

**THIS DEED** is made the \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and

**BETWEEN**

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (“the Council”)
- (2) **REWD LIMITED** (Company number 10276030) of Henwood House, Henwood, Ashford, Kent TN25 8DH (“the Owner”)
- (3) **GILMORE JACOBS LIMITED** (Company number 04070559) care of BTMK Solicitors Limited, 19 Clifftown Road, Southend-on-Sea SS1 1AB (“the Mortgagee”)

**INTRODUCTION**

- (1) The words and phrases used in this Deed are defined in Clause 1
- (2) The Council is the Local Planning Authority for the purposes of the Act
- (3) The Owner is registered as the proprietor of the Site with Absolute Title at H.M. Land Registry under Title Numbers K119091 and K410925
- (4) By a Legal Charge dated 20 July 2018 and made between the Owner of the one part and the Mortgagee of the other part the Owner charged part of the Site registered under title K119091 to the Mortgagee to secure payments of the monies and performance of the obligations therein mentioned and the Mortgagee has agreed to enter into this Deed in order to consent to the terms thereof
- (5) The Owner has applied for the Planning Permission for the Development under reference numbers Y19/0071/FH
- (6) The Council on 23<sup>rd</sup> March 2021 resolved to grant the Planning Permission subject to conditions and to this Deed

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

1.1	“Act”	means the Town and Country Planning Act 1990
1.2	“Affordable Housing”	means Affordable Housing as that term is described and/or defined in Annex 2 of the National Planning

		Policy Framework and affordable in accordance with the Council's housing policies as at the date hereof
1.3	"Affordable Housing Land"	means each area or areas of land upon which the Affordable Housing Units shall be constructed which shall be fully serviced sites in accordance with all necessary consents and permissions
1.4	"Affordable Housing Provider"	means any body or organisation that is permitted by law or other housing provider agreed by the Council and whose main function or aim is to provide and/or manage Affordable Housing including a housing association or housing company or trust registered as a provider with the Homes and Communities Agency or its successor or an alternative provider of Affordable Housing or any company or other body approved by the Homes and Communities Agency for receipt of Social Housing Grant in each case nominated by the Owner and approved in writing by the Council
1.5	"Affordable Housing Units"	means all the Affordable Housing units to be constructed on the Affordable Housing Land together with associated parking in accordance with this Deed
1.6	"Application"	means the application for outline planning permission reference Y19/0071/FH for redevelopment of the former Smiths Medical site for up to 97 dwellings (Class C3) up to 153sqm of offices (Class B1) and up to a 66 bed care home (Class C2)
1.7	"CCG Healthcare Contribution"	means the sum of £69,810 towards the extension of Oaklands Health Centre
1.8	"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the

		purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and Commence Development” shall be construed accordingly
1.9	“Contributions”	means the: <ul style="list-style-type: none"> <li>- CCG Healthcare Contribution;</li> <li>- Open Space Contribution; and</li> <li>- Play Space Contribution</li> </ul>
1.10	“Council’s SPD”	means the Council’s Supplementary Planning Document on Affordable Housing
1.11	“Development”	means the mixed use development of <u>up to 97</u> dwellings, offices and a care home set out in the Application
1.12	“Dwelling”	means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission
1.13	“Index”	means the All Items Retail Price Index published by the Office for National Statistics or any successor organisation
1.14	“Interest”	means interest at 5 per cent above the base lending rate of the Bank of England from time to time
1.15	“Local Market Rent”	Market Rent as defined in the RICS Manual of Valuation Practice 6th Edition (otherwise known as the RICS Red Book) but in relation to any valuation of such market rent on the assumption that the restrictions upon occupation or use affecting the Affordable Housing do not apply
1.16	“Occupation” and “Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or

		decoration or occupation for marketing or display or occupation in relation to security operations
1.17	“Open Market Units”	means the units on the Site that are not Affordable Housing Units
1.18	“Open Space Contribution”	means £71,177.50
1.19	“Plan”	means the plan attached to the first schedule of this Deed
1.20	“Planning Permission”	means the outline planning permission to be granted by the Council pursuant to the Application <u>a draft of which is set out in the Fourth Schedule</u> and any subsequent planning permission that may be granted under s73 of the Act unless the Council requires otherwise
1.21	“Play Space Contribution”	means £86,430.90
1.22	“Rented Affordable Housing Units”	Rented housing owned and managed by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is outside the national rent regime but is subject to other rent controls that require it to be offered to persons at a rent not exceeding 80 per cent of Local Market Rent (including service charges where appropriate)
1.23	“Reserved Matters Application”	means the approval of matters reserved under the conditions of the Planning Permission for subsequent approval in accordance with section 92(2) of the Act
<u>1.24</u>	<u>Self Build Serviced Plots</u>	<u>means a plot or plots within the Development the size and location of which is to be agreed between the Developer and the Council as part of the Reserved Matters application upon which the Self Build Units are to be constructed and such plot to have the benefit of connections to mains services and the provision of a suitable access road from the plot to the highway</u>
<u>1.25</u>	<u>“Self Build Unit”</u>	<u>means a Dwelling to be constructed on a Self Build Serviced Plot where the construction of the Dwelling is to be undertaken by or on behalf of the purchaser of the</u>

		<u>Self Build Serviced Plot for the occupation of that person and their family in accordance with the definition of self/custom build housing set out at Regulation 54A of the Community Infrastructure Levy 2010</u>
1.264	“Shared Ownership Lease”	means a lease or sub lease under which an Affordable Housing Unit may be disposed of by way of shared ownership or shared equity sale and/or lease granted at a premium to be paid by the lessee or sub lessee upon completion or raised by way of mortgage or charge and under which the initial purchaser or lessee acquires an initial share of the equity in that Affordable Housing Unit and pays a rental element if required by the Affordable Housing Provider
1.275	“Shared Ownership Units”	means those Affordable Housing Units that are to be disposed of by Shared Ownership Lease or other Intermediate affordable housing as that term is defined in the National Planning Policy Framework and approved by the Council as a form of Affordable Housing <del>at the time prior to</del> the Commencement of Development
1.286	“Site”	means the land registered as Smiths International Ltd, Boundary Road and Land lying to the north west of Wakefield Way, Hythe against which this Deed may be enforced as shown edged red on the Plan and registered at HM Land Registry under title numbers K119091 and K410925
1.297	“Social Rented Housing”	Dwellings for rent to be owned and managed by an Affordable Housing Provider for which guideline target rents are determined through the national rent regime

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions or the time being made, issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed 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 their respective statutory functions.
- 2.7 Where in this Deed any party covenants not to act such covenant shall include an obligation not to permit or suffer such an act by another person

### 3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 To the extent that the obligations fall within the terms of section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as local planning authority
- 3.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers

### 4. CONDITIONALITY

- 4.1 This Deed shall be (subject to Clause 4.2) conditional on and shall only take effect on the grant of the Planning Permission
- 4.2 The covenants within Clauses 5 and 6 of this Deed are conditional upon the Commencement of Development

#### 5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule

#### 6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Third Schedule

#### 7. MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 7.4 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in

the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest

7.8 This Deed shall not be enforceable against residential owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

#### 8. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

#### 9. WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

#### 10. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

#### 11. INDEXATION

Any sum referred to in this Deed shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid



12. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment

13. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

14. JURSDICTION

This Deed is governed by and interpreted in accordance with the laws of England

15. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed is dated

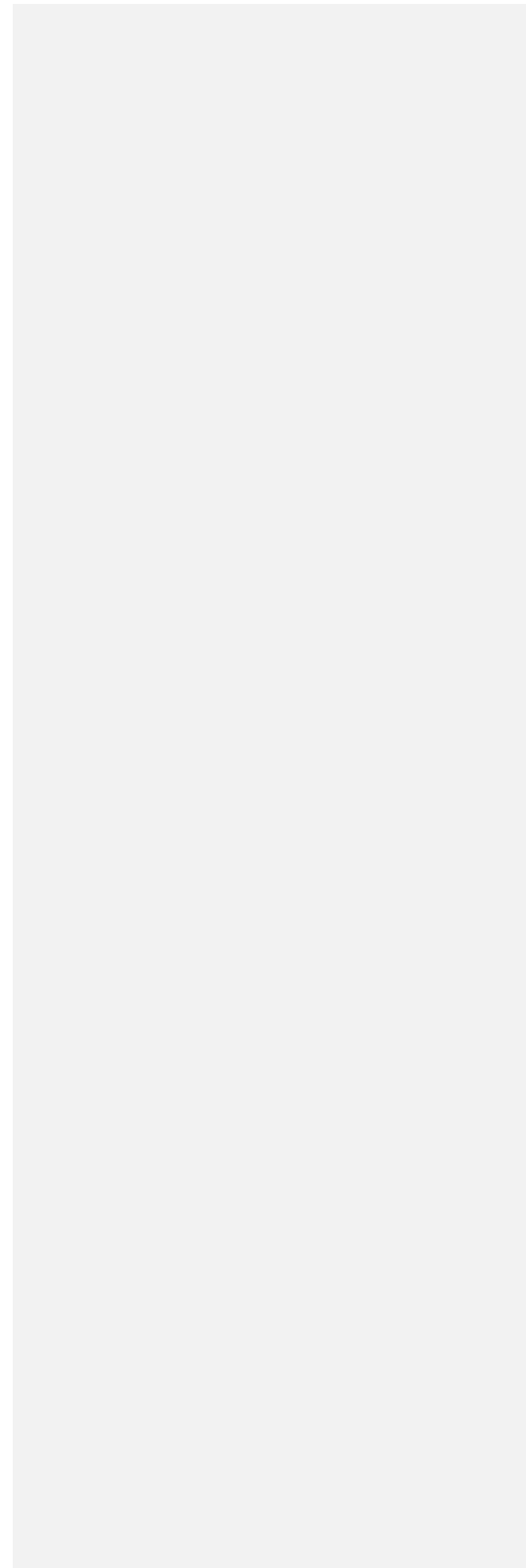
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

**FIRST SCHEDULE**

**Details of the Owner's Title and Description of the Site**

Registered land under title numbers K119091 and K410925.

The site comprises land as shown edged red on the Plan



## SECOND SCHEDULE

### The Owner's Covenants with the Council

#### Part 1

##### Affordable Housing

1. That the total number of Affordable Housing Units on the Site shall be 30% of the number of Dwellings and shall be transferred to the Affordable Housing Provider in accordance with paragraph 8 below
2. That without public subsidy shall provide on the Site a tenure mix of 60% Rented Affordable Housing Units and 40% Shared Ownership Units
3. To ensure integration of the Affordable Housing Units with the Open Market Units that the Affordable Housing Units shall be located as agreed in writing by the Council
4. To provide for approval in writing by the Council (prior to the Commencement of Development):
  - 4.1 details of the location property type and size of the Affordable Housing Units within the Site
  - 4.2 details of the intended Affordable Housing Provider for Affordable Housing Units and the intended mechanisms by which any Shared Ownership Units are to be made available as Affordable Housing (meaning the estimated current market value and consequential likely monthly costs of mortgage and any rent that the intended Affordable Housing Provider would expect to charge to an occupier of such an Affordable Housing Unit)
5. Not to cause or permit the occupation of:
  - 5.1 more than 50% of the Open Market Units until 100% of the Affordable Housing Units have been completed and transferred to an Affordable Housing Provider on the terms set out in paragraph 8 below
6. That each transfer of Affordable Housing Units shall:
  - 6.1 be at a cost that will ensure that the Rented Affordable Housing Units will be let at Affordable Rents and that the Shared Ownership Units will be let at a level that is affordable in accordance with the Council's SPD

- 6.2 provide a vehicular access foul and surface water sewers and water gas electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense and the transfer shall include all necessary easements to use and maintain the same
7. To deduce a good and marketable freehold title to the Affordable Housing Land and to transfer the Affordable Housing Land with full title guarantee and with vacant possession free of any registered charges
8. The rent for any rented Affordable Housing Units shall be restricted to a level which does not exceed affordable rents for properties of that size in that location
9. The Affordable Housing Units may not be occupied otherwise than by a person who is in need of Affordable Housing as defined by the Council
10. No service charge will apply to the Affordable Housing Units unless all elements of the service charge are eligible for housing benefit or equivalent and the service charge has been approved in writing in advance by the Council
11. The restrictions affecting the Affordable Housing Units shall not apply to:
  - 11.1 Any mortgagee of an Affordable Housing Unit; or
  - 11.2 Any owner of a Shared Ownership Unit where that Owner has purchased 100% of the equity in that unit; or
  - 11.3 Any other owner of an Affordable Housing Unit who has exercised a right to buy that unit or their successors in title.
12. To use reasonable endeavours to secure that any mortgagee of the Affordable Housing Land shall prior to seeking to dispose of its interest in the Affordable Housing Land pursuant to any default under the terms of its mortgage or charge give not less than 2 months' prior notice to the Council of its intention to dispose and:
  - (a) in the event that the Council responds within 1 month from receipt of the notice indicating that arrangements for the transfer or assignment of the Affordable Housing Land can be made in such a way as to safeguard them as Affordable Housing and to protect the interest of the mortgagee in respect of moneys outstanding under the charge or mortgage then the

mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer or assignment;

- (b) if the Council does not serve a response in the terms described in Sub-Paragraph (a) within 1 month then the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule;
- (c) if the Council or any other person cannot within 2 months of the date of service of its response under Sub-Paragraph (a) secure such transfer or assignment then provided that the mortgagee shall have complied with its obligations under this Paragraph 14 the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule.

## **Part 2**

### **Notification of commencement of Development**

1. To serve written notice of intended Commencement of Development upon the Head of Planning not less than fourteen (14) days before the intended commencement of Development
2. Not to Commence Development unless at least 14 days has expired from the date upon which a written notice referred to in paragraph 1 has been served upon the Head of Planning

## **Part 3**

### **Contributions**

1. The Owner hereby covenants with the Council to pay the Council prior to the first Occupation of any Dwelling:

(a) the CCG Healthcare Contribution

2. The Owner hereby covenants with the Council to pay the Council prior to the first Occupation of the 35<sup>th</sup> Dwelling and that it shall not occupy the 35<sup>th</sup> Dwelling or any subsequent Dwelling unless and until it has paid the following

(a) the Open Space Contribution; and

**Part 4**

1. The Owner hereby covenants with the Council that it shall provide four Self Build Serviced Plots.
2. The Owner hereby covenants with the Council that it shall not occupy more than 50% of the Dwellings unless and until it has provided the first and second Self Build Serviced Plots to the Council's satisfaction, unless otherwise agreed in writing by the Local Planning Authority.
3. The Owner hereby covenants with the Council that it shall not occupy more than 100% of the Dwellings unless and until it has provided the third and fourth Self Build Serviced Plots to the Council's satisfaction, unless otherwise agreed in writing by the Local Planning Authority.

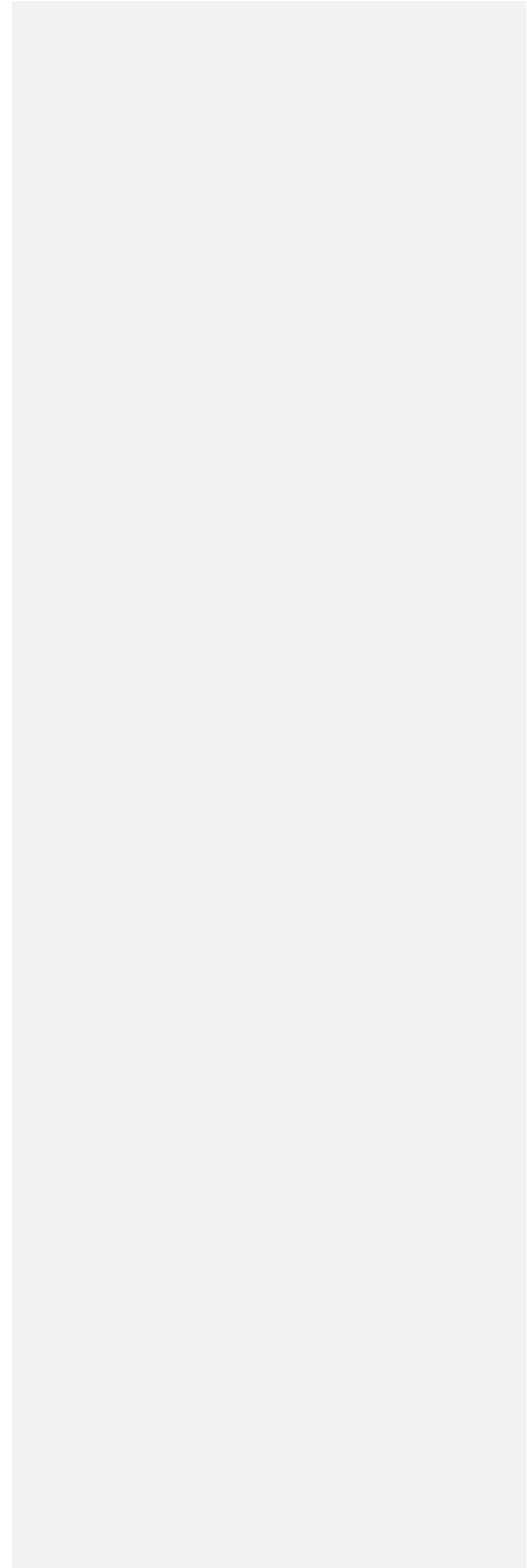
### **THIRD SCHEDULE**

#### **Council's Covenants**

1. Issue of Planning Permission  
The Council shall issue the Planning Permission upon completion of this Deed
  
2. Discharge of obligations  
At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed
  
3. Contributions  
The Council hereby covenants with the Owner to use all sums received from the Owner pursuant to Part 3 of the Second Schedule of this Deed for the purposes specified in this Deed.

**FOURTH SCHEDULE**

**Draft Planning Permission**





THE COMMON SEAL OF THE DISTRICT COUNCIL        )  
OF FOLKESTONE AND HYTHE        )  
was hereunto affixed in the presence of:-        )

Authorised Signatory

SIGNED AS A DEED by REWD LIMITED  
acting by a director in the presence of:        )

Witness .....  
Signature  
Name .....  
Address .....  
.....  
.....

SIGNED AS A DEED by GILMORE JACOBS LIMITED  
acting by a director in the presence of:        )

Witness .....  
Signature  
Name .....  
Address .....  
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