

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

BERWIND REALTY, LLC

Debtor

Case No. 12-02701 (BKT)

Chapter 11

**STIPULATION ON THE USE OF RENTS AND ADEQUATE PROTECTION AND TERMS
FOR TREATMENT OF BPPR'S CLAIMS IN A CONSENTED PLAN OF
REORGANIZATION AND SUPPLEMENT THERETO**

COME NOW Berwind Realty, LLC ("Debtor") and Banco Popular de Puerto Rico ("BPPR" or "Lender"), each by their respective undersigned counsel, and respectfully submit this Stipulation on the Use of Rents and Adequate Protection and Terms for Treatment of BPPR's Claims in a Consented Plan of Reorganization (the "Agreement").

PRELIMINARY STATEMENT

After substantial negotiations, Debtor and BPPR have agreed to the Agreement contained herein, whereby, among other things, BPPR consents to Debtor's limited use of certain rents and post-petition income to satisfy certain operating expenses solely under and pursuant to the terms of the Agreement and the adequate protection provided herein, to enable Debtor to continue operating and confirm a plan that contains, among other things, the terms of this Agreement. BPPR and Debtor respectfully submit that the terms of this Agreement should be promptly approved as they are critical and necessary to provide and assure the continuity of Debtor's business and pave the way for the resolution of this case through the confirmation of a plan of reorganization (the "Plan").

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the scope of 28 U.S.C. § 157(b)(2).

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2. Venue of this proceeding and of the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are Sections 105(a), 361, 362, 363, 364, 365, 1107 and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”), Fed. R. Bank. P. 4001(b) and Local Bankruptcy Rule 4001-2.

BACKGROUND

A. The Bankruptcy Filing:

4. On April 5, 2012, Debtor filed a voluntary petition for relief under the provisions of Chapter 11 of the Bankruptcy Code, and as of that date has been managing its affairs and operating its business as a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

5. No Committee of Creditors or Trustee has been appointed in this case.

B. The Loan Documents

6. On July 13, 2011, BPPR and Debtor, along with J.T.P. Development Corp. and Saleh Yassin and his spouse Aida Issa de Yassin, who are either affiliated or related parties to Debtor (collectively, the “Guarantors”), entered into a Forbearance Agreement where they reaffirmed their obligations and responsibilities to BPPR under the indebtedness described at length below:

a) Westernbank (now BPPR), along with Debtor and the Guarantors are parties to certain credit facilities (as amended and supplemented) in which BPPR made several loans to Debtor in the aggregate amount of \$59,963,093 (the “Loan Agreements”). The Loan Agreements are detailed on **Exhibit A** hereto. Each of the Loan Agreements is secured by the corresponding collateral detailed on **Exhibit A** hereto (the “Collateral”, and, collectively with the Loan Agreements and the Forbearance Agreement, the “Loan Documents”).

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7. The Guarantors executed a Guaranty in favor of BPPR, pursuant to which they jointly and severally guaranteed all of the obligations of Debtor under the Loan Agreements and the other documents executed in connection therewith, which evidence secure the obligations of Debtor under the Loan Agreements.

8. BPPR properly perfected its security interests granted by Debtor under the Loan Agreements.

9. As of the Petition Date, under the Loan Agreements, Debtor has incurred in obligations to BPPR that amount to approximately \$52,955,218.70 in principal and approximately \$1,229,292.78 in interest, for a total amount of approximately \$54,184,511.48, which amounts are secured by, among other assets, the Collateral (the “BPPR Claim”).

10. On June 21, 2012, BPPR and Debtor filed a “Stipulation to Stay Litigation on Pending Controversies, Use of Rents, and Adequate Protection” (the “Stipulation”), as supplemented on July 5, 2012 (Docket No. 47), whereby the parties agreed to certain terms regarding Debtor’s limited use of rents and post-petition income (the “Rents”), and to stay the litigation of the Foreclosure Controversy, as said term is defined at the Stipulation. See, Docket. No. 45.

12. The Court issued an order approving the Stipulation on August 3, 2012. See Docket No. 54.

STIPULATION

13. Debtor requires the use of the Rents to pay (among other things) present operating expenses in order to preserve its going concern value pending reorganization. BPPR is willing to authorize such use solely under, and in reliance upon, the terms and conditions and adequate protection set forth herein. Further, Debtor and BPPR have engaged in discussions aimed at resolving and agreeing on the treatment of BPPR’s Claim in the Plan. BPPR has agreed to the

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treatment of its claim as set forth below solely under, and in reliance upon, the terms and conditions and adequate protection set forth herein.

A. **Authorized Use of Cash Collateral.** Debtor and BPPR hereby inform the Court that they have agreed to amend the cash collateral Stipulation in order to extend its full contents, as provided therein, through the date that Debtor's Plan of Reorganization (the "Plan"), including the incorporation of the terms of this Agreement as a supplement thereto is confirmed by the Court (on amounts equal to those set forth in the Budget). Further, the parties hereby ratify all of the adequate protection provisions provided in the Stipulation, its terms, conditions, and limitations and incorporate the same herein as if fully set forth in this Agreement.

B. **Terms of Consensual Plan and Treatment of BPPR's Claim.**

- **Restructuring of Loans.** Pursuant to Sections 361 and 363 of the Bankruptcy Code, as adequate protection for BPPR and to facilitate Debtor's reorganization through the Plan incorporating the terms described below (and in this Agreement), Debtor and BPPR hereby agree to restructure BPPR's Claim as follows.
 - **Loan A.** Loan A shall have a balance of principal of \$13,365,000, subject to the terms and conditions described below:
 - i. **Interest Rate.** Loan A shall accrue interest at the rate of 4.25% per annum. Upon the occurrence of any Event of Default, Loan A shall automatically and without further notice accrue interest at the default rate of 6.25%.
 - ii. **Term and Balloon.** Loan A shall have an amortization schedule of 25 years, with a balloon payment due on or before December 31, 2014 or upon an Event of Default as defined in this Agreement, not properly

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cured within 10 days after its notification (the “Cure Period”), whichever is earlier. For the avoidance of doubt, there shall be no Cure Period applicable if the Event of Default occurs due to the Debtor’s failure to make any payment agreed to under the terms of this Agreement.

- iii. **Repayment.** Until the indefeasible payment of Loan A and Loan B, Debtor shall pay to BPPR, on or before the first day of each month after the confirmation of the Plan, the sum of \$72,403 for principal and interest under Loan A. For the avoidance of doubt, until such payments commence, Debtor shall continue making to BPPR the adequate protection payments set forth in the cash collateral Stipulation.
- iv. **Barceloneta Property.** Further, the monthly net proceeds of any net cure amounts or payments received on account of that certain of Debtor’s ground lease and sublease agreements for the real estate at Barceloneta, PR (the “Property”), shall be assigned and paid to BPPR as a mandatory repayment of the amounts due under Loan A, until the full payment of the principal amount of Loan A for \$13,365,000, at which time, upon the indefeasible payment in full of the amounts due for Loan A, BPPR will release the Property from any liens and encumbrances thereon held by BPPR.
- v. **Insurance and CRIM.** Until the indefeasible payment of Loan A and Loan B, Debtor agrees to maintain adequate insurance on all of the Collateral from and after the Petition Date, and until the indefeasible

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payment of Loan A and Loan B to (a) list BPPR as an additional insured and loss payee under the corresponding insurance policies, and (b) provide BPPR evidence of such insurance (the “Insurance Obligation”). Debtor also agrees to maintain current any and all post-petition obligations to CRIM.

- **Loan B.** Loan B shall have a principal balance of \$38,329,332.00.
 - i. **Repayment.** Loan B shall be considered fully repaid, subject to the terms and conditions of this Agreement and full compliance therewith, including among others, the Guarantor Payment and the Guarantor’s Limitations, from the proceeds of the sale and/or disposition of the Sale Collateral (defined below), with no additional payments from Debtor or Guarantors, after the sale of the Sale Collateral and the application of the net proceeds from its sale to Loan B.
 - ii. **The Sale Collateral.** The Sale Collateral shall mean the following real properties described below, and in more detail on **Exhibit B**: (1) 1086 Muñoz Rivera Avenue, Río Piedras, PR (formerly El Amal headquarters); (2) Km 32.1, Road 14, San Ildefonso, Coamo, PR; (3) Machete Ward, Guayama (formerly El Amal Store No. 22); (4) Berwind Shopping Center, 65th Infantry Ave., Río Piedras, PR; and (5) Sabana Seca Ave., Levittown, PR (formerly El Amal Store No. 37) (collectively, the “Sale Collateral”).
 - iii. **Sale Motion.** As to the Sale Collateral, within five (5) days after approval of this Stipulation, Debtor, with the consent of BPPR, shall file a motion to authorize the sale of each of the Sale Collateral,

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excluding any Sale Collateral object of any previous sale motion, pursuant to section 363 of the Bankruptcy Code, with all of the net proceeds of such sale(s) paid indefeasibly to BPPR at the closing of any such sale(s). Further, as part of such sale(s), BPPR shall have the right to credit bid pursuant to section 363(k) of the Bankruptcy Code, partially or in full, the amounts under Loan B. The sale motion shall include, unless otherwise agreed to between BPPR and Debtor, a due diligence period of approximately thirty (30) days for potential purchasers, and a closing date of such sale on or before March 31, 2013 (or as may be agreed to in writing between BPPR and Debtor). BPPR shall have the right to approve any stalking horse bidder and the terms of such sale, and, in consultation with Debtor, to set any minimum price for any auction or sale of the Sale Collateral. Further, the minimum sale price, unless otherwise agreed to by BPPR in writing, for each of the Sale Properties shall be the appraised liquidation value of such property.

- iv. **Releases**. On the Release Effective Date, and subject to the Guarantor Payment and Guarantor Limitation, BPPR shall release Debtor and the Guarantors of any and all remaining obligations under Loan B. Within fifteen (15) days from the approval by the Court of this Stipulation, the personal Guarantors shall execute a declaration (the “Declaration”), in which they shall represent and attest, under penalty of perjury: (a) that none of the personal Guarantors has the financial capacity to satisfy

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BPPR's Claim, other than through the Guarantor Payment; (b) include truthful, complete, and accurate financial statements, under oath, showing that there are no available assets, other than those disclosed to BPPR, to satisfy BPPR's Claim (the "Financial Statements"); and (c) that there are no material misrepresentations or omissions of assets or liabilities in their Financial Statements (collectively, the "Financial Representations").

- v. The "Release Effective Date" shall mean such date when Debtor and Guarantors have complied with all of the agreements and conditions set forth in this Stipulation including, without limitation, the Conditions Precedent (defined below). The occurrence of the Release Effective Date is also expressly conditioned on the following (collectively, the "Conditions Precedent"): (a) the payment in full of all obligations and amounts due under Loan A pursuant to the terms of this Agreement; (b) the indefeasible transfer to BPPR or sale with all of the net sale proceeds having been paid to BPPR of all of the Sale Collateral and the Cidra real estate described below; (c) the payment in full of the Guarantor Payment; (d) entry of a final order approving this Agreement; (e) entry of a final order approving the sale of the Sale Collateral on terms and conditions acceptable to BPPR; (f) entry of a final order confirming the Plan on terms acceptable to BPPR; (g) that Debtor and each Guarantor complies with each and every respective obligation, representation, or warranty under this Agreement; (h) that

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no “Event of Default” as defined below has occurred; (i) none of the Borrower or Guarantors engages in any fraudulent conduct relating to their respective obligations under this Agreement, the Declarations, or the Financial Representations; (j) that on or before the Release Effective Date, the personal Guarantors deliver the Declarations and the Financial Representations; and (k) that there are no material misrepresentations or omissions of assets or liabilities in the Financial Representations and in the Declarations. If any of the Conditions Precedent for the Release Effective Date set forth above does not occur, then BPPR shall not be required to provide the Guarantor Limitation or the release to Debtor and the Guarantors.

- **Joint and Several Liability.** Each of Debtor and the Guarantors shall be jointly and severally liable and responsible for each and every obligation described above for Loan A and Loan B, and for each and every other obligation, representation, and covenant included in this Stipulation.
- **Restricted Payments.** Until the indefeasible payment in full of Loan A and the payment of all of the net proceeds from all of the Sale Collateral for Loan B., excepting endeavors geared to the obtention of exiting financing for the payment of Loan A, without BPPR’s previous written consent and Court approval, Debtor shall not (i) make shareholder withdrawals, declare or pay any distributions to its shareholders, buy back stock and/or enter into any guarantees or other contingent liabilities or set aside funds or assets for such purpose, (ii) purchase, redeem or otherwise acquire any of its interests in the

corporations or set aside funds or assets for such purpose or (iii) pay or commit to pay or set aside any funds or assets for the payment of management fees or bonuses, other than those disclosed and approved in the Budget or by BPPR.

- **Capital Expenditures.** Until the indefeasible payment in full of Loan A and the payment of all of the net proceeds from all of the Sale Collateral for Loan B, Debtor shall not make any capital expenditures without BPPR's previous written consent and Court approval, other than the concrete wall to be constructed at the Berwind Shopping Center as required by the Insurance Company for the continuance of the Insurance Policy (estimated between \$75,000 to \$100,000), subject to the submission to BPPR of the invoices for the work already performed and the approval by BPPR of the budget for the remaining work.
- **Transaction with Affiliates.** Until the indefeasible payment in full of Loan A and the payment of all of the net proceeds from all of the Sale Collateral for Loan B,, Debtor shall not enter into any transactions with subsidiaries and/or any other affiliates (including, without limitation, the shareholders) without the previous written consent of BPPR and Court approval, other than those for the purpose of obtaining exiting financing for the payment of Note A described above.
- **Loans.** Debtor shall not make any loans or advances to its shareholders, directors, officers and/or any other person or set aside funds for such purposes, without the previous written consent of BPPR and Court approval,

excepting advances or reimbursements for legitimate and reasonable business expenses duly documented and actually incurred.

- **Indebtedness.** Until the indefeasible payment in full of Loan A and the payment of all of the net proceeds from all of the Sale Collateral for Loan B,, Debtor will not create, incur, assume, permit or suffer to exist any indebtedness (excluding those to BPPR) resulting from borrowings, loans, the extension of credit or otherwise without BPPR's prior written consent and Court approval, except for the full payment of Loan A set forth above.
- **Debtor's Accounts.** Until the indefeasible payment in full of Loan A and the payment of all of the net proceeds from all of the Sale Collateral for Loan B,, Debtor agrees and represents that it will maintain all of its accounts at BPPR and grant BPPR access to monitor such accounts and the payments and deposits made therein, until the full payment of Loans A and B, as set forth above. Further, Debtor hereby covenants and agrees to deposit into said accounts any and all collections and proceeds from cash collateral, sales, or revenues (whether on a cash, credit, or any other basis).
- **Plan.** The terms of this Stipulation and the restructuring of the Loans shall be incorporated in the Plan as a supplement thereto prior to the confirmation hearing.
- **Agreement with Affiliates.** BPPR has also reached an agreement, subject to drafting and execution of documents acceptable to the parties, with Debtor's affiliate, JTP Development, Corp. ("JTP") and Debtor's Shareholder, consisting of a discounted pay-off of \$6,900,000.00, as a payment for all

JTP's obligations to BPPR. As part of such agreement and subject to the drafting and execution of the same, Debtor's Shareholders obligations to BPPR as to any deficiency claim under Loans A and B, or related to Debtor's Affiliates' and Shareholders' obligations to BPPR, as well as those of the Guarantors of A+HC Holding, Inc's obligations to BPPR will be limited on the Release Effective Date (the "Guarantor Limitation") to \$600,000 (the "Guarantor Payment"). The Guarantor Limitation will be expressly conditioned and subject to the occurrence of the Release Effective Date, and JTP's compliance with all of its obligations to BPPR (as may be modified by the agreement described above), and compliance with the payment terms for the Guarantor Payment set forth below and the sale of the Cidra real estate as described below. The Guarantor Payment will be paid to BPPR as follows: \$100,000 on or before the payment in full of the amounts set forth for Loan A or the maturity date for Loan A, whichever is earlier, and the balance under a separate payment agreement that will be executed by and between BPPR and Debtor's Shareholders that will include the terms of repayment of such amount. Further, the Guarantors agree to sell and pay to BPPR the net proceeds of the same that certain real estate located in Cidra, Puerto Rico, and that such sale shall be for an amount no less than \$550,000 (the "Release Price"). Finally, the Guarantors agree that any amount received above and beyond the Release Price shall be paid to BPPR, and that any offers made below the Release Price shall be submitted to BPPR for its consideration and approval, at its sole discretion. The terms of the Guarantor Payment, sale of

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the Cidra real estate, Guarantor Limitation, and agreement with JTP, which are described in this paragraph, shall be set forth in a written agreement executed by all parties that shall include, among others, the terms described above.

- **Cross-Collateral.** As additional adequate protection, the post-petition Collateral under the Replacement Liens and the pre-petition Collateral shall all serve as cross-Collateral for the Loans and any and all other amounts disbursed by BPPR under the Financing Agreements, excluding those related to Debtor's Affiliates and/or Shareholders.
- **Ratification of Loan Documents.** Debtor hereby consents: (i) to the transaction contemplated herein and acknowledges, reaffirms, and ratifies all security interests granted and liens constituted pursuant to the Loan Documents as security for the payment and performance of all of Debtor's obligations under the Loan Documents and their priority rank; (ii) acknowledges and agrees that the guarantees (and all security therefore) contained in the Loan Documents are, and shall continue to remain, in full force and effect after giving effect to this Agreement; and (iii) ratifies the Loan Agreements, the Forbearance Agreement, the Collateral and the Loan Documents.
- **Ratification of Obligations.** Debtor acknowledges, represents, covenants, and agrees with BPPR that (i) Debtor's obligation to pay in full the outstanding balance of principal of the Loans and any other sums due to BPPR including, without limitation, accrued interest under the Loan Agreements and the Forbearance Agreement are valid, binding and enforceable in all respects; and (ii) Debtor's obligations under the Loan Agreements, as well as any and all of their other obligations under any of the

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other Loan Documents (including, without limitation, the guarantees and this Stipulation) are valid, binding and enforceable in all respects.

- **No Novation.** It is hereby understood and agreed by each of the parties hereto that this agreement is not intended to constitute an extinctive novation (“novación extintiva”) of the obligations and undertakings of the parties under any of the Loan Documents, as amended to date. Debtor ratifies, reaffirms, confirms, consents to and acknowledges all of the terms, priority and conditions of, security interest, mortgages or liens over the Collateral provided for in the Loan Documents and Debtor’s obligations under such documents.
- **Events of Default.** The following shall constitute an event of default and entitle BPPR to exercise all of its remedies under the Loan Documents and, among other things, demand the immediate payment in full of all of the amounts due for Loan A and B without any limitations, and shall cause the automatic termination of Debtor’s authorization to use Cash Collateral and consent to a plan: (1) the finding and/or determination that any representation, warranty or other written statement made by Debtor, or by an authorized representative of Debtor, to BPPR with regards to the initiation, negotiation, discussion, and/or execution of this Agreement proves to be false or misleading in any material respect when made; or (2) Debtor’s breach as to any covenant or obligation contained in this Stipulation, or failure to perform any of the terms, conditions or covenants or obligations set forth in this Stipulation; or (3) the challenge in any form, way, or manner by Debtor, by any authorized representative of Debtor, and/or by any of the Guarantors of any of the Loan Documents, or the dispute of the enforceability of the obligations thereunder, or the

perfection or priority of any lien granted to BPPR, or if any of the Loan Documents ceases to be in full force or effect; or (4) the appointment in the Bankruptcy Case of a trustee or an examiner with enlarged powers relating to the operation of Debtor's business (powers beyond those set forth in sections Section 1106(a)(3) and (a)(4) of the Bankruptcy Code); or (5) the granting by Debtor of any lien on any of the Collateral or super-priority claim which is *pari passu* with or senior to the claims of BPPR, or Debtor's motion seeking approval of any such lien or super-priority claim; or (6) the termination of any of Debtor's exclusive rights under Section 1121 of the Bankruptcy Code; or (7) on a cumulative basis, should Debtor's actual cash disbursements vary from the Budget in excess of ten percent (10%) of the amount budgeted, which cumulative variance shall be measured on a monthly basis and subject to a five (5) business day grace period; or (8) the filing of any motion to approve a sale of all or a substantial portion of Debtor's assets without the prior written approval of the BPPR excepting as otherwise provided in the Stipulation; or (9) Debtor's seeking, or the filing of any motion by any other party to obtain, additional or replacement post-petition financing for Debtor other than that needed for the repayment of Loan A in full, as set forth above; or (10) Debtor's failure to comply with any of its adequate protection or payment obligations to the Lender under the Agreement; or (11) the Bankruptcy Case shall be dismissed or converted into a chapter 7 case; or (12) the amount of Cash Collateral used for any expense varies on any month by more than ten percent (10%) in value from the representations contained in the Budget, without BPPR's consent to incur in any unexpected

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disbursement not contained in the Budget; or (13) the commencement of any challenge against BPPR's liens, claims, and/or security interests.

- **Effect of Stipulations on Third Parties.** The Agreement and any admissions, releases and waivers contained herein shall be binding upon Debtor and all other parties in interest. Accordingly, (i) the obligations under the Loan Documents shall constitute allowed claims, not subject to counterclaim, setoff, subordination, re-characterization, defense or avoidance, for all purposes in the bankruptcy case and any subsequent chapter 7 case, (ii) the liens under the Loan Documents on the Collateral shall be deemed to be legal, valid, binding, perfected, not subject to re-characterization, subordination, avoidance or reduction and (iii) the obligations under the Loan Documents, the Collateral and the Loan Agreements shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from, seeking to exercise the rights of Debtor's estate, including, without limitation, any successor thereto (including, to this effect, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for Debtor). Nothing in this Stipulation vests or confers on any Person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to Debtor or its estate. Notwithstanding anything to the contrary, nothing herein shall affect, impair or modify any of Debtor's affiliates or related companies' claims and defenses, if any, against BPPR, nor any of BPPR's claims and defenses against any such company or Debtor.

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Request for Emergency Determination

20. Given the importance of the requested relief to both Debtor and the Bankruptcy Estate as a whole, and considering that the Stipulation is to be incorporated as a Supplement to the Plan, Debtor and BPPR hereby request that the Court consider this Stipulation and approve the same on an emergency basis.

21. No previous application for the relief sought herein has been made to the Court.

22. Debtor and BPPR have carefully examined the matter object of the Stipulation and have concluded that there is a true need for it to be heard on an emergency basis. Debtor has not created the need for this emergency relief through any lack of due diligence.

WHEREFORE, BPPR and Debtor stipulate to the above, and jointly request the Court's approval thereof.

CERTIFICATE OF SERVICE: We hereby certify that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the Assistant US Trustee and to all CM/ECF participants.

San Juan, Puerto Rico, this 22nd day of February, 2013.

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