

L. 150745

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VOL 1462 PAGE 1462

REAL ESTATE MORTGAGE

This Indenture, Made this 25th day of February 1970, between

O. & E. CORPORATION, an Oregon corporation,
California
of the County of Sacramento, State of ~~Oregon~~, whether one or more, hereinafter called the "Mortgagor,"
and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY
a corporation organized under the laws of the State of Indiana, having its principal place of
business at Fort Wayne, State of Indiana, hereinafter called
"Mortgagee."

WITNESSETH, That the Mortgagor does by these presents give, grant, bargain, sell, convey and warrant unto said
Mortgagee the following described real property situated in the County of Klamath, State
of Oregon, to-wit:

PARCEL 1:

All that portion of Tracts 32, 33A and 36 Enterprise Tracts, situated in the Northwest Quarter (NW $\frac{1}{4}$) of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pipe on the South line of said Tract 32, said point being North 89° 30' 45" West, a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said beginning point also being on the northwesterly line of Austin Street as deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed records; thence North 34° 07' 30" East at right angles to South Sixth Street and along the northwesterly line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the east line of said Tract 32; thence North 0° 20' 45" East along said parallel line and along the westerly line of Austin Street a distance of 722.70 feet to an iron pin that is South 0° 20' 45" West a distance of 400.02 feet from the iron pin marking the southerly line of Shasta Way; thence North 89° 39' 15" West a distance of 629.67 feet to an iron pin on the southeasterly line of Avalon Street; thence South 30° 37' 00" West along the southeasterly line of Avalon Street a distance of 667.53 feet to an iron pin on the most northerly corner of a tract described as Parcel 3 in Deed Volume 256 page 96, Klamath County Deed Records; thence South 59° 23' 00" East along the northeasterly line of said tract a distance of 149.94 feet to an iron pin; thence South 30° 37' 00" West along the Southeasterly line of said tract a distance of 59.20 feet to an iron pin on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along the northeasterly line of Pershing Way a distance of 485.14 feet to an iron pipe on the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts; thence North 0° 14' 30" West along said projected line a distance of 98.97 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 89° 30' 45" East along the southerly line of said Tract 32 a distance of 362.50 feet to the point of beginning, containing 16.015 acres, more or less.

PARCEL 2:

A parcel of land situated in the Northwest Quarter (NW $\frac{1}{4}$) of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the northwest corner of said Section 3, said point being marked by a cased iron pin; thence South 0° 00' 30" East along the westerly line of said Section 3 a distance of 826.80 feet to its intersection with a line parallel with and 75.0 feet distant at right angles northeasterly from the centerline of the Klamath Falls-Lakeview Highway, also known as South Sixth Street, as the same is now located and constructed; thence South 55° 52' 30" East, along said parallel line a distance of 1682.84 feet to an iron pin on the northwesterly line of Austin Street; thence North 34° 07' 30" East along said line a distance of 235.00 feet to an iron pin on the northeasterly line of Pershing Way, said point being the True Point of Beginning of this description; thence North 34° 07' 30" East along the Northwesterly line of Austin Street a distance of 282.50 feet to an iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North 89° 30' 45" West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 89° 30' 45" West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South 0° 14' 30" East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along said line a distance of 245.93 feet to the True Point of Beginning of this description, containing 1.209 acres, more or less.

36, Enterprise Tracts; thence North 0° 14' 30" West along said projected line a distance of 98.97 feet to an iron pipe on the Southwest corner of said Tract 32; thence South 89° 30' 45" East along the southerly line of said Tract 32 a distance of 362.50 feet to the point of beginning, containing 16.015 acres, more or less. 10

PARCEL 2:

A parcel of land situated in the Northwest Quarter (NW $\frac{1}{4}$) of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the northwest corner of said Section 3, said point being marked by a cased iron pin; thence South 0° 00' 30" East along the westerly line of said Section 3 a distance of 826.80 feet to its intersection with a line parallel with and 75.0 feet distant at right angles northeasterly from the centerline of the Klamath Falls-Lakeview Highway, also known as South Sixth Street, as the same is now located and constructed; thence South 55° 52' 30" East, along said parallel line a distance of 1682.84 feet to an iron pin on the northwesterly line of Austin Street; thence North 34° 07' 30" East along said line a distance of 235.00 feet to an iron pin on the northeasterly line of Pershing Way, said point being the True Point of Beginning of this description; thence North 34° 07' 30" East along the Northwesterly line of Austin Street a distance of 282.50 feet to an iron pipe on the southerly line of Tract 32, Enterprise Tracts, said point being North 89° 30' 45" West a distance of 281.8 feet from the southeast corner of said Tract 32 (this same reference is described as being West a distance of 281.7 feet by previous records), said point being on the northwesterly line of that tract deeded to Klamath County by Deed Volume 229 page 300, Klamath County Deed Records; thence North 89° 30' 45" West along the southerly line of said Tract 32 a distance of 362.50 feet to an iron pipe on the southwest corner of said Tract 32; thence South 0° 14' 30" East along the southerly projection of the line between Tracts 32 and 36, Enterprise Tracts, a distance of 98.97 feet to an iron pipe on the northeasterly line of Pershing Way; thence South 55° 52' 30" East along said line a distance of 245.93 feet to the True Point of Beginning of this description, containing 1.209 acres, more or less. 1463

PARCEL 3:

Beginning at the iron pipe marking the Southeast corner of Enterprise Tract 32 in Section 3 Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence West along the South line of Tract 32 a distance of 209.57 feet, more or less, to an iron pipe marking the Easterly line of Austin Street; thence North 34° 07' 30" East along the Easterly line of Austin Street Northeasterly at right angles to the center line of South Sixth Street a distance of 161.08 feet, more or less, to an iron rod which lies on a line which is parallel to and 120 feet Westerly at right angles from the East line of Tract 32; thence North 0° 20' 45" East along said parallel line and the East line of Austin Street 391.3 feet, to the true point of beginning, said point of beginning being 823.0 feet South of the North line of Section 3, thence North 0° 20' 45" East along said parallel line and the East line of Austin Street 500.0 feet, more or less, to a point which marks the Southwest corner of parcel of land conveyed by Swan Lake Moulding Company to William L. Wales, Jr., thence leaving the Easterly boundary of Austin Street (North 89° 50' 30" East parallel to and 323 feet distant at right angles from the North line of Section 3 a distance of 120.0 feet to an iron rod marking the Southeast corner of said Wales parcel, on the East line of Tract 32; thence South 0° 20' 45" West along the East line of Tract 32, 500.0 feet to a point, said point being 823.0 feet South of the North line of Section 3; thence South 89° 50' 30" West on a line parallel to the North line of Section 3, a distance of 120.0 feet to the point of beginning. Said parcel contains 60,000 square feet, more or less.

TOGETHER WITH AND SUBJECT TO that certain Cross Easement Agreement dated July 30, 1965, by and between Oregon Shopping Center, Inc., an Oregon corporation, and Erickson Investment Co., a California corporation, recorded March 30, 1966, in Microfilm record as Document No. 5080, Volume M66, Page 2768 Records of Klamath County, Oregon, covering the following described real estate:

All that portion of Tracts 32 and 36, Enterprise Tracts, situated in the Northwest Quarter (NW $\frac{1}{4}$) of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the southeast corner of said Tract 32; thence North 89° 30' 45" West a distance of 281.8 feet (West 281.7 feet by previous records) to an iron pipe on the Northwesterly line of Austin Street as deeded to Klamath County by Deed Volume 229, Page 300, Klamath County Deed Records; thence North 34° 07' 30" East at right angles to South Sixth Street and along the Northwesterly line of Austin Street a distance of 183.08 feet to an iron pin on a point on a line that is parallel to and 180 feet distant at right angles from the east line of said Tract 32; thence North 0° 20' 45" East along said parallel line and along the westerly line of Austin Street a distance of 722.70 feet to an iron pin being the True Point of Beginning of this description; said point being South 0° 20' 45" West a distance of 400.02 feet from the iron pin marking the southerly line of Shasta Way; thence North 89° 39' 15" West a distance of 629.67 feet to an iron pin on the southeasterly line of Avalon Street; thence North 30° 37' East along the southeasterly line of Avalon Street a distance of 284.57 feet to an iron pipe; thence North 89° 56' East a distance of 110.32 feet to an iron pipe; thence North 0° 07' 30" West a distance of 150.11 feet to an iron pipe on the southerly line of Shasta Way; thence North 89° 50' 30" East along the southerly line of Shasta Way a distance of 377.21 feet to an iron pin on the west line of Austin Street; thence South 0° 20' 45" West along the west line of Austin Street a distance of 400.02 feet to the True Point of Beginning of this description.

The bearing of the above described tract of land is based on South Sixth Street bearing being North 55° 52' 30" West from the intersection of Austin Street. The above described tract of land contains 4.468 acres, more or less. 11

FORM No. 31

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1464

together with the tenements, hereditaments, rights, privileges and appurtenances now or hereafter belonging to or used in connection with the premises, and together with all of the rents, issues and profits thereof; also including herein the party walls, if any, on each or any side of the premises, any agreements respecting the same, and all rights in and to such party walls or under the agreements respecting the same.

It is covenanted and agreed that all trees and shrubs, awnings, door and window screens, mantels, linoleum which is glued to the floor, and all plumbing, lighting, heating, electrical, cooling, ventilating, cleaning, elevating, watering and irrigating apparatus and fixtures which are now or may hereafter be installed or placed in or used in connection with the said premises by said Mortgagor or by any of the successions to the freehold and a part of the realty and subject to the lien of this Mortgage.

THIS INSTRUMENT IS INTENDED AS A MORTGAGE to secure the performance of the covenants and agreements herein contained and the payment of the debt represented by one promissory note of even date herewith in the principal sum of Three Million Three Hundred Eighty eight Thousand and No/100 Dollars (\$ 3,388,000.00) made by the Mortgagor to the order of the Mortgagee with interest as therein provided and due as therein provided, and also such sums as may be advanced or loaned by the Mortgagee to the Mortgagor or any of the successors or assigns of the Mortgagor and together with interest thereon. Said note matures on the first day of April, 19 95.

FORM 7526 CRE.—1-52

The Mortgagor covenants lawful seizin of the premises in fee simple, good right and lawful authority to convey and mortgage the premises in the manner and form aforesaid, that the premises are free from encumbrances, that they will warrant and defend the same forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

The Mortgagor further covenants and agrees:

1. To pay all debts and money secured hereby when from any cause the same shall become due.
2. To keep the premises free from statutory liens of every kind and to comply with all laws, ordinances and rulings of any governmental authority or agency relating to said premises.
3. To keep all buildings and improvements now or hereafter placed on the property in good repair. Mortgagor agrees not to sell, mortgage, sever or remove any fixture or appliance on, in or about the buildings and will not procure or permit the removal, demolition or material alteration of any building now on the land without the consent of the Mortgagee, and will not permit or commit any waste on the premises, and will permit the Mortgagee or its agents at all reasonable times to enter, pass through or over the premises for the purpose of inspecting the same to ascertain whether compliance is being made with the conditions and provisions hereof.
4. To pay all taxes, assessments and charges which are or may be levied against the premises or any part thereof before the same become delinquent and to deliver to the Mortgagee satisfactory evidence of such payment. In addition, the Mortgagor shall pay all taxes that may be levied upon the Mortgagee's interest in the said real estate and improvements and which may be levied upon this Mortgage or the indebtedness secured thereby (but only to the extent that such is not prohibited by law and only to the extent that such will not make this loan usurious), but excluding any income tax, State or Federal, imposed upon the Mortgagee. Upon violation of this undertaking or the passage after the date of this instrument of a law in the State of Oregon imposing payment of the whole or any portion of the taxes aforesaid upon the Mortgagee, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby for State or local purposes, then and in such event the debt hereby secured, without any deduction, shall at the option of the Mortgagee become immediately due and payable notwithstanding anything contained in this Mortgage or in any law hereafter enacted.
5. That until all sums secured hereby are paid in full, to keep the buildings and fixtures constantly insured against loss by fire and such other hazards and contingencies as Mortgagee may require from time to time. The policies of such insurance shall be deposited with the Mortgagee and shall contain satisfactory mortgage clauses making such policies payable to the Mortgagee in case of loss, and shall otherwise be in such form and amounts and issued by companies acceptable to the Mortgagee. If the Mortgagor shall carry more insurance than is required by the Mortgagee, such insurance shall be made payable to the Mortgagee as above specified and the policies of such additional insurance shall likewise be deposited with the Mortgagee. The Mortgagee may collect the proceeds of any insurance which may become due and at its option after deducting the expense of such collection may apply the balance to one or both of the following: (a) to a partial or total restoration of the improvements, (b) to the payment of principal whether then matured or not in inverse order of its maturity.
6. If requested by the Mortgagee, the Mortgagor, together with and in addition to the monthly or other periodic payments of principal and interest required under the terms of the note secured hereby, will deposit with the Mortgagee proportionate installments of a sum sufficient to place funds in the hands of the Mortgagee with which to pay taxes, assessments and charges levied against the premises as the same shall become due, and to pay renewal premiums on fire and other hazard insurance, which sums so deposited shall be held by the Mortgagee and may be so applied to the payment of taxes, assessments, charges and insurance premiums. If at any time the funds so held by the Mortgagee are insufficient to pay any such taxes, assessments, charges or insurance premiums when the same become due and payable, the Mortgagor shall immediately upon notice deposit with the Mortgagee the amount of such deficiency. In the event of default of any of the provisions of the Mortgage, the Mortgagee may at its option apply any money held by it to the payment of taxes, assessments, charges or insurance premiums, on any of the mortgage obligations and in such order and manner as it may elect.
7. Mortgagee at its option may make any payment necessary to remove or extinguish any prior or outstanding title lien or encumbrance on the premises and may pay any unpaid taxes or assessments charged against the property, before or after delinquency, with penalties, interest and costs, and may insure said property and pay for such insurance if default be made in the covenants to insure, and any sum or sums so paid shall become a lien upon the above described property and shall be secured by this Mortgage and may be recovered with interest on demand at the highest rate permitted by law not exceeding the rate of ten per cent (10%) per annum.
8. The Mortgagee may at any time, without notice, release portions of the premises from the lien hereof without affecting the personal liability of any person for the payment of said debt or the lien hereof upon the remainder of the premises for the full amount of the debt hereby secured then remaining unpaid.
9. In case of any default in the payment of the sum secured hereby or in the performance of the covenants herein contained, whether the indebtedness is thereby matured or not, and this Mortgage, with the evidence of the debt it secures, is turned over to attorneys for collection, adjustment or settlement, or in case of any action to foreclose this Mortgage or to collect any charge growing out of the debt hereby secured, or in any suit which the Mortgagee may be obligated to defend to protect the unimpaired priority of the lien hereof, the Mortgagor agrees to pay a reasonable sum as attorneys' fees and all costs and expenses in connection with the collection, adjustment, settlement or suit, and also the reasonable cost of searching records, which sums shall be secured hereby and included in any decree of foreclosure.
10. The rents, issues and profits of the property to and until the maturity of the debt secured hereby, either by lapse of time or by reason of default of the Mortgagor, shall belong to the Mortgagor, but upon such maturity for any cause, the Mortgagee shall have the right forthwith to enter into and upon the premises and take possession thereof

13

and to collect the rents, issues and profits thereof and apply the same, less reasonable costs of collection, upon the debt hereby secured, and the Mortgagee shall have the right to the appointment of a receiver to collect the rents, issues and profits thereof and to receive and collect rents, issues and profits on

mortgage or to collect any charge growing out of the debt hereby secured, the Mortgagor agrees to pay a reasonable sum as attorneys' fees and all costs and expenses in connection with the collection, adjustment, settlement or suit, and also the reasonable cost of searching records, which sums shall be secured hereby and included in any decree of foreclosure.

10. The rents, issues and profits of the property to and until the maturity of the debt secured hereby, either by lapse of time or by reason of default of the Mortgagor, shall belong to the Mortgagee, but upon such maturity for any cause, the Mortgagee shall have the right forthwith to enter into and upon the premises and take possession thereof

13
1466
and to collect the rents, issues and profits thereof and apply the same, less reasonable costs of collection, upon the debt hereby secured, and the Mortgagee shall have the right to the appointment of a receiver to collect the rents, issues and profits. The Mortgagor further warrants and covenants that the right to receive and collect rents, issues and profits on the premises has not been assigned to any third party but is and shall be subject completely to the lien of this Mortgage.

11. Upon the payment of the mortgage debt in full, the Mortgagee shall execute and deliver to the Mortgagor or the payor a prompt satisfaction of the Mortgage for record at Mortgagor's expense.

12. The Mortgagor consents to a personal deficiency judgment for any part of the debt hereby secured which shall not be paid by a sales of said property.

13. As further security for the indebtedness secured hereby Mortgagor has assigned, coincident herewith, and may hereafter assign, to Mortgagee a certain lease or leases of all or of portions of the property herein described. Mortgagor covenants and agrees to perform promptly each and every covenant and agreement of any such lease that is to be performed by the lessor and agrees that violation on lessor's part of any covenant or agreement in any such lease that is to be kept or performed by lessor or any violation on assignor's part of any agreement by assignor set out in any such assignment of any such lease shall constitute a breach of this Mortgage and thereupon Mortgagee may, at its option, without notice, declare the entire indebtedness secured hereby immediately due and payable. Mortgagor agrees that it will advise Mortgagee promptly of the execution hereafter of any lease of any part of the property herein described and further agrees that, upon Mortgagee's written request, it will submit to Mortgagee for examination any such lease and, if Mortgagee so requests, Mortgagor will assign such lease to Mortgagee (in form acceptable to Mortgagee) as additional security for the indebtedness secured hereby; and it is agreed that the provisions of this Mortgage with regard to Mortgagor's obligations and Mortgagee's rights with respect to leases and assignments of the same shall apply to all such additional leases and assignments thereof. Mortgagee may, at its option, perform any covenant or provision of any such lease for and on behalf of Mortgagor and at Mortgagor's expense and any amount advanced for this purpose to bear interest at the same rate as the rate for other advances, shall be secured by this Mortgage and shall be payable upon demand. Such performance on behalf of Mortgagor may be made either before or after default of Mortgagor, at the option of Mortgagee. Proceeds from hazard insurance shall be released by Mortgagee, upon the written request of the lessor or the lessee, for use for repair or restoration, if and to the extent required by any such lease.

The covenants and agreements herein are joint and several and binding upon our and each of our successors in title and shall inure to the benefit of each successor in interest of the Mortgagee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESSES:

O. & E. CORPORATION

BY: V. H. Otte President

Attest: Alex Jokay Secretary

STATE OF Oregon }
COUNTY OF Klamath }

SS:

1467
On this 25th day of February, 19 70, before me, a Notary Public in and for said County and State, appeared V. H. Otte and Alex Jokay, both to me personally known, who being duly sworn did say that the said V. H. Otte is the President, and he, the said Alex Jokay is the Secretary of O. & E. CORPORATION, an Oregon corporation, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said V. H. Otte and Alex Jokay acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Carolyn DeVoss
Notary Public in and for the State of Oregon
Residing at: Klamath Falls, Oregon

the property herein described. Mortgagee agrees that every covenant and agreement of any such lease that is to be made by or for and agrees that violation on lessor's part of any covenant or agreement of any agreement by assignor set out in any such assignment of any such lease that is to be kept or performed by lessor or any violation of any agreement by assignor set out in any such assignment of any such lease shall constitute a breach of this Mortgage and thereupon Mortgagee may, at any time, without notice, declare the entire indebtedness secured hereby immediately payable. Mortgagee agrees that it will advise Mortgagee promptly of the execution of any lease of any part of the property herein described and further that, upon Mortgagee's written request, it will submit to Mortgagee for examination any such lease and, if Mortgagee so requests, Mortgagee will assign such lease to Mortgagee (in form acceptable to Mortgagee) as additional security for the indebtedness secured hereby; and it is agreed that the provisions of this Mortgage with regard to Mortgagee's obligations and Mortgagee's rights with respect to leases and assignments of the same shall apply to all such additional leases and assignments thereof. Mortgagee may, at its option, perform any covenant or provision of any such lease for and on behalf of Mortgagee and at Mortgagee's expense and any amount advanced for this purpose to bear interest at the same rate as the rate for other advances, shall be secured by this Mortgage and shall be payable upon demand. Such performance on behalf of Mortgagee may be made either before or after default of Mortgagee, at the option of Mortgagee. Proceeds from hazard insurance shall be released by Mortgagee, upon the written request of the lessor or the lessee, for use for repair or restoration, if and to the extent required by any such lease.

The covenants and agreements herein are joint and several and binding upon our and each of our successors in title and shall inure to the benefit of each successor in interest of the Mortgagee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESSES:

O. & E. CORPORATION

BY:

President

Attest:

Secretary

STATE OF Oregon

COUNTY OF Klamath

ss:

On this 25th day of February, 19 70, before me, a Notary Public in and for said County and State, appeared V. H. Otte and Alex Jokay, both to me personally known, who being duly sworn did say that the said V. H. Otte is the President, and he, the said Alex Jokay is the Secretary of O. & E. CORPORATION, an Oregon corporation, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said V. H. Otte and Alex Jokay acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Carolyn DeVoss
Notary Public in and for the State of Oregon
Residing at: Klamath Falls, Oregon

My commission expires: January 9, 1973

This instrument was prepared by Donald F. Butler, Assistant Counsel, for The Lincoln National Life Insurance Company, Fort Wayne, Indiana.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.

this 25th day of February, A. D., 19 70 at 9:51 o'clock A. M., and duly recorded in Vol. M-70, of Mortgages on Page 1462

Fee \$9.00

WM. D. MILNE, County Clerk

By Charles K. Stratman Deputy

FORM No. 31

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