0** |
| BALANCE | 0 | 0 | 0 | **0** |

**FUND(S):**

**COMMENTS:** This item has no fiscal impact.

## SUMMARY OF ITEM

The amended agreement adds the real property owner as a party to the contract and corrects the Reinvestment Zone designation to reflect which zone the property is located in.

| List of Supporting Documents: | Other Departments, Boards, Commissions or Agencies |
|---|---|
| Amended Tax Abatement Agreement | |

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amended Tax Abatement Agreement by and between Air System Components, Inc. and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS,** the City Council has been presented a proposed First Amended Tax Abatement Agreement between Air System Components, Inc., Plano Tech Partners, Ltd., and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

**WHEREAS,** the amended agreement adds the real property owner as a party to the contract and corrects the Reinvestment Zone designation to reflect which zone the property is located in; and

**WHEREAS,** upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

**Section II.** The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

**Section III.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 24th day of January, 2011.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS )
)
COUNTY OF COLLIN )

**FIRST AMENDED TAX ABATEMENT AGREEMENT**

This Tax Abatement Agreement (this "Agreement") is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City;" Plano Tech Partners, Ltd., a Texas Limited partnership, duly acting by and through its general partner, hereinafter "Owner" and Air System Components, Inc., a Delaware corporation, duly acting by and through its authorized representative, hereinafter referred to as " Lessee."

**W I T N E S S E T H:**

**WHEREAS,** this First Amended Tax Abatement Agreement supersedes the Tax Abatement Agreement between the City of Plano, Texas and Air System Components, Inc. approved on the 25th day of October 2010 by the City Council of the City of Plano, Texas by Resolution 2010-10-22(R). The purpose of the First Amended Tax Abatement Agreement is to revise the terms to reflect the accurate ownership of the real property, to designate the proper reinvestment zone, and to modify other ancillary terms.

**WHEREAS**, on the 27th day of July, 2009, the City Council of the City of Plano, Texas passed Ordinance No. 2009-7-15 establishing Reinvestment Zone No. 119, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance", as authorized by V.T.C.A. Tax Code, Chapter 312.001, et.seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Acts"; and

**WHEREAS,** the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2009-9-21(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

**WHEREAS,** the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

**WHEREAS,** the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting the City in accordance with the said Ordinance and Act; and

**WHEREAS,** the contemplated use of the Real Property**,** as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 119 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

**NOW THEREFORE,** the parties hereto do mutually agree as follows:

1. This First Amended Tax Abatement Agreement supersedes the Tax Abatement Agreement between the City of Plano, Texas and Air System Components, Inc. approved on the 25th day of October 2010 by the City Council of the City of Plano, Texas.

2. The real property subject to this Agreement is located at 605 Shiloh Road and is within the property described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof and more particularly shown on the Improvement area, Building 9 as marked on **EXHIBIT "B"**. At the time of this Agreement, Plano Tech Center Partners, Ltd., is the Owner of the Real Property and Air System Components, Inc. is the Lessee of the Real Property.

## JOBS

3. The Lessee estimates the proposed occupancy of the Real Property for Building 9 as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 130 full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 3). "Job Equivalent" shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

## IMPROVEMENTS

4. The Lessee shall occupy not less than 90,000 gross square feet of commercial/industrial space on the Real Property by the Commencement Date. The "Commencement Date" means the date of occupancy of the Real Property by the Lessee but in no event shall be later than January 1, 2011. The Lessee and/or Owner shall make real property improvements to the Real Property with a taxable value of not less than Four Million Five Hundred Thousand Dollars ($4,500,000.00) by January 1, 2011 subject to the Lessee having additional time as may be required in the sole discretion of the City in the "event of force majeure" if Lessee is diligently and faithfully pursuing the completion of the Improvements or made substantial progress toward the completion of the Improvements. Real Property Improvements to be made by the Lessee include but are not limited to a complete construction and finish out of the interior space for office and warehouse facilities. The term "Event of Force Majeure" means any contingency or cause beyond the control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Owner's or Lessee's operations in the City.

## DEFAULT

5. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Owner allows its real property taxes located on the Real Property owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Lessee fails to occupy the Improvements on or before the Commencement Date, subject to delay due to "Event of Force Majeure"; or

(c) The value of real property improvements on the Real Property on January 1, 2011 is less than the minimum amounts set forth in paragraphs 3 above; or

(d) The assessed value of the Improvements falls below the minimum amounts set forth in paragraph 3 above as the result of the Owner filing a protest or as a result of the removal of Improvements from the Real Property; or

(e) Lessee fails to employ at least 75% of the required Job Equivalents as provided in paragraph 2 above, subject to delay due to "Event of Force Majeure"; or

(f) Owner and Lessee fail to provide annual certification as required in paragraph 8 below; or

(g) Owner or Lessee has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens at the Development.

6. In the event that the Owner and/or the Lessee defaults under this Agreement then the City shall give the Owner and Lessee written notice of such default and if the defaulting party has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraphs 5(a) or 5(g) above and after the defaulting party fails to cure same within the cure period, this Agreement shall terminate upon delivery of written notice by the City to Owner and Lessee and all taxes due after termination of this Agreement shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

7. Upon the occurrence of an event of default under Paragraph 5(a) above and after Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 5(g), this Agreement shall terminate upon delivery of written notice by the City to Owner with respect to the tax abatement attributable to the Real Property improvements and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

## ANNUAL CERTIFICATION

8. Beginning November 1, 2011 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Owner and the Lessee, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** for Owner and **Exhibit "D"** for Lessee hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

## ASSIGNMENT

9. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner or Lessee unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Owner or Lessee is permissible upon a written agreement by the affiliate to be bound by the terms of this Agreement ;

(b) A transfer or assignment of this Agreement by Owner or Lessee to other successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement prior to the transfer or assignment and Owner or Lessee shall continue to conduct business on the subject premises, and shall remain the primary tenant or landlord.

Assignment under either (a) or (b) above may be made without consent of the City; however, Owner agrees to give thirty (30) days prior written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof. Failure of Owner or Lessee to provide notice or obtain prior written agreement for any assignee or successor to be bound by the terms of this Agreement within (30) days of due date upon written demand by the City will result in all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, becoming due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

If (A) Owner desires to assign this Agreement and the City's consent is required to such assignment, and (B) the City does not consent to such assignment, then the Owner may terminate this Agreement by delivering written notice to the City, and upon such termination, the Owner and the City shall have no further rights, duties or obligations under this Agreement.

## ABATEMENT PROVISIONS

10. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Real Property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Owner shall have the right to protest and/or contest any assessment of the real property improvements, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraph 3 as a result of an Owner filed protest and/or contest or removal of improvements from the Real Property.

**NOTICE**

11. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Lessee by notice to:

Air System Components, Inc.
Attn: Jon Muckley,
Vice President
605 Shiloh Road
Plano, Texas 75074

With a copy to: Tomkins Law Department
Attn: Corporate Counsel, Air System Components, Inc.
1551 Wewatta Street, MC10-A5
Denver, CO 80202

For Owner by Notice to: Plano Tech Center Partners, Ltd.
c/o Peloton Real Estate Partners
Attn: Chuck Sellers
1616 Woodall Rodgers Freeway # 600
Dallas, TX 75202

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

**MISCELLANEOUS PROVISIONS**

12. The Owner and Lessee further agree that the City, its agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the real property improvements in order to insure that the real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (with no less than 5 business days prior written notice to Owner and Lessee) to inspect the Real Property during regular business hours to insure that the real property improvements are thereafter maintained in accordance with this Agreement.

13. **INDEMNIFICATION**: **IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE OWNER AND LESSEE, IN PERFORMING THEIR OBLIGATIONS HEREUNDER, ARE ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES IN CONNECTION THEREWITH TO THIRD PARTIES AND OWNER AND LESSEE AGREE TO INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, INCLUDING ATTORNEYS' FEES, OF ANY NATURE WHATSOEVER ARISING OUT OF OWNER'S DEFAULT OF ITS OBLIGATIONS HEREUNDER.**

14. The City represents and warrants that the Property does not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

15. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 24th day of January, 2011, authorizing the City Manager to execute the Agreement on behalf of the City.

16. This Agreement was entered into by Owner and Lessee pursuant to their duly authorized representative.

17. This instrument shall constitute a valid and binding agreement between the City, Lessee and Owner when executed in accordance herewith.

18. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2011.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

_____
Di Zucco, CITY SECRETARY

_____
Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

Air System Components, Inc., a Delaware corporation

By: _____
Name:_____
Title:_____

Plano Tech Center Partners, Ltd.

By:_____
Name:_____
Title:_____

**EXHIBIT "A"**
**LEGAL DESCRIPTION**
**REINVESTMENT ZONE NO. 119**

**Real Property**
**Metes and Bounds**

FIELD NOTES
BUILDINGS 9 AND 10

LOT 5, BLOCK 1 PLANO TECH CENTER II

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and J.T. McCullough Survey, Abstract No. 633, and being all of Lot 5, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 862 of the Plat Records of Collin county, Texas (P.R.C.C.T.), same being part of a tract of land described in Special Warranty deed to Argent Plano Realty, L.P., dated May 24, 2000, as recorded in Volume 4678, Page 2236, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at the northeast corner of a tract of land described by deed to Patrick Hillary as recorded in Volume 2206, Page 185, D.R.C.C.T., said point being on the west right-of-way line of Shiloh Road (variable width);

THENCE South 87 degrees 10 minutes 35 seconds West, departing said west right-of-way line and along the north line of said Hillary Tract, a distance of 570.20 feet to a ½ inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC", (hereinafter referred to as "with cap") for corner, said corner being the northwest corner of said Hillary Tract;

THENCE North 01 degree 26 minutes 31 seconds West, a distance of 16.55 feet to a point for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 312.80 feet to a 1/2 inch found iron rod with cap for corner;

THENCE North 00 degrees 21 minutes 11 seconds West, a distance of 138.22 feet to an aluminum disk found in concrete for corner, said corner being the most southerly southeast corner of Lot 1, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 459, P.R.C.C.T.;

THENCE North 64 degrees 59 minutes 53 seconds East, along the common line between said Lot 1 and said Lot 5, a distance of 50.51 feet to a ½ inch found iron rod with cap for corner;

THENCE North, continuing along said common line, a distance of 681.25 feet to a found "X" cut in concrete for corner;

THENCE North 89 degrees 51 minutes 32 seconds East, departing said common line, a distance of 313.72 feet to a ½ inch found iron rod with cap for corner;

THENCE South 00 degrees 15 minutes 46 seconds East, a distance of 99.57 feet to a found “X” cut in concrete for corner:

THENCE South 89 degrees 56 minutes 16 seconds East, a distance of 419.48 feet to a found “X” cut in concrete for corner, said point being on the west line of a tract of land described by deed to Texas Power & Light Company (known as Tract 2) as recorded in Volume 874, Page 566, D.R.C.C.T.;

THENCE South 00 degrees 11 minutes 54 seconds West, along said west line, a distance of 646.72 feet to a ½ inch found iron rod with cap for corner, said corner being the southwest corner of said Tract 2:

THENCE North 87 degrees 11 minutes 54 seconds East, along the south line of said Tract 2, a distance of 76.77 feet to a ½ inch found iron rod with cap for corner, said corner being the southeast corner of said Tract 2:

THENCE North 00 degrees 35 minutes 54 seconds East, along the east line of said Tract 2, a distance of 1194.03 feet to a ½ inch found iron rod with cap for corner on the west right-of-way line of said Shiloh Road, said corner being on a non-tangent circular curve to the left, having a radius of 1255.00 feet and whose chord bears South 09 degrees 55 minutes 53 seconds East, a distance of 42.48 feet;

THENCE Southerly, along said west right-of-way line and along said circular curve to the left, through a central angle of 01 degree 56 minutes 23 seconds and an arc distance of 42.49 feet to a ½ inch found iron rod with cap for the point of reverse curvature of a circular curve to the right, having a radius of 1145.00 feet and whose chord bears South 05 degrees 09 minutes 05 seconds East, a distance of 229.42 feet;

THENCE Southerly, continuing along said west right-of-way line and along said circular curve to the right, through a central angle of 11 degrees 29 minutes 58 seconds and a arc distance of 229.81 feet to a ½ inch found iron rod for the point of tangency;

THENCE South 00 degrees 35 minutes 54 seconds West, continuing along said west right-of-way line, a distance of 858.99 feet to a found “X” cut in concrete for corner;

THENCE South 00 degrees 39 minutes 42 seconds West, continuing along said west right-of-way line, a distance of 149.97 feet to the POINT OF BEGINNING AND CONTAINING 625,615 square feet or 14.36 acres of land, more or less.

# EXHIBIT "B"
# SITE PLAN

**EXHIBIT "A-1"**

**FLOOR PLANS**

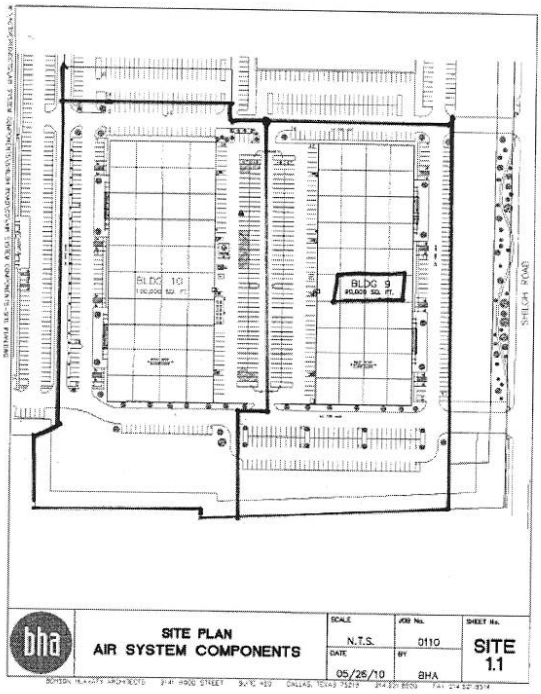

**EXHIBIT "C"**
**CERTIFICATION FORM**
**REINVESTMENT ZONE NO. 119**

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 119
Tax Abatement Agreement (the "Agreement") between Plano Tech Center Partners, Ltd., Air System Components, Inc., ("Companys") and the City of Plano, dated as of _____

This letter certifies that Owner is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year the Agreement is in force.

Plano Tech Center Partners, Ltd, a Texas
Limited Partnership

By: _____
Name: _____
Title: _____

**EXHIBIT "D"**
**CERTIFICATION FORM**
**REINVESTMENT ZONE NO. 119**

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 119
Tax Abatement Agreement (the "Agreement") between Plano Tech Center Partners, Ltd., Air System Components, Inc., ("Companys") and the City of Plano, dated as of _____

This letter certifies that Lessee is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year the Agreement is in force.

Air Systems Components Inc., a Delaware Corporation

By: _____
Name: _____
Title: _____