## **CITY COUNCIL RESOLUTION NO. 2021-147**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY. FLORIDA. AUTHORIZING THE EXECUTION OF A DECLARATION OF RESTRICTIVE COVENANT; PROVIDING FOR ISSUANCE OF A CONDITIONAL SITE REHABILITATION COMPLETION ORDER BY THE FLORIDA DEPARTMENT OF PROTECTION; ENVIRONMENTAL **PROVIDING** FOR IMPOSITION OF CERTAIN RESTRICTIONS AND ENGINEERING CONTROLS TO REDUCE THE RISKS ASSOCIATED WITH USERS OF CERTAIN REAL PROPERTY AND THE ENVIRONMENT CAUSED BY CERTAIN CONTAMINANTS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** on, or about, March 14, 2007, the Florida Department of Environmental Protection (hereinafter "FDEP") discovered the presence of an unauthorized solid waste disposal, or storage, area on real property commonly referred to as the C & D Debris Storage Area (hereinafter the "Property"), more particularly described in the attached *Declaration of Restrictive Covenant* (hereinafter the "Declaration"); and

**WHEREAS,** the City of Lake City, Florida (hereinafter the "City"), has been asked to consent to the execution and recording of the Declaration, by the FDEP; and

**WHEREAS,** the restrictions listed in the Declaration reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants and reduce or eliminate the threat of migrations of the contaminants; and

**WHEREAS,** the FDEP has agreed to issue a *Conditional Site Rehabilitation Completion Order*, upon recordation of the Declaration by the City; and

**WHEREAS,** the City Council finds that it is in the City's best interest and the best interest of its citizens to execute and record the Declaration, pursuant to the terms and conditions of said Declaration, a copy of which is attached hereto as "Exhibit A".

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:

**Section 1**. The above recitals are all true and accurate and are incorporated herein and made a part of this Resolution.

**Section 2**. The Mayor is authorized to execute the *Declaration of* Restrictive Covenant for and on behalf of the City. **Section 3.** Effective Date. This Resolution shall take effect immediately upon adoption. PASSED AND ADOPTED at a meeting of the City Council this \_\_\_\_ day of October 2021. CITY OF LAKE CITY, FLORIDA By: \_\_\_\_\_ Stephen M. Witt, Mayor ATTEST: APPROVED AS TO FORM AND LEGALITY: By: \_\_ Frederick L. Koberlein, Jr., Audrey E. Sikes, City Clerk City Attorney



This instrument prepared by: Scott I. Steady, Esq. Burr & Forman LLP 201 N. Franklin Street Suite 3200 Tampa, FL 33602

## **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made by the City of Lake City, a Florida municipal corporation (hereinafter "GRANTOR") and the Florida Department of Environmental Protection (hereinafter "FDEP"). This Declaration is neither extinguished nor affected by the Marketable Record Title Act pursuant to section 712.03, Florida Statutes (F.S.).

#### RECITALS

- A. GRANTOR is the fee simple owner of that certain real property situated in the County of Columbia, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property"). The portion of the Property that is being restricted by this Declaration is more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Restricted Property").
- B. The FDEP Facility Identification Number for the Property is ERIC\_11816. The facility name at the time of this Declaration is the City of Lake City Public Works

Department Property. This Declaration addresses the discharge that was reported to the FDEP on March 14, 2007.

- C. During the site inspection conducted on March 14, 2007, the FDEP discovered the presence of an unauthorized solid waste disposal/storage area on the Property generally referred to as the C&D Debris Storage Area. The discharge of arsenic, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds and semivolatile organic compounds on the Restricted Property is documented in the following reports that are incorporated by reference.
  - 1. Site Assessment Report Addendum II dated September 21, 2011, submitted by Tetra Tech, Inc.; and
  - Site Assessment Report Addendum III dated September 29, 2015, submitted by Tetra Tech Inc.; and
  - 3. Site Assessment Report Addendum IV dated May, 2016, submitted by City of Lake City, Public Works Department.
- D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located on the Restricted Property. These reports confirm that contaminated soil and groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Restricted Property. Also, these reports document that the groundwater contamination does not extend beyond the Restricted Property boundaries, and the groundwater contamination is not migrating.
- E. It is GRANTOR'S and FDEP's intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Restricted Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.
- F. FDEP has agreed to issue a Conditional Site Rehabilitation Completion Order (hereinafter "Order") upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of arsenic, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds and semivolatile organic compounds increase above the levels approved in the Order, or if a subsequent discharge occurs at the Restricted Property, FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. ERIC\_11816, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area.
- G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Restricted Property that an Order be obtained and that the Restricted Property be held subject to certain restrictions and engineering controls, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

- 1. The foregoing recitals are true and correct and are incorporated herein by reference.
- 2. GRANTOR hereby imposes on the Restricted Property the following restrictions and requirements, as depicted on Exhibit B:
  - a. <u>Groundwater Use</u>. There shall be no use of the groundwater under the Groundwater Contamination Area on the Restricted Property. There shall be no drilling for water conducted on the Groundwater Contamination Area on the Restricted Property, nor shall any wells be installed on the Groundwater Contamination Area on the Restricted Property other than monitoring or other wells pre-approved in writing by FDEP Division of Waste Management (DWM) in addition to any authorizations required by the FDEP Division of Water Resource Management (DWRM) and the applicable Water Management District (WMD).
  - b. <u>Dewatering</u>. For any dewatering activities on the Groundwater Contamination Area on the Restricted Property a plan approved by FDEP DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated. FDEP will rely on this Declaration, Rule 62-621.300, F.A.C., and the guidance incorporated therein, and prior FDEP DWM review of any dewatering plan as the institutional control to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the contaminated site. Rule 62-621.300, F.A.C., requires a permit when conducting dewatering in the area of a contaminated site. FDEP DWM can only approve a dewatering plan that ensures the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under Rule 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available at law, may institute proceedings to revoke this Declaration and the Order and require the resumption of site rehabilitation activities if any dewatering activities are commenced without FDEP DWM prior approval.

## c. Stormwater Facilities.

There shall be no stormwater swales, stormwater detection or retention facilities, or ditches on the Restricted Property.

d. <u>Soil Engineering Controls</u>. The "Area of Soil Contamination" as located on the Restricted Property, as described in Exhibit A and shown on Exhibit B, shall be

permanently covered and maintained with a minimum of two (2) feet of crushed stone that prevents human exposure (hereinafter referred to as the "Engineering Control"). A chain link fence will also be utilized to delineate the restricted access of the laydown yard. An Engineering Control Maintenance Plan (ECMP) has been approved by FDEP. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of FDEP. The ECMP, as amended, relating to FDEP Facility No. ERIC\_11816 can be obtained by contacting the appropriate FDEP district office or Tallahassee program area.

- e. Excavation and Construction. Excavation and construction below the Engineering Control is not prohibited on the Restricted Property provided any contaminated soils that are excavated are either: 1) placed back into the excavation and the Engineering Controls are reconstructed or 2) are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas.
- f. Land Use Restrictions. The following uses of the Restricted Property are prohibited: agricultural use of the land including forestry, fishing and mining; hotels or lodging; recreational uses including amusement parks, parks, camps, museums, zoos, or gardens; residential uses, and educational uses such as elementary or secondary schools, or day care services. These prohibited uses are specifically defined by using the North American Industry Classification System, United States, 2017 (NAICS), Executive Office of the President, Office of Management and Budget. The prohibited uses by code are: Sector 11 Agriculture, Forestry, Fishing and Hunting; Subsector 212 Mining (except Oil and Gas); Code 512132 Drive-In Motion Picture Theaters; Code 519120 Libraries and Archives; Code 531110 Lessors of Residential Buildings and Dwellings; Subsector 61110 Elementary and Secondary Schools; Subsector 623 Nursing and Residential Care Facilities; Subsector 624 Social Assistance and Day Care Facilities; Subsector 711 Performing Arts, Spectator Sports and Related Industries; Subsector 712 Museums, Historical Sites, and Similar Institutions; Subsector 713 Amusement, Gambling, and Recreation Industries; Subsector 721 Accommodation (hotels, motels, RV parks, etc.); Subsector 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations; and Subsector 814110 Private Households.
- g. <u>Subsivision of Restricted Property</u>. The criteria for direct exposure of contamination in the soil was based upon an average soil contaminant concentration calculated using a 95% Upper Confidence Limit (UCL) approach

with an exposure unit (EU) of 3.8 acres pursuant to Rule 62-780.680, F.A.C. Therefore, the Restricted Property may not be subdivided into parcels smaller than 3.8 acres without prior written approval from FDEP's Division of Waste Management. A subsequent amendment to this Declaration shall be recorded on the Property in accordance with Paragraph 7.

- 3. In the remaining paragraphs, all references to "GRANTOR" and "FDEP" shall also mean and refer to their respective successors and assigns.
- 4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Restricted Property at reasonable times and with reasonable notice to GRANTOR. Access to the Restricted Property is available via an immediately adjacent public right-of-way.
- 5. It is the intention of GRANTOR that this Declaration shall touch and concern the Restricted Property, run with the land and with the title to the Restricted Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP. and to any and all parties hereafter having any right, title or interest in the Restricted Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FDEP as provided in paragraph 7 below. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by this Declaration. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within ten (10) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Restricted Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Restricted Property.
- 6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this Declaration, and GRANTOR shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Restricted Property, GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration. Without limiting the generality of paragraph 3 above, it is the intention of the parties that if GRANTOR has conveyed the Restricted Property, the GRANTOR's successors and assigns shall be required to perform such notification.
- 7. This Declaration is binding until a release is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is

located. To receive prior approval from the FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendments must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

- 8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.
- 9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Restricted Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Restricted Property. GRANTOR also covenants and warrants that the Restricted Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in this Declaration.

-- The remainder of this page has been intentionally left blank.--

IN WITNESS WHEREOF, the C	ity of Lake City has executed this instrument, this, 2021.
	GRANTOR CITY OF LAKE CITY
	By: Name: STEPHEN WITT Title: Mayor Full Mailing Address: City Hall 205 N. Marion Avenue Lake City, FL 32055
Signed, sealed and delivered in the pre	esence of:
Witness Print Name:	Date:
Witness Print Name:	Date:
STATE OF	_)
COUNTY OF	_)
	cknowledged before me by means of □ physical day of, 2021, by
	Produced Identification
	Signature of Notary Public
	Print Name of Notary Public Commission No. Commission Expires:

Approved as to form by the Florida De General Counsel	epartment of Environmental Protection, Office of
	Florida Department of Environmental Protection day of, 2021.
	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
	By:
Signed, sealed and delivered in the pr	esence of:
Witness:Print Name:	Date:
Witness:Print Name:	Date:
STATE OF	_) _)
presence or □ online notarization, this	acknowledged before me by means of   physical by tative for the Florida Department of Environmental
	Produced Identification
	Signature of Notary Public
	Print Name of Notary Public Commission No Commission Expires:

## **EXHIBIT A**

## **Legal Description of the Property**

The Southeast 1/4 of the Southwest 1/4 as lies South of SR 25-A and East of US 441 and The Southwest 1/4 of the Southwest 1/4 Lying West of US Highway 441, Southwest of SR 25-A and East of Oakland Ave, lying and being in Section 20 Township 3 South Range 17 East, Columbia County, Florida.

LESS AND EXCEPT those lands described in Official Records Book 954, Page 460 and Official Records Book 842, Page 250, of the Public Records of Columbia County, Florida.

## **Legal Description of the Restricted Property**

THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AS LIES SOUTH OF NORTHEAST GUM SWAMP ROAD (SR-250) AND EAST OF US 441, LYING AND BEING IN SECTION 20 TOWNSHIP 3 SOUTH RANGE 17 EAST, COLUMBIA COUNTY, FLORIDA.

CONTAINS 25.54 ACRES, MORE OR LESS.

# Legal Description of the Soil/Groundwater Contamination and Engineering Control Area

## A PORTION OF

THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AS LIES SOUTH OF NORTHEAST GUM SWAMP ROAD (SR-250) AND EAST OF US 441, LYING AND BEING IN SECTION 20 TOWNSHIP 3 SOUTH RANGE 17 EAST, COLUMBIA COUNTY, FLORIDA.

BEING MORE PARTICULAR DESCRIBED AS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 17 EAST; THEN RUN S86°15"23"W, ALONG THE SOUTH LINE OF SAID SECTION 620.00 FEET, THEN RUN N2°22'21"W, 400.00 FEET; THENCE RUN N79°50'01"E, 625.60 FEET TO THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION, THEN RUN ALONG SAID EAST LINE S2°22'21"E 470.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 269622.76 SQUARE FEET OR 6.19 ACRES, MORE OR LESS

LEGAL DESCRIPTION:

THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AS LIES SOUTH OF NORTHEAST GUM SWAMP ROAD (SR-250) AND EAST OF US 441, LYING AND BEING IN SECTION 20 TOWNSHIP 3 SOUTH RANGE 17 EAST, COLUMBIA COUNTY, FLORIDA.

CONTAINS 25.54 ACRES, MORE OR LESS.

#### **NOTES**

- THE PURPOSE OF THIS SURVEY IS TO SHOW THE EXISTING GROUND IN RELATION TO THE NATURAL GROUND ELEVATION.
- 2. HORIZONTAL COORDINATES ARE BASED ON NAD83 (1990), FLORIDA NORTH ZONE.
- BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF SECTION 20 AS BEING S86°15'23"W.
- ELEVATIONS SHOWN HEREON ARE BASED ON NATIONAL GEODETIC SURVEY BENCHMARK # T576, BEING A CONCRETE MONUMENT, HAVING A PUBLISHED ELEVATION OF 80.72. (NAVD 88)
- THERE MAY BE EASEMENTS AND RESTRICTIONS OF RECORDS AND/OR PRIVATE AGREEMENTS NOT FURNISHED TO THIS SURVEYOR THAT MAY AFFECT PROPERTY RIGHTS AND/OR LAND USE RIGHTS OF THE LANDS SHOWN HEREON.
- 6. NO UNDERGROUND INSTALLATIONS, FOUNDATION FOOTINGS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED.
- THIS SURVEY WAS PERFORMED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR SURVEYS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.
- 8. BASED ON THE NATIONAL FLOOD INSURANCE PROGRAM "FIRM" MAP COMMUNITY PANEL NUMBER 12023C0284 D DATED 02/04/2009 THE ABOVE DESCRIBED PROPERTY IS LOCATED IN ZONES "X" AND "A".
- 9. THIS FIELD SURVEY WAS PERFORMED ON OCTOBER 3, 2018.

### LEGEND

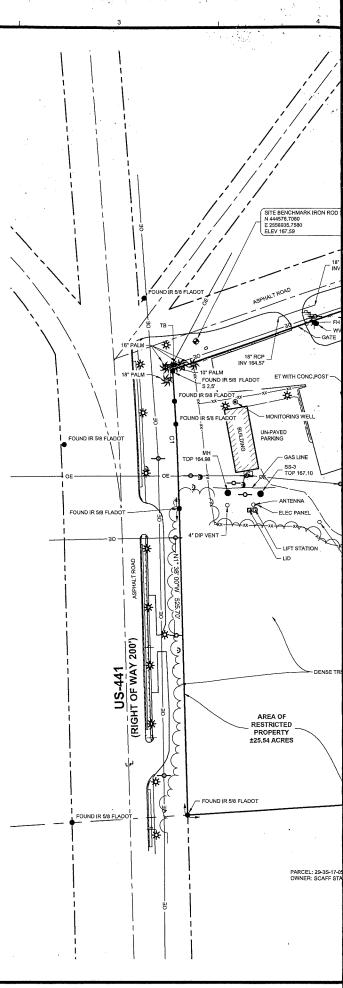
→BM	BENCHMARK	<b>9</b>	ELECTRIC TRANSFORMER	+	SPIGOT
$\otimes_{ND}$	NAIL & DISK	桊	EVERGREEN TREE	*	SPRINKLER HEAD
$\triangle^{TP}$	TRAVERSE POINT	Ω	FIRE HYDRANT		TRAFFIC SIGN
F	FOUND IRON (TYPE)	×	FLAG (AS SHOWN)		UTILITY MARKER (AS SHOWN)
08	SET IRON (TYPE)	v	GUY ANCHOR	Ö	UTILITY MANHOLE (AS SHOWN)
<b>≡</b> F	FOUND MONUMENT (TYPE)	*	LIGHT POLE		UTILITY METER (AS SHOWN)
□S	SET MONUMENT (TYPE)	MB	MAIL BOX		UTILITY RISER (AS \$HOWN)
→ <sup>sc</sup>	SECTION CORNER	楽	PALM TREE	8	UTILITY VALVE (AS SHOWN)
oco	CLEANOUT	• P	POST	0	UTILITY POLE (AS SHOWN)

SATELLITE DISH

### **ABBREVIATIONS**

DECIDUOUS TREE

	· ·				
ANT	ANTENNA	GM	GAS METER	RW	RECLAIMED WATER
вм	BENCHMARK	GV	GAS VALVE	S	SET
(C)	CALCULATED '	INV	INVERT	SC	SECTION CORNER
ĊÓ	CLEANOUT	IP	IRON PIPE	SH	SPRINKLER HEAD
CONC	CONCRETE	IR	IRON ROD	SPIG	WATER SPIGOT
CM	CONCRETE MONUMENT	IRRV	IRRIGATION VALVE	SS	SANITARY SEWER
CMP	CORRUGATED METAL	JBL.	JURISDICTIONAL	SD	STORM DRAIN
	PIPE		BOUNDARY LINE	sv	SANITARY SEWER VALVE
CPP	CORRUGATED PLASTIC	(M)	MEASURED	TB	TELEPHONE RISER
	PIPE	MB	MAILBOX	TEL	TELEPHONE
(D)	AS DESCRIBED	MH	MANHOLE	TP	TRAVERSE POINT
DIP	DUCTILE IRON PIPE	MW	MONITORING WELL	TSC	TRAFFIC SIGNAL
DH	DRILL HOLE	ND	NAIL & DISK		CONTROL
EB	ELECTRIC RISER	NL	NAIL	TSP	TRAFFIC SIGNAL POLE
ELEC	ELECTRIC	OE	OVERHEAD UTILITY LINES	TV	CABLE TELEVISION
EM	ELECTRIC METER	OR	OFFICIAL RECORDS	UΕ	UNDERGROUND UTILITY
ET	ELECTRIC TRANSFORMER	P	POST		LINES
F	FOUND	(P)	PER PLAT	W	WATER
FDC	FIRE DEPT CONNECTION	PB	PLAT BOOK	WW	WATER METER
FF	FINISHED FLOOR	PG	PAGE	WV	WATER VALVE
FH	FIRE HYDRANT	PK	PK NAIL	XC	X CUT
FO	FIBER OPTIC	RCP	REINFORCED CONC PIPE		



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