

First Reading: September 18, 2013
Second Reading: dispensed

RESOLUTION NO. 2013 - 150

A RESOLUTION AUTHORIZING THE PURCHASE AND CLOSING OF THE REAL PROPERTY BEING PART OF THE PROPERTY LOCATED AT 7754 MONTGOMERY ROAD IN SYCAMORE TOWNSHIP

WHEREAS, the Board of Township Trustees is desirous of acquiring a fee simple interest in a 16,953 square foot parcel of real property and a temporary construction easement consisting of a 15,492 square feet of real property located at 7754 Montgomery Road, Sycamore Township, Ohio 45236, being part of Auditor's parcel number 600-0211-0030-00 (the "Real Property");

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The Board hereby authorizes the purchase of the Real Property located at from Dennis M. Schnurr, Archbishop of Cincinnati, Trustee, by contract in substantially the same form as that attached hereto as Exhibit A. The President of the Board, or the Township Administrator, or the Assistant Township Administrator are all hereby authorized individually to execute any documents necessary to obtain the conveyance of the property.

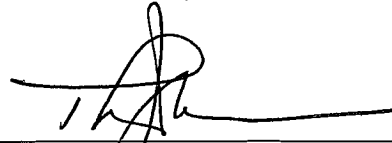
SECTION 2. The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with any requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

SECTION 3. Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety and welfare of Sycamore Township. The reason for the emergency is to provide for a timely acquisition of the real property in order to begin road construction.


VOTE RECORD:

Mr. Bishop Aye Mr. Connor Aye Mr. Weidman Aye

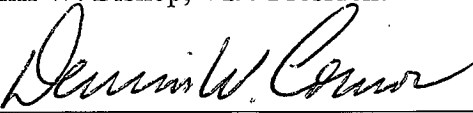
Passed at a meeting of the Board of Township Trustees of Sycamore Township this 18th day of September, 2013.



Thomas J. Weidman, President



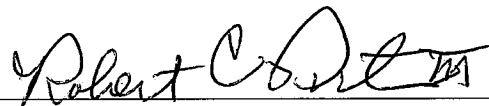
Cliff W. Bishop, Vice President



Dennis W. Connor, Trustee


AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 18th day of September, 2013.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

APPROVED AS TO FORM:



R. Douglas Miller, Law Director

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (“Agreement”) is made as of the Effective Date (defined below) by and between DENNIS M. SCHNURR, ARCHBISHOP OF CINCINNATI, TRUSTEE FOR THE MEMBERS OF THE CONGREGATION OF ST. VINCENT FERRER ROMAN CATHOLIC CHURCH, KENWOOD, HAMILTON COUNTY, OHIO, (“Seller”), and THE BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP, OHIO, an Ohio Township (“Purchaser”).

For and in consideration of the mutual covenants and premises herein contained, the parties hereto hereby agree as follows:

1. **Basic Provisions.** The following are certain provisions which are part of, and, in certain instances, referred to in subsequent provisions of this Agreement:

(a) **Effective Date:** The date of execution set forth under the signature block of Seller or Purchaser, whichever of such parties has executed this Agreement last.

(b) **Seller’s Address:** 7754 Montgomery Road
Cincinnati, Ohio 45242

(c) **Purchaser’s Address:** 8540 Kenwood Road
Sycamore Township, Ohio 45236-2010

(d) **Property:** A fee simple interest in Seller’s real property consisting of 16,953 square feet more or less, of vacant land proposed for permanent right of way as depicted on the attached Exhibit A, along with a temporary construction easement on 15,492 square feet, all being part of Auditor’s Parcel Number 600-0211-0030-00.

(e) **Purchase Price:** The Purchase Price shall be Two Hundred Twenty Five Thousand Three Hundred Fifty Dollars (\$225,350.00) to be allocated as follows:

Fee Simple Interest	\$185,000.00
Temporary Easement	7,750.00
Driveway Repairs	10,000.00
Landscaping and Tree Moving	<u>22,600.00</u>
TOTAL	\$225,350.00

(f) **Earnest Money Deposit:** One Thousand and 00/100 Dollars (\$1,000.00).

(g) **Contingency Period:** The time period commencing upon the Effective Date and expiring on the date of Closing.

(h) **Closing:** The meeting at which the documentation evidencing the consummation of the transaction contemplated by this Agreement shall be executed and

delivered by Purchaser and Seller and at which the Purchase Price, as adjusted by the adjustments set forth below, shall be delivered by Purchaser to Seller.

- (i) **Closing Date:** _____, 2013.
- (j) **Conditions Precedent:** Those conditions to be satisfied by Purchaser or waived by Purchaser during the Contingency Period.

- (i) **Title Condition:** Purchaser's satisfaction with the state of title to the Property in accordance with the terms of Paragraph 4 below.

- (ii) **Physical Condition:** Purchaser's satisfaction, in its reasonable discretion, with the physical aspects of the Property, including, but not limited to, matters that would be disclosed by a survey of the Property, the environmental condition of the Property, the soil bearing capacity of the Property, the location and capacity of utilities infrastructure servicing the Property and the engineering feasibility of Purchaser's proposed use of the Property.

2. **Sale and Conveyance.** On and subject to the terms and conditions of this Agreement, Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller. Purchaser acknowledges and agrees that such purchase and sale is made on an AS IS, WHERE IS basis, WITH ALL FAULTS, and without any representation or warranty by Seller except as set forth in Paragraph 20(b) below.

3. **Earnest Money Deposit.**

- (a) Within ten (10) days after the Effective Date, Purchaser will deliver the Earnest Money Deposit to Seller. The Earnest Money Deposit shall be applied to the Purchase Price or refunded to Purchaser, as provided in this Agreement. The Earnest Money Deposit shall be held by the Seller pending Closing.

- (b) The Earnest Money Deposit shall be refunded to Purchaser if Purchaser terminates this Agreement prior to the expiration of the Contingency Period by reason of Purchaser not being satisfied with any Condition Precedent. If Purchaser elects not to terminate this Agreement prior to the expiration of the Contingency Period, but defaults on this Agreement, the Earnest Money Deposit plus all interest earned thereon shall be paid to Seller as liquidated damages (subject however to Paragraph 18 below). If Purchaser proceeds with the Closing, the Earnest Money shall be applied to the Purchase Price.

4. **Title.**

- (a) Purchaser shall at its sole cost and expense, satisfy itself as to title to the Property prior to the Closing date.

- (b) On or before the expiration of the Contingency Period, Purchaser shall deliver to Seller written notice of any encumbrances or exceptions to which Purchaser objects. Seller shall have until the Closing to cure those objections, at its option.
- (c) The parties agree that Seller shall have no obligation to cure any title objection raised by Purchaser, and if Seller fails to cure any title objection by Closing, Seller shall not be in default hereunder. Notwithstanding the foregoing, Seller shall cure any monetary lien against the Property at or before Closing, provided that Purchaser provided a reasonable notice of such lien and the opportunity to obtain is payoff and provided that such liens can be cured on or before Closing from the funds paid for the Purchase Price at Closing. With respect to any encumbrances or exceptions to which Purchaser may object prior to the expiration of the Contingency Period as aforesaid, and which Seller does not cure prior to Closing, Purchaser may elect either: (i) to waive its objections to and accept title subject to such encumbrances or exceptions; or (ii) to terminate this Agreement, whereupon the Earnest Money Deposit shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect.

5. **Condition of Premises.**

- (a) Purchaser and its representatives shall have a temporary license continuing during the Contingency Period, to enter upon the Property (and any other real property of Seller necessary to access the Property) to undertake such activities thereon reasonably required to enable Purchaser to investigate the condition of the Property and otherwise to satisfy itself with respect to the Property, all at Purchaser's sole cost and expense. Purchaser, personally and through its authorized agents and representatives, shall be entitled upon reasonable advance notice to Seller to enter upon the Property during hours calculated not to interfere with the use of Seller's Property to obtain appraisals, geotechnical and other engineering studies, environmental studies and underwriting analyses, as Purchaser deems necessary or advisable, subject to the following limitations: (a) such access shall not violate any law or agreement to which Seller is a party, or otherwise expose Seller to a material risk of loss or liability; (b) Purchaser shall give Seller prior notice before conducting any inspections of the Property, and a representative of Seller shall have the right to be present when Purchaser or its representatives conducts its or their investigations on the Property; (c) neither Purchaser nor its agents shall cause any material damage to the Property or any portion thereof, and shall promptly repair any damage caused by Purchaser or its agents; (e) Purchaser shall use reasonable efforts to perform all due diligence reviews on an expeditious and efficient basis.
- (b) If Purchaser, in its sole discretion, determines based upon its investigation of the Property pursuant to Paragraph 5(a) above, that the Property is not satisfactory to Purchaser, then Purchaser shall have the right to terminate this Agreement by written notice to Seller delivered during the Contingency Period. If Purchaser so terminates this Agreement, the Earnest Money Deposit shall be promptly returned

to Purchaser and this Agreement shall be null and void. If Purchaser fails to terminate this Agreement by such written notice during the Contingency Period, then Purchaser shall be deemed satisfied with the condition of the Property and to have irrevocably waived the contingency set forth in this Paragraph 5, except as to matter of title first appearing in the records of the county record after the expiration of the Contingency Period.

6. **Contingencies.**

(a) Seller acknowledges that Purchaser is acquiring the Property for the purpose of constructing and dedicating a public road, such road being generally depicted as shown on the attached Exhibit A. Seller further acknowledges that, in order to construct the road, Purchaser must acquire real property from two other owners of adjacent real property, those owners being BRG KEG III and the JP Morgan Chase Bank, N.A. This Agreement is expressly conditioned on Purchaser acquiring and closing on those properties on terms satisfactory to Purchaser, on or before the Closing Date. In the event Purchaser fails to acquire and close on such adjacent properties on or before the Closing Date, then Purchaser shall have the right either to (i) terminate this Agreement by written notice to Seller given by the initial Closing Date, in which case the Earnest Money Deposit shall be promptly returned to Purchaser; or alternatively (ii) extend the Closing Date (but not the Contingency Period) to _____, 2013, by written notice to Seller given by the initial Closing Date.

(b) Notwithstanding anything herein to the contrary, the obligations of Seller under this Agreement are contingent upon the Agreement being approved by both the College of Consultors of the Archdiocese of Cincinnati and the Finance Council of the Archdiocese of Cincinnati, on or before the Closing Date (approval of these parties shall be hereinafter referred to as the "Seller Approvals"). If both Seller Approvals are not obtained on or before the Closing Date, then this Agreement shall automatically be null and void and the Earnest Money Deposit shall be promptly returned to Purchaser.

7. **Retaining Wall.** Post-Closing, as part of the public road improvement, Purchaser shall at its sole cost and expense, diligently construct and thereafter maintain at all times in good condition, a retaining wall on the Property in a manner that will: 1) provide for Purchaser's intended use of the Property as a public road; and 2) provide for the best available use of Seller's remaining property in the vicinity of the Property given any restraints Purchaser has in the location of the retaining wall. Such retaining wall shall be constructed by Purchaser in accordance with the plans and specifications attached hereto as Exhibit B. Purchaser shall use only clean fill behind the retaining wall. Purchaser's obligations set forth in this paragraph shall survive Closing.

8. **Privacy Fence.** As additional compensation for this Agreement, Post-Closing, as part of its public road improvements work, Purchaser shall at its sole cost and expense, install a six foot high privacy fence within the temporary easement on the western side of the public road, as close as reasonably possible to the boundary of the Property. Such fence shall be constructed by Purchaser in accordance with the plans and specifications

attached hereto as Exhibit C. After construction, Seller shall be responsible for maintenance of the fence; provided however that Purchaser shall be responsible at its sole cost and expense for diligent removal of any graffiti on the Property-side of the fence, and for diligent correction of any defects in the installation of the fence. Purchaser's obligations set forth in this paragraph shall survive Closing.

9. **Additional Consideration.** As part of the Purchase Price, Purchaser is compensating Seller for damages to the residue of Seller's property for driveway repairs, landscaping, loss of trees and moving a willow tree. Seller shall have such work performed and Purchaser shall have no liability or responsibility for those items other than payment of the Purchase Price in full.
10. **Access and Restoration.** Purchaser shall keep the driveway to the residence on Seller's property open and accessible at all times during construction of the public road. After construction of the public road on the right of way, Purchaser shall (i) provide a compacted level surface behind the new retaining wall, with the adjoining property of Seller, and (ii) install and leave in place adequate erosion prevention measures, so as to enable Seller thereafter to complete its restoration of the real property of Seller disturbed during construction. Purchaser's obligations set forth in this paragraph shall survive Closing.
11. **Remainder Plat.** At Closing, Purchaser at its sole cost and expense shall provide Seller a plat and legal description of the remainder of Seller's real property (i.e., after conveyance of the Property to Purchaser), in a form satisfactory to the Hamilton County Engineer for recording.
12. **Closing.**
 - (a) Unless Purchaser shall have notified Seller prior to the expiration of the Contingency Period that Purchaser elects to terminate this Agreement pursuant to this Agreement, Closing shall be held at the Purchaser's offices on the Closing Date.
 - (b) At Closing, Seller shall cause to be executed and delivered to Purchaser the following:
 - (i) An affidavit stating whether or not Seller is a foreign person or nonresident alien for purposes of Section 1445 of the Internal Revenue Code ("Code") and, if Seller is a foreign person or nonresident alien for such purposes, Seller shall (and does hereby authorize Purchaser to) comply with the provisions of the Code as shall be applicable to Seller in such case.
 - (ii) A limited warranty deed conveying the Property to Purchaser ("Deed"), subject to all real estate taxes and assessments, both general and special, not yet due and payable; (ii) declarations, conditions, covenants,

restrictions, easements, rights of way and other similar matters of record; (iii) zoning and building ordinances; and (iv) those matters which would be disclosed by an accurate survey of the Property.

- (iii) An Affidavit pertaining to matters concerning mechanic's liens, notices of assessments, rights of persons in possession, etc., in the form attached hereto as Exhibit D.
 - (c) At Closing, Purchaser shall deliver or cause to be delivered to Seller, by township check, the balance of the Purchase Price, as adjusted by the adjustments set forth below.
 - (d) At Closing, Seller and Purchaser shall mutually execute and deliver to one another a closing statement setting forth all adjustments and prorations required by or among Purchaser and Seller under this Agreement. All real estate taxes and installment of special assessments due for the then current tax period against the Property as of the date of Closing shall be paid by Seller. Seller shall continue to pay the real estate taxes and assessments until such time as the Property is assessed as a separate parcel.
 - (e) To enable Seller to make conveyance as herein provided, Seller may, at the Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments evidencing the clearing thereof are delivered at the Closing except that in the case of a mortgage held by an institutional lender Seller may deliver a "pay-off" letter satisfactory to Title Company who shall promptly thereafter obtain and record the discharge.
 - (f) At the conclusion of Closing and upon satisfaction or waiver by Purchaser of all of Purchaser's obligations and duties required hereunder, Seller shall deliver the Deed to Purchaser. Seller shall also deliver to Purchase a temporary construction easement on the 15,492 square foot portion of Seller's property adjacent to the Property being purchased, in the form attached hereto as Exhibit E.
13. **Miscellaneous**. This Agreement cannot be modified except by written instrument signed by all of the parties hereto. Paragraph headings set forth herein are for convenience of reference and shall not be construed to interpret, limit or otherwise define the terms and conditions of this Agreement. This Agreement sets forth, fully and completely, the agreement of the parties with respect to the subject matter described herein, and this Agreement shall be deemed to supersede any and all prior written or oral agreements relating to the subject matter described herein. Except as otherwise expressly set forth herein, the covenants, warranties and representations set forth in this Agreement shall survive Closing. Except as otherwise set forth herein, this Agreement shall be binding upon and shall inure to the benefit of Purchaser, Seller and their respective permitted heirs, successors, successors-in-interest and assigns. This Agreement may not be relied upon by parties other than Seller and Purchaser and the execution hereof shall not be deemed to create any third party beneficiaries to this Agreement. This Agreement has

been the subject of negotiation between Seller and Purchaser, and each party participated fully and equally in the drafting hereof. Therefore, this Agreement shall not be more strictly construed against one party than the other as the result of one party having prepared the same. Prior drafts of this Agreement shall not be used in construing the terms hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Delivery of executed counterparts of this Agreement may be made by telecopy as if the same contained original signatures thereto. Wherever in this Agreement provision is made for the doing of any act by any person, it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed. If an event specified to occur herein falls on a Saturday, Sunday or on a day on which banking institutions in the state where the Property is located are authorized by law to close, then such event shall occur on the next day which is not a Saturday, Sunday or day on which banking institutions in such state are authorized by law to close.

14. **Waiver.** Purchaser reserves the right, at its sole option, at any time, to waive any of the Conditions Precedent.
15. **Assignment.** This Agreement may not be assigned by Purchaser without the consent of Seller.
16. **Notices.** All notices and deliveries to be given or made in connection herewith shall be deemed completed and sufficient if mailed, or delivered by personal delivery or nationally recognized overnight courier service, or electronically, effective upon: (i) receipt or refusal to accept delivery with respect to personal delivery or overnight courier service, or (ii) three (3) days following posting with the United States mail if forwarded via certified mail, return receipt requested, provided that such notices and deliveries shall be made to the respective parties for whom the same is intended if forwarded to the parties at their addresses set forth in Paragraph 1 above or to such address or addresses as the parties may notify each other in accordance with this Paragraph 16.
17. **Brokers.** Each party warrants that they have not employed the services of a real estate broker in this transaction and that there is no commission due as a result of this Agreement. Each party shall pay any commission due on this transaction that occurs as a result of a breach of this warranty.
18. **Remedies.** Seller and Purchaser agree that damages resulting from a breach of this Agreement by either party shall not include consequential or punitive damages and that in any event, Purchaser's total liability for breach of this Agreement by failing to Close shall not exceed the Earnest Money Deposit; but if Purchaser consummates the Closing and subsequently fails to fulfill its post-Closing obligations set forth herein (e.g., regarding construction of the fence and retaining wall, and restoration of the residue of Seller's property), Seller shall have all rights and remedies available under the law, including but not limited to the right to seek damages and/or injunctive relief. In the event of Seller's breach of this Agreement, Purchaser's sole remedies shall be to either

(a) seek specific performance or (b) terminate this Agreement and seek return of the Earnest Money Deposit.

19. **Condemnation.** Purchaser covenants that prior to the Closing Date, it shall not commence condemnation proceedings against the Property. In the event that condemnation proceedings against the Property are threatened or commenced prior to the Closing by any other party, Seller shall notify Purchaser thereof and Purchaser shall have the right to terminate this Agreement without liability on its part by so notifying Seller within ten (10) days of Seller's notification to Purchaser with regard to such condemnation proceedings. In the event Purchaser elects to terminate this Agreement in accordance with the foregoing, Purchaser shall, notwithstanding anything herein contained to the contrary, receive an immediate refund of the Earnest Money Deposit, including any accrued interest thereon, and neither party shall have any further liability or obligation hereunder. In the event Purchaser does not terminate this Agreement in accordance with the foregoing, then, in the event of Closing, Seller shall, at Closing, assign all of its right, title and interest to any condemnation award to be made in connection with any such proceedings.

20. **Representations, Warranties & Covenants.**

(a) (i) Purchaser is duly organized, validly existing and in good standing under the laws of the State of Ohio;

(ii) Purchaser has full right, authority and capacity to execute and perform the Agreement and to consummate all of the transactions contemplated herein;

(iii) Purchaser is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

(iv) Purchaser has reviewed and approved Seller's planned reconfiguration of the parking lot on Seller's residue property, as depicted on Exhibit F attached hereto, and Purchaser agrees that it has approved such reconfiguration and Seller shall not be required to apply for or obtain any variances, permits, consents or other approvals from Purchaser in order to complete such work.

(b) (i) Intentionally omitted.

(ii) Subject to Paragraph 6(b) above, Seller has full right, authority and capacity to execute and perform the Agreement and to consummate all of the transactions contemplated herein;

(iii) Seller is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

21. **Time for acceptance:** This Agreement shall remain open for acceptance by Seller until notice of its withdrawal is given to Seller or its agent.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES:

SELLER:

By: _____
DENNIS M. SCHNURR, ARCHBISHOP OF
CINCINNATI, TRUSTEE FOR THE MEMBERS
OF THE CONGREGATION OF ST. VINCENT
FERRER ROMAN CATHOLIC CHURCH,
KENWOOD, HAMILTON COUNTY, OHIO

Dated: _____

WITNESSES:

PURCHASER:
THE BOARD OF TOWNSHIP TRUSTEES
OF SYCAMORE TOWNSHIP

By: _____
Thomas J. Weidman, Trustee

By: _____
Robert C. Porter, III, Clerk

Dated: _____

EXHIBIT A

The Property

See attached.

EXHIBIT B

Plans and Specifications for the Retaining Wall

See attached.

EXHIBIT C

Plans and Specifications for the Privacy Fence

See attached.

EXHIBIT D

TITLE AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF HAMILTON)

Dennis M. Schnurr, Archbishop of Cincinnati, Trustee for the Members of the Congregation of St. Vincent Ferrer Roman Catholic Church, Kenwood, Hamilton County, Ohio (“Affiant”), first duly cautioned and sworn, deposes and says:

1. Affiant is the fee simple owner of real property known as described on Exhibit A attached hereto (the “Real Estate”).
2. That to Affiant’s actual knowledge without investigation, (i) there are no outstanding deeds, security interests, easements, licenses, options to purchase, contracts of sale or rights of others of any kind which are not fully disclosed of record affecting the title to the Real Estate, and (ii) there are no mortgages or other liens encumbering the Real Estate, except taxes and assessments not yet due and payable.
3. There are no leases affecting the Real Estate or parties in possession or entitled to possession of the Real Estate.
4. No work, labor or material has been furnished or performed on, to or for the Real Estate by Affiant within the last 90 days which has not been fully and completely paid for and for which a mechanic's or materialmen's lien, or the right to file such a lien, might exist; nor has any unsatisfied claim for payment been made to Affiant for labor or material furnished to such premises.
5. That to Affiant’s actual knowledge without investigation, there are no judgments, liens, bankruptcy or insolvency proceedings or court proceedings of any kind which would affect the title to the Real Estate.
6. That to Affiant’s actual knowledge without investigation, except as may be set forth in the records of the Hamilton County, Ohio Auditor/Treasurer/Recorder, there are no outstanding assessments against said Real Estate, including but not limited to assessments for improvements, water and utility charges or owners association charges nor has any notice been received as to the intention to create assessments against the Real Estate.
7. That there are no real estate agents or brokers involved in this transaction other than those set forth on the settlement statement.

Dennis M. Schnurr, Archbishop of Cincinnati,
Trustee for the Members of the Congregation of St.
Vincent Ferrer Roman Catholic Church, Kenwood,
Hamilton County, Ohio

Sworn to before me and subscribed in my presence this _____ day of _____, 2013.

NOTARY PUBLIC
STATE OF _____

EXHIBIT E

Temporary Construction Easement

See attached.

EXHIBIT F

Approved Parking Lot Reconfiguration

See attached.

Sycamore/Kenwood AccessRoad/St.VincentPurchaseAgreement081513

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