

IDENTURE OF TRUST AND RESTRICTIONS FOR  
WHISPERING HILLS,

ST. LOUIS COUNTY, MISSOURI

THIS INDENTURE, made and entered into this 22nd day of March, 1967, by and between E. JERRY HARDESTY and JOSEPH L. JOHNSON, Co-partners doing business as WHISPERING HILLS DEVELOPMENT COMPANY, a partnership, "First Parties", and E. JERRY HARDESTY, JOSEPH L. JOHNSON and ELMER FOODER, all of St. Louis County, Missouri, "Trustees",

WITNESSETH, THAT:

WHEREAS, the St. Louis County Council, by Ordinance No. 4187, approved the development plan for Whispering Hills., the out boundaries of which are described in Exhibit A hereto attached, in accordance with the Planned Environmental Development Ordinances, so that plats of portions of said tract may now be recorded; and

WHEREAS, First Parties have recorded the plat of Whispering Hills Plat I on this, the 24th day of March, 1967, as Daily No. 175 in the St. Louis County Recorder's Office and contemplate that the remainder of the aforesaid 138.940 acres will also be subdivided and that plats thereof, designated as Whispering Hills Plat 2, Plat 3, Plat 4, Plat 5 and, possibly, Plat 6, will be recorded in St. Louis County Records pursuant to and in conformity with the aforesaid ordinance; and

WHEREAS, common land for park and recreational areas has been reserved in Whispering Hills Plat I and common land for similar purposes will be reserved in the subsequent plats of Whispering Hills; and

WHEREAS, as each of the subsequent plats of Whispering Hills is recorded, First Parties will adopt this Indenture of Trust and Restrictions and all provisions thereof for each of said plats, except for any changes necessary for plats which include multiple dwelling units; and

WHEREAS, they may be designated, established and recited on the recorded plats of Whispering Hills certain streets, common land and easements which are for the exclusive use and benefit of the residents of Whispering Hills, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies, and which have been provided for the purpose of constructing, maintaining and operating sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of Whispering Hills; and

WHEREAS, it is the purpose and intention of this indenture to preserve said tract of land as a restricted neighborhood and to protect the same against certain uses by the adoption of a sound urban environment plan and scheme of restrictions, and to apply that plan and scheme of restrictions to all of said land described in Exhibit A. including all common land, and mutually to benefit, guard and restrict future residents of Whispering Hills and to foster their health, welfare and safety; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, and all of which are sometimes hereafter termed "restrictions", are jointly or severally for the benefit of all persons who may purchase, hold or reside upon, any of the lots covered by this instrument; and

WHEREAS, First Parties, by deed simultaneously herewith, have conveyed to the Trustees herein designated and have established as common land, the property described in Exhibit B hereto attached; and

WHEREAS, said deed conveys the property described therein to said Trustees for a period of fifty (50) years after which fee simple title to said property will vest in all the then record owners of the lots and dwelling units in all recorded plats of Whispering Hills, as tenants in common, but the rights of such tenants in common will only be appurtenant to and in conjunction with their ownership of lots and dwelling units in plats of Whispering Hills, and any conveyance or change of ownership of lot or dwelling unit in a plat of Whispering Hills will carry with it ownership in common property, so that none of the owners of lots or dwelling units in any plat of Whispering Hills and none of the owners of the common property will have such rights of ownership as will permit them to convey their interest in the common property except as an incident to the ownership of such lot or dwelling unit, and any sale of any lot or dwelling unit in any plat of Whispering Hills will carry with it, without specifically mentioning it, all the incidents of ownership of the common property; PROVIDED, HOWEVER, that all of the rights, powers and authority conferred upon the Trustees of Whispering Hills shall continue to be exercised by the Trustees.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may thereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the lots and parcels of land in any plat of Whispering Hills, all as described herein as follows, to-wit:

I.

RESERVATION OF EXPENDITURES

First Parties reserve the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by them for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, road, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the creation of any subdivision in the tracts described in Exhibit A.

II.

DESIGNATION AND SELECTION OF TRUSTEES

The initial trustees shall be E. Jerry Hardesty, Joseph L. Johnson and Elmer Fooder, designated herein as Trustees, who, by their signatures to this instrument, consent to serve in such capacity. Whenever any of said Trustees resigns, refuses to act, becomes disabled or dies, the remaining Trustees or Trustee shall appoint a successor or successors until such time

that neither of First Parties owns any of the property described in Exhibit A hereto attached or owns any property in any plat of Whispering Hills, at which time a meeting of the then record owners in fee simple title to lots in all plats of Whispering Hills shall be called by notice of meeting signed by at least three (3) lot owners, sent by first class mail to, or personally served upon, all of such record lot owners at least ten(10)days before the date fixed for the meeting, for the purpose of electing new trustees. The notice shall specify the time and place of meeting, which place shall be in St. Louis County, Missouri. At such meeting, the owner of a lot improved with a single-family residence shall have one (1) vote and the owner of a lot improved with multiple family dwelling units shall have one vote (1) for each two (2) such units. A majority of all votes in all plats of Whispering Hills shall have the power to elect new trustees, two (2) of whom shall be elected from among the owners of multiple family dwelling units and one (1) from among the owners of single family residences, each trustee being elected separately. After three (3) have elected, by lot one shall serve for a term of one (1) year, one for a term of two (2) years and one for a term of three (3) years, their successors being elected to terms of three (3) years each, with each successor being elected from among owners of multiple family dwelling units if his predecessor was elected from among owners of such units, or from among the owners of single family units if his predecessor was so elected. Meetings thereafter shall be called by the Trustees, with notices given in the same manner as hereinbefore provided and any business relevant or pertinent to the affairs of any plat of Whispering Hills may be transacted at any meeting of lot owners called in conformity with this procedure.

### III.

#### TRUSTEES' DUTIES AND POWERS

First Parties hereby invest Trustees and their successors with the rights, powers and authorities described in this instrument, and with the following rights, powers and authorities:

1) To acquire and hold the common land hereinabove described and conveyed to trustees by separate instrument on even date herewith, which said common land is set forth and shown on the plat of Whispering Hills, all in accordance with and pursuant to the aforesaid ordinance of the St. Louis County Council and in accordance with and subject to the provisions of this instrument, and to deal with any common lands so acquired under the provisions hereinafter set forth.

2) To exercise such control over the easements, streets and roads (except for those easements, streets and roads which are now or may hereafter be dedicated to public bodies or agencies), entrances, lights, gates, common land, park areas, lakes (including restrictions of use of same), shrubbery, storm water sewers, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities as may be shown on any recorded plat of Whispering Hills as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets, and roads, etc. by the necessary public utilities and others, including the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements and streets, sewers, pipes, poles, wires and other facilities and public utilities for services to the lots shown on said plat.

3) To exercise control over the common land shown on said plats; pay real estate taxes and assessments on said common land out of the general assessment herein provided; to maintain and improve same with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, morals, recreation, entertainment, education and general use of the owners of lots in Whispering Hills, all in conformity with applicable laws; to prescribe by reasonable rules and regulations the terms and conditions of the use of common land, all for the benefit and use of the owners of the lots in Whispering Hills and according to the discretion of the Trustees.

4) To dedicate to public use any private streets constructed or to be constructed on the afore described tract of land, whenever such dedication would be accepted by a public agency, in the event the recorded plat does not provide for public use and maintenance.

5) To prevent, as Trustees of an express trust, any infringement and to compel the performance of any restriction set out in this Indenture or established by law, and also any rules and regulations issued by said Trustees covering the use of said common land or any matters relating thereto. This provision is intended to be cumulative and not to restrict, the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

6) To clean up rubbish and debris and remove grass and weeds from, and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lots or property, and the owners thereof may be charged with the reasonable expenses so incurred. The Trustees, their agents or employees shall not be, deemed guilty or liable for any matter of trespass or any other act for any such injury, abatement, removal or planting.

7) To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on said lots, proposed additions to such buildings or alterations in the external appearance of buildings already constructed, it being provided that no buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools, tennis courts or other structures may be erected or structurally altered on any of said lots unless there shall be first had the written approval of a majority of the Trustees to the plans and specifications therefore and to the grade proposed therefore. In the event the Trustees fail to approve or disapprove within thirty (30) days after building plans or other specifications for fences, swimming pools or tennis courts, accessory buildings and other outbuildings have been submitted to them hereunder, approval will not be required and the related restrictions shall be deemed to have been fully complied with.

8) To require a reasonable deposit in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis court or other structure on any of said lots in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all, damages to subdivision improvements shall be repaired.

9) To establish rules and regulations for the operation of recreational facilities and swimming pool when the same have been provided in common areas and employ personnel to supervise and operate the same. The regulations shall include the conditions under which residents may entertain guests in such facilities, including the charges to residents for such guests.

10) To purchase and maintain in force liability insurance, protecting the Trustees and lot owners from any and all claims for personal injuries and property damage arising from use of common areas and facilities.

11) In exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Indenture, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary, to employ counsel to institute and prosecute such suits as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

At such time (fifty years after the date of any warranty deed by which the Trustees acquired the common land) as the then lot owners of Whispering Hills become owners of part or all of the common land theretofore conveyed to and held by the Trustees. The Trustees shall continue to exercise all the same rights and authorities and have the same duties and responsibilities with respect to the said common land as hereinbefore set forth, and particularly, the Trustees shall continue to collect for and make payment of the real estate taxes which may be levied on the common land by St. Louis County and/ or by other governmental body or agency.

#### IV. ASSESSMENTS

The Trustees and their successors in office are hereby authorized, empowered and granted the right to make assessments upon and against lots in Whispering Hills for the purposes herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of this instrument:

(1) (a) The Trustees and their successors in office are authorized to make uniform annual assessments in an amount not to exceed Fifty Dollars (\$50.00) per lot in each calendar year upon and against each lot in a plat of Whispering Hills upon which a residence has been constructed and sold either by First Parties or by any other builder, and in an amount not to exceed the annual rate of Twelve and One-half Dollars (\$12.50) against each completed multiple family dwelling unit, for the purpose of carrying out any and all of the general duties and powers of the Trustees hereunder and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately to maintain streets, if required, common land, utilities, parking spaces, entrance gates and trees, and to dispose of garbage or rubbish, to perform or execute any powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the residents in Whispering Hills. Each Annual assessment shall be levied prior to November 1 in the year prior to the year for which it is levied, notice thereof being given by first-class mail addressed to the last known or usual post office address of the owner and deposited in the United States mail with postage prepaid, or by the posting of a notice of the assessment upon the residence or dwelling unit against which it applies, by said November 1.

Each such annual assessment shall be due on January 1 following and shall become delinquent if not paid by February 1.

(b) In addition to the foregoing authority to make a uniform annual assessment for the purpose of carrying out their general duties and powers, the Trustees shall levy a uniform annual assessment against each completed multiple family unit for maintenance and operation of recreational facilities and swimming pool, the owner or occupant of any single family residence in any plat who elects to use such facilities paying four (4) times the assessment so levied. Should the sums so received be insufficient to pay for the maintenance and operation of these facilities on a non-profit basis, the trustees are empowered to levy annual assessments against each lot in any plat upon which there is an occupied residence, the owner or occupant of which has not voluntarily elected to use such facilities, such assessment shall not exceed four (4) times the rate levied against completed multiple family units for these purposes, PROVIDED, HOWEVER, that no such assessment shall be levied until the facilities have been completed and no part of such assessments shall be expended in payment for the original construction. The Trustees are further authorized to obtain the additional funds through dues to be paid by those residents of Whispering Hills who elect to use the facilities.

(c) If at any time the Trustees consider it necessary to make any expenditure requiring an assessment additional to the annual assessment, they shall submit a written outline of the contemplated project and the amount of the assessment required, to the then owners of residences and dwelling units. If such assessment is approved either at a meeting of the owners of residences and dwelling units called by the Trustees by fifty-five percent (55%) of the votes cast in person or by proxy, or on written consent of fifty-five percent (55 % of the total votes, the Trustees shall notify all owners of the additional assessment; PROVIDED, HOWEVER, that in determining single-family required fifty-five percent (55%) majority, each owner of a single-family residence shall be entitled to one (1) full vote and each owner of a multiple-family dwelling unit shall be entitled to one-half (1/2) of a full vote, except that only those who have paid all assessment theretofore made, shall be entitled to vote on any question. The limit of the annual assessments for general purposes as set forth in (1) (a) above, shall not apply to any assessment made under the provision of this paragraph. Notice of such special assessment shall be given in the same manner as notices of annual assessments are given, with such assessment becoming delinquent thirty (30) days after the date of such notice.

d) Should a residence or multi-family building become subject to assessments after January 1 in any year, and should an annual or a special assessment have been levied for that year, then such assessment shall be adjusted so that such residence or dwelling unit shall be charged with a portion of the assessment prorated for the balance of that year.

e) In addition to the foregoing assessments, each single-family residence and each multiple-family dwelling unit shall annually be assessed for sanitary sewer purposes by Fee Fee Trunk Sewer, Inc., its successors and assigns in such amounts as First Parties or the Trustees, by a written contract, may agree.

(2) All assessments shall bear interest at the rate of eight percent (8%) per annum from the date of delinquency and such assessment, together with interest, shall constitute a lien upon the

property against which it is assessed unto the amount, together with interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the Recorder's Office of St. Louis County, Missouri. Such assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that such assessment shall not have priority over existing mortgages or deeds of trust. Should an owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall release said lien and

(3) The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings and Loan Insurance Corporation, the treasurer being bonded for the proper performance of his duties in an amount fixed by the Trustees.

(4) The Trustees are authorized and empowered to procure such insurance, including but not limited to public liability and property damage, as they may deem necessary and proper.

#### V.

#### INDENTURE OF RESTRICTIONS

First Parties, being the owners of the following described real estate lying and being situated in St. Louis County, Missouri, and being more particularly described as:

Lots 1 to 13, both inclusive, of Whispering Hills Plat I, a Subdivision of St. Louis County, Missouri according to plat thereof recorded in the Office of Recorder of Deeds, St. Louis County, Missouri, on the 24th day of March, 1967, as Daily No. 175.

by this Indenture do impose upon all lots and common land in Whispering Hills Plat I, the following restrictions and conditions, to-wit:

(1) Term: These restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for continuing successive terms of ten (10) years each unless an Instrument, signed by the then owners of a majority of the lots and dwelling units (each dwelling unit being considered one-half of one lot in determining whether there is a majority) in all plats of Whispering Hills has been recorded, agreeing to change these covenants in whole or in part.

(2) Land Use and Building Type: All lots in Whispering Hills Plat I shall be used only for single family residential dwellings and no buildings shall be erected, placed, altered or permitted to remain on any lot other than one single-family dwelling not to exceed two stories in height with an attached garage for not fewer than two automobiles.

(3) Dwelling Cost, Quality and Size: The construction cost of each dwelling in Whispering Hills Plat I shall not be less than Eighteen Thousand Dollars (\$18,000.00) based on building costs prevailing on the date these covenants are recorded and shall be of such quality, workmanship and design and shall be constructed of such materials as will maintain the subdivision as first class single-family residential area. The determination as to whether these standards of cost, quality, workmanship, design and materials are satisfactory shall be made by the Board of Trustees.



Exclusive of garages and open porches, there shall be not less than 1400 square feet on the ground floor of a one-story dwelling, not less than 1000 square feet on the ground floor of a one and a half story dwelling, and not less than 900 square feet on the ground floor of a two-story dwelling.

(4) Placement of Improvements: Residence buildings shall be placed on lots only in the manner approved by the Trustees, with the front and side building set-back lines being at least those required by St. Louis County zoning ordinances for the subdivision.

(5) Easements: The easements shown on the recorded plat for installation and maintenance of utilities and drainage facilities are hereby reserved and the same shall run with the land.

(6) Entrance Way: The Board shall maintain the entrance way or ways into the subdivision and pay the cost of electricity consumed for lighting such entrance way or ways and the streets in the subdivision.

(7) Signs: No signs shall be erected or displayed in public view on any lot except one (1) sign, not larger than five (5) square feet, advertising the property for sale or rent, EXCEPT, THAT, any signs may be erected by First Parties, their agents or builders, in the development of the subdivision. Should First Parties not develop all the lots and should they convey lots to other builders, the Trustees may grant such other builders or developers the right to place suitable signs on lots during construction and prior to initial sale of the residence constructed thereon.

(8) Livestock and Poultry: No animals, livestock or poultry shall be raised, bred or kept on any lot, EXCEPT, THAT, household pets, in limited numbers, may be kept provided they are not maintained for any commercial purpose.

(9) Fences: No fences or screening shall be erected or maintained on any lot between the building set-back lines and the street upon which that lot fronts. Fences may be maintained on other portions of lots only with written consent of the Trustee as to locations, materials used and height of fence. The decision of the Trustees shall be conclusive.

(10) Nuisances: No noxious or offensive activity shall be carried on any lot, nor shall anything be done thereon which may be or become a nuisance or annoyance.

(11) Invalidation: Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.

IN WITNESS WHEREOF, First Parties have executed this Indenture this    day of    , 1967.

\_\_\_\_\_  
E. Jerry Hardesty

\_\_\_\_\_  
Joseph L. Johnson

Co-partners doing business as  
WHISPERING HILLS

DEVELOPMENT COMPANY.



E. Jerry Hardesty

Joseph L. Johnson

Elmer Fooder

Trustees

STATE OF MISSOURI )  
 ) SS  
COUNTY OF ST. LOUIS)

On this 22nd day of March 1967, before me personally appeared E. JERRY HARDESTY and JOSEPH L. JOHNSON, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

SEAL

My term expires:

STATE OF MISSOURI)  
 ) SS  
COUNTY OF ST. LOUIS)

On this 22nd day of March, 1967, before me personally appeared E. JERRY HARDESTY and JOSEPH L. JOHNSON and ELMER FOODER, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed as Trustees.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

SEAL

My term expires:

Land Sale of April 3, 1987

The money that was received from the April 1987 Land Sale is carried in the Common Ground Maintenance Fund (approximately \$58,000) and the interest earnings are being used to maintain the Common Land. In accordance with the agreement insisted upon *by* the homeowners, the principal is being held for "other than normal" maintenance or capital projects. All three Trustees would have to unanimously agree to any expenditure, and it is proposed that the Homeowners' Trustee, in order to obtain the consent of the homeowners for any use of the principal amount, conduct a written poll where-in any proposed expenditure would be presented *for* a vote of the homeowners. A 67% approval of all 110 homeowners would authorize the Homeowners' Trustee to vote in favor of the proposed expenditure.

#### AGREEMENT

This Agreement is made and entered into this 14th day of January 1988, by and between the three (3) Whispering Hills Trustees presently serving under the Whispering Hills Indenture of Trust made and entered into the 22nd day of March, 1967, and the residents of the Whispering Hills Subdivision.

#### RECITALS

WHEREAS, The Indenture of Trust for Whispering Hills was amended on the 3rd day of April, 1987, authorizing the Trustees to sell a parcel of common ground for \$70,000.00. A copy of the Trust Indenture Amendment is attached hereto and incorporated herein by reference; and

WHEREAS, under the provisions of the Trust Indenture, the proceeds from the sale of the common ground must be invested with the annual interest income being placed exclusively in the common ground budget; and

WHEREAS, no portion of the sale proceeds can be used to operate and/or maintain the Whispering Hills recreation facility, which includes all of Plat IV of the Whispering Hills development; and

WHEREAS, under the Trust Indenture, the use of the Principal *for* common area maintenance is controlled by the Trustees; and

WHEREAS, the Whispering Hills lot owner representatives have voiced their concerns and have requested that an Agreement be executed requiring the unanimous consent of all three Trustees on the manner in which the principal from the proceeds be used for common area maintenance; and

WHEREAS, the Trustees, having no objection, enter into this Agreement.

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NOW, THEREFORE, pursuant to this Agreement between the Trustee, it shall require the unanimous consent of all three Trustees before any of the principal may *be* used for common area maintenance. It is further the agreement of the Trustees that the subdivision Trustee shall be required to solicit and receive the written consent of 67% *of* the 110 homeowners before voting in the affirmative to spend any of the principal. The term of this agreement shall be effective until the principal has been fully expended for the common area maintenance, or terminated *by* the unanimous consent of all lot owners.

IN WITNESS WHEREOF, the Whispering Hills Subdivision representatives and Trustees have caused this Memorandum to be executed as follows. ((Notarized on 14th day of January, 1988))

WHISPERING HILLS SUBDIVISION

By: H. Robert Scheinkman, Trustee  
Gerald W. Reinert, Trustee  
Seymour R. Zilberstain, Trustee

2. Article V of the Indenture is hereby amended to add a new Sub-Paragraph (12), as follows: .."

(12) The Trustees of the Subdivision or\* hereby authorized and empowered to enter into and execute a contract to sell the OUT PARCEL, under such terms and conditions as the Trustee\* deem appropriate, at a purchase price of not less than \$70,000.00 (prior to normal closing adjustments), payable in cash *or* by certified check at closing, and the Trustees are further empowered to execute all such documents and take all such actions as are necessary or appropriate to effect the terms of such contract and close the same on behalf of the Subdivision.

Except for the Amendments set forth herein, all other trust powers, rights and restrictions shall continue in full force and effect.

IN WITNESS WHEREOF, the Trustees have executed this Amendment to the Trust Indenture this 3rd day of April, 1987. .."

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