

ROSSENDALE BOROUGH COUNCIL (1)

EAST LANCASHIRE HOSPITALS NATIONAL HEALTH SERVICE TRUST (2) TAYLOR WIMPEY UK LIMITED (3)

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to property known as the

Land at the former Rossendale Hospital

Haslingden Road

Rawtenstall

Taylor Wimpey UK Limited Legal Services 1 Lumsdale Road Stretford Manchester M32 0UT (REF: MRC/JMK/M10.03)

THIS AGREEMENT is made the 22nd day of MLY BETWEEN

2013

ROSSENDALE BOROUGH COUNCIL of The Business Centre Futures Park Bacup Lancashire OL13 0BB (hereinafter called "the Council") of the first part

EAST LANCASHIRE HOSPITALS NATIONAL HEALTH SERVICE TRUST of Royal Blackburn Hospital Haslingden Road Blackburn BB2 3HH (hereinafter called "the Owner") of the second part

TAYLOR WIMPEY UK LIMITED (Company number 1392762) of Gate House Turnpike Road High Wycombe Bucks HP12 3NR (hereinafter called "the Developer") of the third part

1. DEFINITIONS

In this Deed the following words and phrases shall where the context so admits have the following meanings:

- 1.1 **"Affordable Housing"** means housing provided to eligible households whose needs are not met by the market and which meets the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices
- 1.2 **"Affordable Housing Strategy"** the strategy for the delivery of the Affordable Housing Units which shall include the proposals for the numbers, types, locations and operational proposals for the Affordable Housing Units and which shall be in accordance with the proposals shown in Schedule 1
- 1.3 "Affordable Housing Units" means the 28 affordable dwellings to be provided on the Property in accordance with the Affordable Housing Strategy and to be delivered by a "Registered Provider" as defined in the Housing and Regeneration Act 2008 which shall be a mix of 15 two bedroomed 10 three bedroomed and 3 four bedroomed dwellings
- 1.4 **"Affordable Price"** means the price of the Shared Ownership Units on any subsequent disposal to a Qualifying Person following transfer to the Registered Provider which shall be in accordance with a standard Homes and Communities Agency lease
- 1.5 **"Close Family Association"** means a spouse, parent, brother, sister, child, grandparent or grandchild who is resident in the relevant area and who has been resident there for a minimum of five continuous years
- 1.6 "Commence" means the carrying out of a material operation as defined by section
 56(4) of the Act (excluding any act of demolition, remediation, site clearance,

archaeological investigations, forming any site entrance, investigations for the purpose of assessing ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) in accordance with the Planning Permission and the expression "Commencement" shall have a corresponding meaning PROVIDED THAT all operations carried out prior to the date of this Agreement shall be disregarded

- 1.7 **"Education Contribution"** means the sum of £23,271 (twenty three thousand two hundred and seventy one pounds) increased by the Indexation Factor towards the provision of school places in Rossendale to be provided by Lancashire County Council
- 1.8 **"Employment**" means that a person is permanently employed or has accepted in writing a firm offer of permanent employment or is in fulltime self employment within the relevant area
- 1.9 "Highways Contribution" means the sum of £45,000 (forty five thousand pounds) for improvements to the local off site definitive footpath network by Lancashire County Council
- 1.10 **"Highway Works"** means the Works listed in Paragraph 9.1 of the First Schedule under the terms of a Section 278 Highways Act 1980 Agreement with Lancashire County Council
- 1.11 **"Index"** means the BCIS General Building Cost Index
- 1.12 **"Low Cost Sale Unit"** the Affordable Housing Unit(s), if any, which will be made available for sale on the open market to persons living within the Council's administrative area through a resale covenant of no more than 70% of Open Market Value
- 1.13 "Mortgagee" any mortgagee or chargee of the Registered Provider or successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 1.14 **"Occupation"** means Occupation for the purposes permitted by the Planning Permission but does not include use by personnel whilst engaged in construction, fitting out or decoration of the Units or Occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
- 1.15 **"Open Market Units**" means the Units to be erected on the Property (excluding the Affordable Housing Units) which shall be available for sale on the open market

- 1.16 **"Open Market Value"** means the market value of the relevant Low Cost Sale Unit assessed in accordance with the Appraisal and Valuation Manual of the Royal Institution of Chartered Surveyors (the Red Book) current for the time being
- 1.17 **"Open Space**" means structural landscaping general amenity areas and equipped play areas in accordance with paragraph 8.2 First Schedule which for the avoidance of doubt shall not be construed as meaning open space land within the meaning of the Open Space Act 1906
- 1.18 **"Plan"** means the plan annexed hereto
- 1.19 **"Planning Permission**" means the planning permission to be granted pursuant to the Application substantially in the form attached hereto
- 1.20 **"Property**" means land at the former Rossendale Hospital Haslingden Road Rawtenstall for the purpose of identification only shown edged in red on the Plan
- 1.21 **"Qualifying Criteria**" means the criteria contained in the First Schedule which a person must meet to qualify for an Affordable Housing Unit
- 1.22 "Qualifying Person" means a person(s) who meets the Qualifying Criteria
- 1.23 **"Shared Ownership Unit"** means one of the 21 designated Affordable Housing Units, as identified in the Affordable Housing Strategy, to be made available to Qualifying Persons on a shared ownership basis
- 1.24 **"Rented Units"-** means one of the 7 designated Affordable Housing Units using a rental model as agreed between the Registered Provider and the Council to be transferred and managed by the Registered Provider
- 1.25 **"Sports Provision Contribution"** means the sum of £97,161 (ninety seven thousand one hundred and sixty one pounds)
- 1.26 "the Act" means the Town and Country Planning Act 1990 (as amended)
- 1.27 **"the Application"** means the application for Planning Permission for the erection on the Property of 139 dwellings made to the Council on 28th March 2012 and numbered 2012/0162
- 1.28 **"the Development"** means the residential and ancillary development of the Property for 139 dwellings in accordance with the Planning Permission
- 1.29 **"Unit"** means a dwelling to be constructed pursuant to the Planning Permission and "Units" shall be construed accordingly

2. INTERPRETATION

In this Agreement

- 2.1 words importing one gender shall be construed as importing any other gender
- 2.2 words importing the singular shall be construed as importing the plural and vice versa

- 2.3 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
- 2.4 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
- 2.5 the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation
- 2.6 any reference to a clause or a paragraph or a schedule is to one in this Agreement so numbered
- 2.7 any reference to a colour or letter is to one on the Plan
- 2.8 in the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation direction or plan made or issued under the statute or deriving validity from it
- 2.9 references to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its functions as local planning authority and local housing authority as appropriate

3. RECITALS

- 3.1 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Property is situated
- 3.2 Lancashire County Council is the local education authority and local highway authority for the purposes of the Act for the area within which the Property is situated
- 3.3 The Owner is seized of the fee simple in possession of the Property free from incumbrances and the Owner's title to the Property is registered at HM Land Registry under title number LA817865
- 3.4 The Developer has entered into a Conditional Contract with the Owner dated 9th December 2011 to acquire the Property subject to the grant of Planning Permission
- 3.5 Taylor Wimpey Manchester (being a trading name of the Developer) on the 28th
 March 2012 made the Application to the Council
- 3.6 The Council is satisfied that the Development is such as may be approved by it under the Act but subject to the Owner entering into this Agreement with the Council under the provisions of Section 106 of the Act

4. OPERATIVE PROVISIONS

& save for any mortgage of the Property when and whil such mortgage exercises it power of sale pursuant to its moregage.

- 4.1 This Agreement is made under the provisions of Section 106 of the Act and Section 111 of the Local Government Act 1972 with the intention that the obligations contained herein are planning obligations for the purposes of that section in respect of the Property which may be enforced by the Council against the Owner or any person deriving title under it
- 4.2 This Agreement is conditional upon the grant of the Planning Permission and the Commencement of the Development in whole or in part
- 4.3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Property or the relevant part of the Property in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest)
- 4.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if:-
 - 4.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
 - 4.4.2 the Planning Permission shall expire prior to the Commencement of the Development
 - 4.4.3 the Council or any other competent authority shall at any time after the date hereof grant a new planning permission under which development of the Property is initiated for the purposes of section 56 of the Act
- 4.5 This Agreement is a local land charge and shall be registered as such
- 4.6 It is not intended that any person(s) who (but for the provisions of the Contract (Rights of Third Parties) Act 1999) would not acquire any interest hereunder should do so by virtue of such Act
- 4.7 The Owner hereby covenants with the Council to perform the obligations specified in the First Schedule of this Agreement
- 4.8 The Council hereby covenants with the Owner to perform the obligations specified in the Second Schedule of the Agreement
- 4.9 The Council will within fourteen days of this Agreement grant the Planning Permission for the Development referred to in the form annexed hereto
- 4.10 Wherever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed
- 4.11 Any dispute between the parties as to any matter the subject of this Agreement shall be referred to an appropriate independent expert (who shall either be agreed

between the parties or failing agreement appointed on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or any person acting with his authority)) and the decision of the expert shall be final and binding (save in case of manifest error) and his costs shall be borne as he shall direct

- 4.12 If any sum due under this Agreement shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 2% above the base lending rate for the time being of National Westminster Bank Plc
- 4.13 Any notice or other communication given or made in accordance with this Agreement shall be in writing and may (in addition to any other effective mode of service) be sent by recorded delivery or registered post to the Council at the address of the Council shown on the first page of this Agreement or at such other address as may from time to time have been notified to the sender as being the address for service of the relevant party for the purposes of this Agreement
- 4.14 The Developer shall pay to the Council on completion of this Agreement the sum of Seven hundred and fifty pounds (£750.00) for the costs incurred in the negotiation preparation and execution of this Agreement
- 4.15 No statutory undertaker in respect of any site used only as an electricity substation, gas governor or pumping station or any individual Unit purchaser shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement.

FIRST SCHEDULE Owner's Obligations

1. Commencement

1.1 To notify the Council in writing of the Commencement of the Development, such notice to include details of which Units within the Development are to be the Affordable Housing Units and details of the Registered Provider (to the extent known) and such notice shall be served on the Council within 7 days of the Commencement of the Development

2. Highways Contribution

2.1 Prior to the first Occupation of a Unit at the Development to pay the Highways Contribution

3. Sports Provision Contribution

- 3.1 Prior to the first Occupation of a Unit at the Development to pay one half of the Sports Provision Contribution to the Council
- 3.2 Prior to Occupation of the 75th Unit at the Development to pay the balance of the Sports Provision Contribution to the Council

4. Education Contribution

- 4.1 Prior to first Occupation of the Unit at the Development to pay one half of the Education Contribution to the Council
- 4.2 Prior to Occupation of the 75th Unit at the Development to pay the balance of the Education Contribution to the Council

5. Affordable Housing

- 5.1 To construct the Affordable Housing Units in accordance with the Affordable Housing Strategy.
- 5.2 Not to use or permit to be used the Affordable Housing Units for any purposes other than for the provision of Affordable Housing unless otherwise agreed with the Council PROVIDED THAT the Owner and/or the Developer (as the case may be) may offer an Affordable Housing Unit for sale as a Low Cost Sale Unit in the event that it has sought to offer it for sale and/or occupation for a continuous period of 2 years and there are no Qualifying Persons who wish to acquire or occupy the said Affordable Housing Unit.
- 5.3 That the initial and all subsequent disposals of each of the Affordable Housing Units shall be subject to a covenant providing that the Affordable Housing Unit shall only be occupied by a Qualifying Person and a covenant that no disposition of the said Affordable Housing Unit (other than a charge) is to be registered at the Land

Registry without a certificate signed by the solicitor to the proprietor of the registered estate which states that the requirements of this paragraph have been fully complied with.

- 5.4 Prior to the disposal of a Shared Ownership Unit the owner shall submit in writing to the Council the owner's assessment of the Affordable Price of the Shared Ownership Unit and no disposal of the Shared Ownership Unit shall take place without the receipt in writing of the Council's approval of the Affordable Price PROVIDED ALWAYS that if the Council has not responded within 35 days of the date of submission the Council shall be deemed to have approved the Affordable Price and this Clause shall apply to the first and all subsequent disposals of a Shared Ownership Unit.
- 5.5 Prior to the disposal of a Shared Ownership Unit the owner shall submit in writing to the Council evidence that the intended purchaser qualifies as a Qualifying Person and no disposal of the Shared Ownership Unit shall take place without receipt in writing of the Council's approval of the Qualifying Person PROVIDED ALWAYS that if the Council has not responded within 35 days of the date of submission the Council shall be deemed to have approved the Qualifying Person and this Clause shall apply to the first and all subsequent disposals of a Shared Ownership Unit.

6. Affordable Housing Strategy

- 6.1
- 6.2 The Affordable Housing Units shall be delivered in accordance with the Planning Permission together with the plan and affordable housing proposal attached at Appendix 1 in all respects regarding number, type and location. On completion of the construction of the Affordable Housing Units the Affordable Housing Units shall be transferred to a Registered Provider as agreed by the Council to deliver such Affordable Housing Units to Qualifying Persons.
- 6.3 The disposal of the 21 Shared Ownership Units shall contain the following covenants:
 - 6.3.1 that the Shared Ownership Unit is occupied as the sole or main residence of the Qualifying Person;
 - 6.3.2 that the Shared Ownership Unit shall not be disposed of otherwise than in accordance with a standard Homes and Community Agency lease; and
 - 6.3.3 no disposition of the registered estate other than by charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor or Conveyancer to the proprietor for the time being of the estate that the provisions [] of the Section 106 Agreement

dated the [] 2013 and made between [] have been complied with.

6.3.4 None of the obligations in this Section 106 Agreement (or at least the affordable housing provisions in this Section 106 Agreement) shall be binding upon a chargee or mortgagee of the Registered Provider in the event of default under a mortgage or chargee or upon any receiver appointed by them or any successors in title to such mortgagee chargee or receiver and such chargee mortgagee or such receiver appointed by them and their successors in title shall be entitled to sell the Affordable Housing Units free from the provisions of this Section 106 Agreement and provided further that such provisions shall not bind a tenant of an Affordable Housing Unit who exercises any right to buy or right to acquire such dwelling or acquires the relevant Affordable Housing Unit pursuant to a voluntary sales policy of his landlord and not to any person deriving title through or under such tenant and shall not bind any tenant or successor in title thereto who staircases out a property to 100%."

7. Qualifying Criteria

- 7.1 Preference should be given to persons who in the opinion of the Council are in need of Affordable Housing and who;
 - 7.1.1 have lived in Rossendale for at least 12 months; or
 - 7.1.2 have strong connections with Rossendale either by Employment or Close Family Association.
- 7.2 If no person qualifies under paragraph 7.1 of this Schedule and the Affordable Housing Unit has been marketed for occupation for a period of at least twelve weeks, evidence of which should be provided to the Council, preference should be given to persons who in the opinion of the Council are in need of Affordable Housing and who;
 - 7.2.1 have lived in the Council's administrative area for at least 12 months; or
 - 7.2.2 have strong connections with the Council's administrative area either by Employment or Close Family Association.

8. Open Space

- 8.1 Not to Commence Development until the details and proposed location of the Open Space has first been submitted to and approved by the Council
- 8.2 Prior to the 100th Occupation of the Units to lay out and make available for use the Open Space in accordance with the details approved under paragraph 8.1 to the reasonable satisfaction of the Council

8.3 After the Open Space has been laid out and made available and in accordance with paragraph 8.2 above it shall thereafter be maintained by the Owner to the reasonable satisfaction of the Council until a scheme for securing the long term maintenance of the Open Space has been submitted to and approved in writing by the Council and the approved scheme has been implemented to the satisfaction of the Council

9. Highway Works

- 9.1 Prior to the Occupation of the first Unit comprised in the Development the Developer shall:
 - a) Enter into an agreement pursuant to S278 Highways Act 1980 in respect of:
 - i. the signalization of Union Road/Haslingden Road
 - ii. a pedestrian refuge on Haslingden Road
 - iii. the widening of the footway or the removal of highway trees along Union Road
 - iv. improvements to the pedestrian/cycle link from Union Road along Old Haslingden Road
 - b. Provide a link capable of being adopted from between plots 64 and 66 to improve accessibility
 - c. Provide a link capable of being adopted from the Development to definitive footpath 322 to improve accessibility
 - d. To provide a scheme for restricting vehicles and signage for vehicles entering and exiting the Property
- 9.2 To use reasonable endeavours to have the works under Paragraph 9.1(a)(b)(c) adopted by Lancashire County Council

SECOND SCHEDULE

Council's Obligations

- 1 When requested in writing the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.
- 2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 3 The Council shall respond definitively to the Owner within 15 working days of any written request by the Owner as to whether nominated purchasers for the Shared Ownership Units are Qualifying Persons who satisfy the Qualifying Criteria
- **4** The Council covenants to use the Sports Provision Contribution towards the provision of sports facilities in Rossendale
- 5 The Council covenants with the Owner that it will refund all such sums received to the person who paid such sums received by the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of such sum together with interest for the period from the date of payment to the date of refund

THIRD SCHEDULE

Standard Lease Provisions for Low Cost Sale Units

- 1.1 In this clause the following further expressions have where the context admits the following meaning:-
 - 1.1.1 "the Assumptions" are:
 - 1.1.1.1 that prior to the date of valuation the premises were freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard to the nature of the premises and the state of the market) and that values remained static throughout that period and
 - 1.1.1.2 that no account is taken of any bid by any prospective purchaser with a special interest and
 - 1.1.1.3 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
 - 1.1.1.4 that the premises are in their existing state of repair and sold with vacant possession and
 - 1.1.1.5 that the deed of assignment or transfer does not contain any provisions that are not standard or usual in residential leasehold or freehold transactions
 - 1.1.2 The "Council" means Rossendale Borough Council of The Business Centre Futures Park Bacup Lancashire OL13 0BB
 - 1.1.3 "the Council's Affordable Housing Register" means the list maintained by the Council for the purpose of providing access to properties at less than market value to Qualifying Persons (or any successor to the list that may be introduced by the Council)
 - 1.1.4 the "Discounted Price" means no more than 70% of the Open Market Value of the premises
 - 1.1.5 "Independent Valuer" means a member of the Royal Institution of Chartered Surveyors appointed by the tenant at his own cost but first approved by the Council
 - 1.1.6 "Open Market Value" means the value as determined by an Independent Valuer to be the price at which the lease can reasonably be sold on the date of valuation taking into account the Assumptions
 - 1.1.7 "Qualifying Person" means a person or persons on the Council's Affordable Housing Register or in the circumstances set out in clause 1.2.3.5 of this lease such other person that may qualify for the purposes of that clause

- 1.1.8 A "Sale" of the premises occurs in every case where there is a transfer or assignment in the premises except when the transfer or assignment is:
 - (i) executed in pursuance of an order of a court on granting in respect of
 - the parties a decree of marriage or judicial; or
 - (ii) executed in pursuance of an order of a court which is made in connection with the dissolution of annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree; or
 - (iii) executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution of annulment of the marriage or their judicial separation; or
 - (iv) executed by personal representative of the tenant for the purpose of transferring or assigning into the sole ownership of the spouse of the tenant; or
 - (v) executed by personal representatives of a joint tenant and the surviving tenant for the purpose of transferring or assigning the premises into the sole ownership of the surviving tenant
 - 1.2 Subject to the provisions of clause 1.5 the tenant hereby covenants with:
 - 1.2.1 the Council and
 - 1.2.2 as a separate covenant with the landlord (but not so as to render the tenant liable to the landlord after the tenant shall have parted with his interest in the premises) that
 - 1.2.3.1 any Sale of the premises shall only be for the Discounted Price
 - 1.2.3.2 subject to clause 1.2.3.5 any Sale of the premises shall be to a Qualifying Person
 - 1.2.3.3 the premises shall at all times be the sole residence of the tenant
 - 1.2.3.4 the tenant shall not effect a Sale unless at least seven days prior to the marketing of the premises the tenant obtains the written approval of the Council to the proposed Sale
 - 1.2.3.5 the tenant shall not effect a Sale unless the Council has been allowed a period of ten weeks in which to nominate a purchaser for the premises from the Council's Affordable Housing Register PROVIDED THAT if a suitable purchaser shall not have been nominated by the Council by the end of the tenth week the premises may be sold to another person subject to the restriction contained within this lease

1.2.3.6 the tenant shall not sell the premises without

premises

1.2.3.6.1	procuring that any transferee or assignee enters
	into a covenant with the Council to observe and
	perform the covenant set out in this clause 1
	and
1.2.3.6.2	delivering to the Council the covenant referred
	to in clause 1.2.3.6.1 on the Sale of the

1.3 To intent that no transfer or assignment of this lease shall take place otherwise than in accordance with clause 1.2 of this lease the tenant shall at the tenant's expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the lease such restriction to remain on the Register during its subsistence:

"No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a Certificate addressed to HM Land Registry and signed by Rossendale Borough Council The Business Centre Futures Park Bacup Lancashire OL13 0BB

that the disposition complies with clause [] of a lease dated [] made between [] (1) and [] (2)"

- 1.4 The Council shall have the benefit of the right to enforce the covenants contained in this lease pursuant to the Contracts (Rights of Third Parties) Act 1999
- 1.5 If this lease becomes vested in a mortgagee in possession of the whole of the premises the provisions of clause 1.2 shall cease to apply to the residue of the term of the lease

IN WITNESS whereof the Council the Owner and the Developer have hereunto caused their

respective Common Seals to be hereunto affixed and executed as a Deed the day and year

first before written

THE COMMON SEAL of ROSSENDALE BOROUGH COUNCIL was hereunto affixed to this Deed in the presence of:



Authorised Signatory



)

)

)

DIRECTOR OF BUSINESS

THE COMMON SEAL of EAST LANCASHIRE HOSPITALS NATIONAL HEALTH SERVICE TRUST

was hereunto affixed to by way of execution as a Deed in the presence of:





Executed as a DEED by TAYLOR WIMPEY UK LIMITED Acting by two authorised attorneys

In the presence of:

Nelly Ball

Taylor Wimpey UK Limited Chase House Park Plaza Cannock WS12 2DD

Sadie Leigh 1 Lumsdale Road Stretford M32 0UT





Appendix 1

Affordable Housing Units

Size and Tenure Mix



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