

**PROTECTIVE COVENANTS
FOR
SOUTH POINTE SUBDIVISION
WASHINGTON COUNTY, UTAH**

KNOW ALL MEN BY THESE PRESENTS: That The Edmund B. Howell Family Trust, hereinafter referred to as the "Developer", is the owner of the following described property, hereinafter referred to as the "Property", located in Washington County, State of Utah, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS
REFERENCE

and it is the intention of the Developer to include all of the Property in said plat, to divide the Property into lots as shown on said plat (such lots being shown on said plat as Lots numbered 1 through 9), and to dedicate the streets shown on said plat to the public. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements.

NOW, THEREFORE, said Developer hereby declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every lot, part or portion thereof, and these restrictions, covenants and conditions shall run with the land. The acceptance of any deed to or conveyance of any lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said restrictions, covenants and conditions as follows, to-wit:

ARTICLE I - GENERAL RESTRICTIONS

1. **LAND USE AND BUILDING TYPE:** All lots shall be used only for single family residential purposes and no professional, business or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident; provided, however, that the lot restrictions contained in this section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therefrom. The only building or structure permitted to be erected, placed or permitted to be located on any lot within the subdivision shall be a detached single family dwelling not to exceed two stories in height, with an enclosed private garage for not less than two (2) nor more than five (5)

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automobiles. The Architectural Control Committee, in its discretion, may allow construction of a three story residence on a lot with sufficient grade that one or more stories is partially concealed by the natural grade. The height of the garage door header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet. No car port or other outdoor or partially enclosed parking facility shall be permitted. All construction shall be of new materials, except that used brick may be used so long as it conforms with the building and subdivision ordinances of the City of St. George, Utah. All structures shall be constructed in accordance with the zoning and building ordinances of the City of St. George, Utah, in effect from time to time. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law. The construction of any building on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within nine (9) months after such commencement.

2. **LOT SIZE:** Lot sizes as described on the recorded plat of subdivision are considered minimum lots size and no person shall further subdivide any lot other than as shown on the recorded plat of said subdivision.

3. **MINIMUM AREA:** The minimum total square footage of living area on the first level above ground and located within the area of a foundation for any residential dwelling constructed on any lot within the subdivision, exclusive of porches, balconies, patios and garages, shall be not less than 1,090 square feet. The Architectural Control Committee may, in its discretion, waive this requirement for homes having three stories, containing at least 1,400 square feet of finishable living space.

4. **ADDITION, CHANGE OR ALTERATION:** No addition, change or alteration, or in the event of a casualty loss, any restoration to be made to the exterior portion of any residence, shall be made only when the plans and specifications showing the nature, kind, shape, height, materials, and location of the same, and the grading plan and landscape plan therefore, shall have been submitted to and approved in writing (as provided in Article II below) as to the harmony of exterior design and location in relation to surrounding structures and topography and finish grade elevations by the Architectural Control Committee. Further, no fence or wall shall be erected, placed or altered upon any lot nearer to any street than the minimum building set back line unless similarly approved.

5. **BUILDING LOCATION:** No building shall be located on any lot closer to the front lot line than twenty-five (25) feet therefrom; nor closer than ten (10) feet to the rear lot line; nor closer than eight (8) feet on one and ten (10) feet on the other side lot line. All of the foregoing measurements shall be made from the applicable lot line to the foundation, porch or other extension of such building, whichever is nearer to such lot line. For the purpose of this covenant, eaves and steps shall not be considered as part of a building for the purpose of determining such distance, provided, however, that this shall not be construed to permit any portion of a building, including eaves or steps to encroach upon another lot.

6. **DRIVEWAYS:** Each driveway on a lot shall be constructed out of cement, asphalt or brick. Driveways consisting of cinders, sand, gravel, or dirt shall not be

permitted on any lot. Driveways of any other materials must be approved by the Architectural Control Committee. The driveway on each lot shall be in a color which blends with the exterior of the structure located on such lot.

7. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each lot shall from time to time grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

8. **TEMPORARY OR OTHER STRUCTURES:** No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials.

9. **NUISANCES:** No noxious or offensive activity shall be carried on upon any lot, part or portion of the Property nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

10. **SIGNS:** No billboard of any character shall be erected, posted, painted or displayed upon or about any of the Property. No sign of any kind, except signs used by the Developer or by a builder to advertise the Property during a development, construction or sales period, shall be displayed to the public view on any lot, part or portion of the Property without the prior written approval of the Architectural Control Committee and said Committee shall have the right to remove or cause the removal of any such billboard or any such sign erected and displayed without said prior written approval.

11. **OIL AND MINING OPERATIONS:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such lot or portion of the Property.

12. **LIVESTOCK, POULTRY, AGRICULTURE:** No animals, livestock, or poultry of any kind shall be raised, bred, or keep on any lot, part or portion of the Property, except that dogs, cats or other domesticated household pets may be kept in a residence constructed on a lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled

and kept pursuant to all applicable laws and ordinances. No outside dog houses or dog runs are allowed.

13. **GARBAGE AND REFUSE DISPOSAL:** No lot, part or portion of the Property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

14. **BUILDING MATERIALS:** No lot, part or portion of the Property shall be used or maintained as a storage for building materials except during a construction phase. Once a dwelling is occupied or made available for sale all building materials shall be removed or stored inside such dwelling.

15. **WATER SUPPLY:** No individual water supply system shall be used or permitted to be used on any lot, part or portion of the Property.

16. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any lot, part or portion of the Property.

17. **BOATS AND MOTOR VEHICLES:** No boats, trailers, buses, motor homes, campers or other similar vehicles shall be parked or stored upon any street or sidewalk. No junk or inoperable vehicles, buses or semi-trailers shall be parked in any location within the subdivision.

18. **ANTENNAE:** No external radio, television, satellite dish over 18" in diameter, or other antennae of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals shall be permitted on any lot without the prior written approval of the Architectural Control Committee. The Architectural Control Committee may permit specific devices by rule, applicable to all lots.

19. **SAFE CONDITION:** Without limiting any other provision of these protective covenants, each owner shall maintain and keep such owner's lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment of other owners of their respective lots.

20. **SIGHT DISTANCE AT INTERSECTIONS:** No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within the (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No

tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

21. **LANDSCAPING:** Within three (3) months after the completion of construction of any home upon a lot, the owner of such lot must have substantially completed the landscaping of such lot and fenced the rear yard of the lot. Such landscaping shall include but shall not be limited to the preparation for the planting of lawn, grass or other appropriate ground cover, appropriate shrubbery, and planting of at least one (1) tree in the front yard. No more than twenty-five percent (25%) of the front yard landscaping shall be in the desert motif. The provisions of the two preceding sentences may be waived for a specific lot by the Architectural Control Committee if geologic or soil conditions require. The planting of trees and shrubs and grass are encouraged and recommended. Should any lot owner fail to comply with the provisions of this section, the Architectural Control Committee shall have right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete the landscaping and require the lot owner to pay a reasonable amount for such completion. All attorneys fees and costs incurred in any such action, and all expenses incurred in connection with such completion, shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of said lot owner, enforceable at law, until such payment therefore is made.

No healthy tree shall be removed from any lot prior to the written approval of the Architectural Control Committee of the landscaping plan for such lot, unless the Architectural Control Committee shall have approved of such removal. No healthy tree shall be removed from any lot after the completion of the approved landscaping thereof, nor shall other major landscaping changes be made, without the prior written approval of the Architectural Control Committee. Notwithstanding this section, all diseased trees must be removed by the lot owner within one hundred-twenty (120) days after the diseased condition is discovered or after receipt of notification issued by the Architectural Control Committee demanding the removal thereof. All diseased and other trees removed from any lot, part or portion of the Property shall be replaced by the lot owner by the planting of an equivalent number of trees of the same species upon such lot. All trees planted by a lot owner pursuant to the requirements of this paragraph shall be of a minimum size of two and one half inches (2 1/2") caliper measured at a point one foot (1') above ground level.

22. **EXCAVATIONS:** Except for excavations for an approved foundation, no excavations or removal of dirt are permitted on any lot below the present grade of such lot.

23. **DWELLING CONSTRUCTION AND FENCE RESTRICTIONS:** In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are applicable to the Property:

(A) Dwelling style, design, alterations and additions will conform to standards established by the Architectural Control Committee.

(B) Exterior construction materials will be limited to stone, stone veneer, brick or brick veneer, stucco or other materials approved for use by the Architectural Control Committee, and shall be in colors and of materials indigenous to the area. Specifications regarding the color, texture, finish and quality for the above will be made available by the Architectural Control Committee.

(C) Roof materials will be limited to tile, and shall be in colors which blend with the exterior of the structure. No mansard roofs are allowed.

(D) No storage or utility buildings are allowed. All such structures intended for such uses must be built so as to be part of the house. All air conditioning equipment and utility pipes, etc. shall be placed as discretely as possible and covered with landscaping or fence materials. Roof mount air conditioning equipment must be situated so as not to be visible from the front view of the residence.

(E) Dome structures of any type are not allowed.

(F) Any light used to illuminate garages, patios, parking areas or for any other purposes, shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

(G) Fences and other barriers.

1. Fences: Back yard fences which comply with the provisions of these protective covenants must be in place within 90 days after closing.

2. Materials: Fences or walls shall be of wood, unpainted concrete block, brick or stone approved by the Architectural Control Committee and of a color which blends with the exterior of the structure on the lot. No wire mesh fences are allowed.

3. Height: Fences, walls or hedges shall comply with all City ordinances, but in any event may not exceed six feet (6') in height. Fences shall not extend beyond the front yard set back at any point.

4. Variations: The Architectural Control Committee will consider approval of aesthetically compatible fences or walls of the materials listed above or hedges which (a) are not more than six feet in height, (b) are located on the side lot line of a lot or on the perimeter of a patio or open porch and not extending beyond the front or rear yard set back line, (c) are intended to enhance the privacy of the residents of such lot, and (d) do not unreasonably interfere with the line of sight towards, or view of, any golf course from any neighboring lot.

(H) Aluminum soffit fascia is required for all houses.

24. **LIMITATION ON ROOF MOUNTINGS.** Without the prior written consent of the Architectural Control Committee, no apparatus or equipment shall be placed on the roof of any structure so as to extend higher than the ridge line of the roof. No swamp coolers shall be placed on the roof of any structure.

25. **LEASED OR RENTED RESIDENCE.** Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Protective Covenants for South Pointe Subdivision, as the same may be amended from time to time, and that any failure by lessee to comply with the terms of such document shall be a default under the lease. In addition, if a residence is leased or rented, the lot owner shall retain the services of a professional landscaping maintenance company to ensure that the landscaping around the residence is sufficiently maintained to perpetuate the integrity of the development, and shall supply a copy of the agreement to the Architectural Control Committee.

ARTICLE II - DURATION, ENFORCEMENT, AMENDMENT

1. **DURATION OF RESTRICTIONS:** The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. During the Development Phase (defined below), the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument. The "Development Phase" shall be the time from the date of the recording of the Plat of Subdivision until such time as Developer transfers legal title to more than ninety percent (90%) of the number of lots to bona fide purchasers.

Upon completion of the Development Phase, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of seventy-five percent (75%) of the number of lots. Any amendment after the completion of the Development Phase shall require a thirty (30) day written notice of any such proposed amendment be sent to every owner of any lot, part or portion of the Property.

2. **PERPETUITIES:** If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the applicable provision shall continue and endure only until the expiration of twenty-one (21) years after the death of the last to survive the class of persons consisting of all of the lawful descendants of Michael Leavitt, Governor of the State of Utah, or William Jefferson Clinton, President of the United States, living at the date of the recording of this document.

3. **NOTICES:** Any notice required under the provisions of this document to be sent to any lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

4. **CONSTRUCTION AND SEVERABILITY:** All of the restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall in no wise affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

5. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any owner or owners from time to time of any lot or portion of the Property. Remedies hereunder shall be deemed cumulative and not exclusive.

6. **ENFORCEMENT:** Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Developer, and of the owner or owners from time to time of any lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, may be enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer or the owner or owners from time to time of any lot, part or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said, lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. No legal or equitable right presently exists or shall exist with respect to the use of or access to any golf course or other property adjacent to the subdivision or any amenity now or hereafter located thereon.

7. **RIGHT TO ENFORCE:** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Developer, by the owner or owners from time to time of any lot, part or portion of said Property, their and each of their legal representative, heirs, successors and assigns, and failure by the Developer or any such owner, or their respective legal representatives, heirs, successors, or assigns, to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

8. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee which is vested with the powers described herein shall consist initially of at least three (3) persons appointed by the Developer. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, there shall first be filed with the Architectural Control Committee two (2)

complete sets of building plans and specifications, together with a site or plot plan indicating the exact part of the building site which the improvements will cover, and no such work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Committee pursuant hereto. Said Committee shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building or other structure so planned on the outlook from adjacent or neighboring property. The Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee. In the event said Committee fails to approve or disapprove in writing any such plans within sixty (60) days after the submission thereof to the Committee, then such approval shall be deemed to have been given. The Developer shall have the right to appoint all members of the Architectural Control Committee until such time as title to more than ninety percent (90%) of the number of lots in the Property has been transferred to bona fide purchasers. When title to more than ninety percent (90%) of all of the lots in said development has been transferred by the Developer, a majority of the owners of lots, parts or portions of the Property subject to these covenants shall elect and appoint members of the Architectural Control Committee, which Committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the property subject to these restrictions, covenants and conditions.

9. **EXPANSION:** The Property as defined in this document is an initial phase of a multiple phase subdivision. The Developer may subject additional land to the covenants contained in this document by filing

- a. an additional subdivision plat or plats, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this document upon the filing of a Declaration of Annexation and
- b. a Declaration of Annexation which shall state the Developer's intention to have the area described therein subject to this document.

Upon the recording of such a plat and Declaration of Annexation the property described therein shall be subject to this document, and the property therein described shall be part of the Property as defined herein.

10. **ASSIGNMENT OF POWERS:** Any and all rights and power of the Developer herein contained may be delegated, transferred or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 28th day of February, 1996.

DECLARANT:

THE EDMUND B. HOWELL FAMILY TRUST

THE EDMUND B. HOWELL FAMILY
LIMITED PARTNERSHIP

By Edmund B. Howell Trustee
Edmund B. Howell, Trustee

BY Edmund B. Howell General Partner
EDMUND B. HOWELL, GENERAL PARTNER

STATE OF UTAH)
COUNTY OF WASHINGTON) ss.

On this 28th day of February, 1996, before me personally appeared Edmund B. Howell whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Trustee of the Edmund B. Howell Family Trust, and that the foregoing instrument was signed by proper authority, and acknowledged before me that he executed the document in the capacity and for the purposes stated in it.

Chris Millsap
NOTARY PUBLIC
Address: St. George, Utah
My Commission Expires: 2-24-97



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STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

ON THE 22ND DAY OF APRIL, 1996 PERSONALLY APPEARED BEFORE ME EDMUND B. HOWELL, WHO BEING DULY SWORN DID SAY THAT HE IS THE GENERAL PARTNER OF EDMUND B. HOWELL FAMILY LIMITED PARTNERSHIP, AND THAT HE EXECUTED THE FOREGOING INSTRUMENT IN BEHALF OF SAID PARTNERSHIP BEING DULY AUTHORIZED AND EMPOWERED TO DO SO BY THE PARTNERSHIP AGREEMENT OF DECEMBER 28, 1983 AND HE DID DULY ACKNOWLEDGE TO ME THAT SUCH PARTNERSHIP EXECUTED THE SAME FOR THE USES AND PURPOSES STATED THEREIN.

MY COMMISSION EXPIRES: 2/24/97

Chris Millsap
NOTARY PUBLIC
RESIDING IN: ST. GEORGE, UTAH

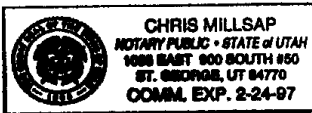


EXHIBIT "B"
LEGAL DESCRIPTION

Beginning at a point which lies South $0^{\circ}52'18''$ East 1359.10 feet along the center section line and West 1198.67 feet from the center Quarter Corner of Section 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian and running thence South $0^{\circ}45'02''$ East 698.36 feet to a point on the Northerly boundary of Riverside Heights Plat "A" Amended, according to the official plat thereof, records of Washington County; thence South $89^{\circ}11'39''$ West 97.89 feet along said Northerly boundary to a point on the Easterly right of way line of 2750 East street; thence North $0^{\circ}44'32''$ West 678.72 feet along said right of way to the point of a 20.00 foot radius curve to the right; thence Northeasterly along said right of way and the arc of said curve through a central angle of $90^{\circ}10'53''$, a distance of 31.48 feet to the point of tangency; thence North $89^{\circ}26'21''$ East 77.73 feet to the point of beginning.

A proposed Subdivision to be known as South Pointe Phase 1.

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