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DOMESTIC FILING

NAME: HERON BAY AT WATERSTONE  
HOMEOWNERS ASSOCIATION, INC.

XX ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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CONTACT PERSON: Kimberly Moret - EXT. 2949

EXAMINER'S INITIALS: \_\_\_\_\_

**ARTICLES OF INCORPORATION  
OF  
HERON BAY AT WATERSTONE HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Heron Bay Association and includes "Individual Home Assessments" and "Special Assessments" (as such terms are defined in the Heron Bay Declaration) and any and all other assessments which are levied by the Heron Bay Association in accordance with Heron Bay at Waterstone Documents.
3. "Heron Bay Association" means Heron Bay at Waterstone Homeowners Association, Inc., a Florida corporation not for profit. The "Heron Bay Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
4. "Heron Bay Association Property" means the property more particularly described in Article I and Article II of the Heron Bay Declaration.
5. "Board" means the Board of Directors of the Heron Bay Association.
6. "Bylaws" means the Bylaws of the Heron Bay Association and any amendments thereto.
7. "Community Expenses" means the expenses for which Owners are liable to the Heron Bay Association as described in the Heron Bay Declaration and any other Heron Bay at Waterstone Documents and include, but are not limited to, the costs and expenses incurred by the Heron Bay Association in administering, operating, maintaining, financing, or repairing, but not reconstructing, replacing or improving, the Heron Bay Association Property and improvements thereon and all costs and expenses incurred by the Heron Bay Association in carrying out its powers and duties hereunder or under any other Heron Bay at Waterstone Documents.

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8. "County" means Brevard County, Florida.
9. "Declarant" means DiVosta Homes, LP, a Delaware limited partnership, and any successor or assign thereof to which DiVosta Homes, LP specifically assigns all or part of the rights of Declarant under the Heron Bay Declaration by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Heron Bay Lands, as defined in the Heron Bay Declaration. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.
10. "Heron Bay Declaration" means the Declaration of Covenants, Conditions and Restrictions for Heron Bay at Waterstone, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.
11. "Director" means a member of the Board.
12. "Home" means a residential dwelling unit constructed or to be constructed within Heron Bay at Waterstone, which is designed and intended for use and occupancy as a single-family residence. The term "Home" shall include the Lot as defined in the Heron Bay Declaration.
13. "HOA Act" means the homeowners' association act, Chapter 720, Florida Statutes as amended through the date of the Heron Bay Declaration amongst the Public Records of the County.
14. "Member" means a member of the Heron Bay Association.
15. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Home within Heron Bay at Waterstone, and includes Declarant for as long as Declarant owns fee simple title to a Home, but excluding therefrom those having such interest as security for the performance of an obligation.
16. "Heron Bay at Waterstone" means that planned residential development located in the County, which will consist of the land set forth in Exhibit "B" of the Heron Bay Declaration and may be expanded or contracted as set forth in the Heron Bay Declaration.
17. "Heron Bay at Waterstone Documents" means in the aggregate the Heron Bay Declaration, these Articles and the Bylaws and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s).

Unless otherwise defined herein, the terms defined in the Heron Bay Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II  
NAME

The name of this corporation shall be HERON BAY AT WATERSTONE HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418.

ARTICLE III  
PURPOSES

The purpose for which the Heron Bay Association is organized is to take title to, operate, administer, manage, lease and maintain the Heron Bay Association Property in accordance with the terms of, and purposes set forth in, Heron Bay at Waterstone Documents and to carry out the covenants and enforce the provisions of Heron Bay at Waterstone Documents.

ARTICLE IV  
POWERS

The Heron Bay Association shall have the following powers and shall be governed by the following provisions:

A. The Heron Bay Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Heron Bay Association shall have all of the powers granted to the Heron Bay Association in The Heron Bay at Waterstone Documents. All of the provisions of the Heron Bay Declaration and Bylaws which grant powers to the Heron Bay Association are incorporated into these Articles.

C. The Heron Bay Association shall have all of the powers reasonably necessary to implement the purposes of the Heron Bay Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Heron Bay at Waterstone Documents.

2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Heron Bay Association Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Community Expenses and other costs defined in the Heron Bay Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Heron Bay Association.

4. To own, maintain, repair, replace, operate and convey the Heron Bay Association Property in accordance with the Heron Bay at Waterstone Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the Heron Bay at Waterstone Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Heron Bay Association Property and to enter into any other agreements consistent with the purposes of the Heron Bay Association, including, but not limited to, agreements with respect to professional management of the Heron Bay Association Property and to delegate to such professional manager certain powers and duties of the Heron Bay Association.

7. To enter into the Heron Bay Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Heron Bay Association mandate to keep and maintain Heron Bay at Waterstone in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at Heron Bay at Waterstone.

9. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Heron Bay Association Property in accordance with the Heron Bay Declaration and, as security for any such loan, to collaterally assign the Heron Bay Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

10. Notwithstanding anything contained herein to the contrary, the Heron Bay Association shall be required to obtain the approval of seventy-five percent (75%) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Heron Bay Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to The Heron Bay at Waterstone Documents;

(c) the enforcement of any applicable use and occupancy restrictions contained in The Heron Bay at Waterstone Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Heron Bay Association Property or to

Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of seventy-five (75%) of the Members); or

- (e) filing a compulsory counterclaim.

ARTICLE V  
MEMBERS AND VOTING

The qualification of Members of the Heron Bay Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Heron Bay Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Homes until each such Home is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Homes owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Heron Bay Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Home as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Home is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Home shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Heron Bay Association.

D. The Heron Bay Association shall have two (2) classes of voting membership:

1. "Class A Members" shall be all Members, with the exception of Declarant while Declarant is a Class B Member, each of whom shall be entitled to one (1) vote for each Home owned.

2. "Class B Members" shall be Declarant, who shall be entitled to three times the total number of votes of the Class A Members plus one. Class B membership shall cease and be converted to Class A membership upon the earlier to occur of the following events ("Turnover Date"):

(i) Three (3) months after the conveyance of ninety percent (90%) of the Homes by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County; or

(ii) At such time as Declarant shall designate in writing to the Heron Bay Association.

On the Turnover Date, Class A Members, including Declarant, shall assume control of the Heron Bay Association and elect not less than a majority of the Board.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Homes, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Heron Bay at Waterstone Documents.

F. No Member may assign, hypothecate or transfer in any manner his or her membership in the Heron Bay Association except as an appurtenance to his or her Home.

G. Any Member who conveys or loses title to a Home by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Home and shall lose all rights and privileges of a Member resulting from ownership of such Home.

H. There shall be only one (1) vote for each Home, except for the Class B Members as set forth herein. If there is more than one Member with respect to a Home as a result of the fee interest in such Home being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Home owned by more than one natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Home, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Owner"), and filed with the Secretary of the Heron Bay Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Heron Bay Association, the vote of such Home shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Home is owned by a husband and wife they may, but shall not be required to, designate a Voting Owner. In the event a certificate designating a Voting Owner is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Home owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.



2. When only one (1) spouse is present at a meeting, the person present may cast the Home vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Heron Bay Association by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Home vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Heron Bay Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Heron Bay Association or the designation of a different Proxy by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

#### ARTICLE VI TERM

The term for which the Heron Bay Association is to exist shall be perpetual. In the event of dissolution of the Heron Bay Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Heron Bay Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Heron Bay Association and its properties in the place and stead of the dissolved Heron Bay Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Heron Bay Association and its properties.

#### ARTICLE VII INCORPORATOR

The name and address of the Incorporator of these Articles is as follows:

John Olinger  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, FL 33418

#### ARTICLE VIII OFFICERS

The affairs of the Heron Bay Association shall be managed by the President of the Heron Bay Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the

Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members. After the Turnover Date of the Master Association, the President, or his delegate, shall serve as one of the Heron Bay Association's Voting Representatives, which Voting Representative shall act as a Director of the Master Association Board. The Board shall elect a second Voting Representative from the remaining Directors, which Voting Representative shall also act as a Director of the Master Association Board. The Board may also elect replacement Voting Representatives to fill any vacancy, temporary or permanent, from time to time, should either Voting Representative be unable to serve as such.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX  
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	-	Rick Greene
Vice President	-	David Koon
Secretary/Treasurer	-	John Olinger

ARTICLE X  
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Heron Bay Association ("First Board") shall be three (3). The number of Directors elected by the Members at the "Initial Election Meeting" (as hereinafter defined) shall be not less than five (5) nor more than seven (7), as the Board shall from time to time determine prior to each meeting at which Directors are to be elected. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

NAMES

ADDRESSES

Rick Greene

Divosta Homes, L.P.  
4500 PGA Blvd, Suite 400  
Palm Beach Gardens, FL 33418

David Koon

Divosta Homes, L.P.  
4500 PGA Blvd, Suite 400  
Palm Beach Gardens, FL 33418

John Olinger

Divosta Homes, L.P.  
4500 PGA Blvd, Suite 400  
Palm Beach Gardens, FL 33418

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Upon the Turnover Date, the Members (including Declarant) shall be entitled to elect all the Directors. The election shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

D. The Board shall continue to be so designated and elected, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

E. A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

F. The Initial Election Meeting shall be called by the Heron Bay Association, through the Board, within sixty (60) days after the Members other than Declarant are entitled to elect a majority of Directors as provided in Paragraph C hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days' notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Members.

G. At the Initial Election Meeting, a "staggered" term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and

2. the remaining Directors' terms of office shall be established at one (1) year.

At each Annual Members' Meeting thereafter, as many Directors of the Heron Bay Association shall be elected as there are Directors whose regular term of office expires at such time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

H. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Heron Bay Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Heron Bay Association or the Members had, now have or will have or which any personal representative, successor, heir or assign of the Heron Bay Association or the Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

#### ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Heron Bay Association shall be indemnified by the Heron Bay Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him or her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he or she becomes involved by reason of his/her being or having been a Director or officer of the Heron Bay Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Heron Bay Association, and in the event a Director or officer admits that he or she is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Heron Bay Association may be entitled under statute or common law.

ARTICLE XII  
BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII  
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by the incorporator of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the total voting interests present at such meeting.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home; and (ii) any "Institutional Mortgagee" (as such term is defined in the Heron Bay Declaration) without the prior written consent of such Institutional Mortgagee.

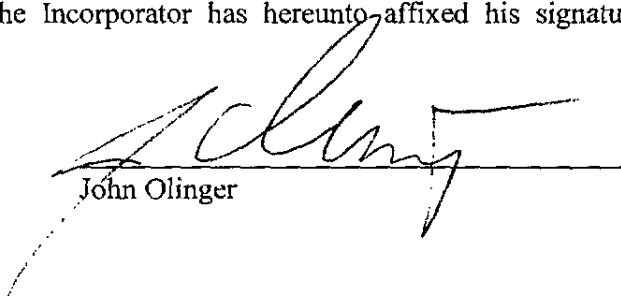
F. Notwithstanding the foregoing provisions of this Article XIII, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X hereof, nor shall any amendment be adopted or become effective without the prior written consent of Declarant.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

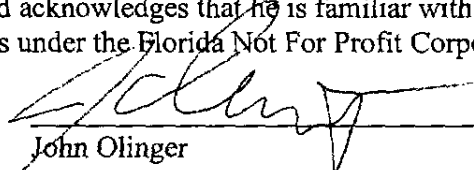
ARTICLE XIV  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Heron Bay Association is 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418 and the initial registered agent of the Heron Bay Association at that address shall be John Olinger.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature, this  
6 day of February, 2006.

  
John Olinger

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

  
John Olinger

Dated: 2/06, 2006

Heron Bay at Waterstone Articles of Incorporation-final.DOC

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