

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2010, Legislative Day No. 12

Resolution No. 52-10

Mr. John Olszewski, Sr., Chairman
By Request of County Executive

By the County Council, July 6, 2010

A RESOLUTION authorizing and providing for the issuance and sale by Baltimore County, Maryland, pursuant to the Maryland Economic Development Revenue Bond Act (the "Act"), as its limited obligations and not upon its faith and credit or pledge of its taxing power, of one or more series of its bonds (as defined in the Act) in an amount not to exceed \$10,000,000 for the purpose of financing, refinancing and reimbursing Home Run Lodging, LLC, a Maryland limited liability company (the "Facility Applicant") for all or a portion of the costs of a certain facility (as defined in the Act), such facility and the financing, refinancing and reimbursing to consist of and include: (A) the acquisition, construction, improvement and equipping of a 105 room, 5 story hotel to be located on land owned by or leased to the Facility Applicant at 10521 Red Run Boulevard, Owings Mills, Maryland; (B) certain working capital expenditures; (C) capitalized interest; (D) any required deposit to a debt service reserve fund or other reserve fund; (E) all or a portion of the issuance costs; and (F) the costs of any bond insurance or other credit enhancement, if necessary and as permitted by the Act; such facility to be used by the Facility Applicant in its business of hotel ownership and operation; reserving in Baltimore County, Maryland certain rights concerning the issuance of such bonds; generally describing the public purposes to be served and the financing transaction to be accomplished; specifying the maximum aggregate principal amount of such bonds that may be issued; authorizing the County Executive to specify, prescribe, determine, provide for or approve certain matters, details, forms, documents or procedures appropriate to the authorization, sale, security, issuance, delivery, or payment of or for such bonds; and specifying and describing various matters in connection therewith, as required or permitted by the Act.

RECITALS

The Maryland Economic Development Revenue Bond Act, Title 12, Subtitle 1, Sections 12-101 through 12-118 of the Economic Development Article of the Annotated Code of Maryland, as amended (the “Act”), provides that in order to accomplish the legislative policy of the Act, in addition to whatever powers it may have and notwithstanding any limitation of law, any public body (as defined in the Act) may issue and sell its bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, for the purposes of financing or refinancing any costs of the acquisition and improvement (as defined in the Act) of one or more facilities (as defined in the Act) for one or more facility users (as defined in the Act) or of refunding outstanding bonds, including the necessary expenses of preparing, printing, selling, and issuing those bonds, the funding of reserves, and the payment of interest with respect to financing and refinancing such acquisition and improvement in such amounts, or for such period, as the public body deems reasonable.

The General Assembly of the State of Maryland (the “State”), in the Act, declares its legislative purpose to:

- (1) relieve conditions of unemployment in the State;
- (2) encourage the increase of industry and commerce and a balanced economy in the State;
- (3) assist in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State through, among other things, the development of ports, the control or abatement of environmental pollution, and the use and disposal of waste;
- (4) promote economic development;
- (5) protect natural resources and encourage resource recovery; and
- (6) promote the health, welfare, and safety of the residents of the State.

The Act provides that a public body may accomplish the acquisition and improvement of one or more facilities from the proceeds of the sale of its bonds by one or more of the following methods:

- (1) by leasing the facility to a facility user;
- (2) by selling the facility to a facility user under an installment sale agreement;
- (3) by lending bond proceeds to a facility user to be used to finance a facility; or
- (4) in any other manner that the public body considers appropriate to accomplish the legislative purposes of the Act.

The Act provides that, for each issue of its bonds, the legislative body of a county or municipal corporation shall adopt a resolution that:

- (1) specifies and describes the facility;

- (2) generally describes the public purpose to be served and the financing transaction;
- (3) specifies the maximum principal amount of the bonds that may be issued; and
- (4) imposes terms or conditions on the issuance and sale of bonds it considers appropriate.

The Act provides that the legislative body of a county or municipal corporation, by resolution, may:

- (1) specify, determine, prescribe, and approve matters, documents, and procedures that relate to the authorization, sale, security, issuance, delivery, and payment of and for the bonds;
- (2) create security for the bonds;
- (3) provide for the administration of bond issues through trust or other agreements with a bank or trust company that cover a countersignature on a bond, the delivery of a bond, or the security for a bond; and
- (4) take other action it considers appropriate concerning the bonds.

The Act provides that the legislative body of a county or municipal corporation may authorize a designee to exercise the powers provided under Section 12-111(a) of the Act, which designee may be the chief executive, who shall act by executive order or otherwise, or any other appropriate administrative officer, who shall act by order or otherwise with the approval of the chief executive.

Baltimore County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the “State”) and a public body (as defined in the Act) (the “County”), has received a letter of intent from Home Run Lodging, LLC, a Maryland limited liability company (the “Facility Applicant”), a copy of which is attached hereto as Exhibit A and made a part hereof (the “Letter of Intent”), pursuant to which the Facility Applicant has requested the County to participate in the financing, refinancing and reimbursement of the Facility Applicant for certain costs hereinafter described by the issuance and sale by the County of one or more series of its revenue bonds, in an aggregate principal amount of such series not to exceed \$10,000,000, pursuant to and in accordance with the Act for the purposes of financing, refinancing or reimbursing the Facility Applicant for all or a portion of the costs of the following (collectively, the “Project”): (A) the acquisition, construction, improvement and equipping of a 105 room, 5 story hotel to be located on property to be owned by or leased to the Facility Applicant at or in the vicinity of 10521 Red Run Boulevard, Owings Mills, Maryland; (B) certain working capital expenditures; (C) capitalized interest; (D) any required deposit to a debt service reserve fund or other reserve fund; (E) all or a portion of the issuance costs; and (F) the costs of any bond insurance or other credit enhancement, all as permitted by the Act. The Project involves the acquisition, construction, improvement, equipping and operation of a 105 room, 5 story hotel by the Facility Applicant in its business of providing lodging and hospitality services to business persons, tourists and others.

The Letter of Intent further expresses the Facility Applicant's intention that the interest payable on such bonds shall be excludable from the gross income of the owners of such bonds for purposes of federal income taxation pursuant to Section 103 of the Internal Revenue Code of 1986, as amended and the Income Tax Regulations thereunder (collectively, the "Internal Revenue Code"), and requests the County to designate such bonds as "recovery zone facility bonds" under Section 103 of the Internal Revenue Code (but the Facility Applicant recognizes that the County can give no assurance and makes no representation that the interest on the Bonds, if issued, will be tax-exempt). In addition, the Letter of Intent contains acknowledgments by the Facility Applicant that the County reserves certain rights concerning the issuance of such bonds as provided in Section 5 hereof and that under existing provisions of the Internal Revenue Code, "recovery zone facility bonds" must be issued not later than December 31, 2010.

The County, based upon the findings and determinations and subject to the reservation of rights set forth below, has determined to participate in the financing, refinancing or reimbursing the Facility Applicant for the costs of the Project (to the fullest extent permitted by the Act) by the issuance, sale and delivery, at any time or from time to time and in one or more series, of its revenue bonds, pursuant to this Resolution, in the maximum aggregate principal amount of \$10,000,000 (the "Bonds"), such proceeds to be applied in accordance with the provisions of the Act and this Resolution.

NOW THEREFORE, IN ACCORDANCE WITH THE ACT:

SECTION 1. BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That words and terms used in this Resolution (including the Recitals) that are defined in the Act shall have the meanings indicated in the Act unless the context clearly requires otherwise.

SECTION 2. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That acting pursuant to the Act, it is hereby found and determined as follows:

- (1) The County is a "public body" and a "county" within the meaning of the Act.
- (2) The Facility Applicant is a "facility applicant" and a "facility user" within the meaning of the Act.
- (3) The Project is a "facility" within the meaning of the Act.
- (4) The Letter of Intent is a "letter of intent" within the meaning of the Act.
- (5) The County Executive is the "chief executive" within the meaning of the Act.
- (6) The issuance and sale of the Bonds by the County, pursuant to the Act, in order to make the

proceeds thereof available to the Facility Applicant for the sole and exclusive purpose of financing, refinancing or reimbursing the Facility Applicant for the costs of the Project (to the fullest extent permitted by the Act) will facilitate and expedite the Project.

(7) The financing, refinancing or reimbursing the Facility Applicant for the costs of the Project as provided in this Resolution will promote the declared legislative purpose of the Act to (a) relieve conditions of unemployment in the State; (b) encourage the increase of industry and commerce and a balanced economy in the State; (c) assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State; (d) promote economic development; and (e) generally promote the health, welfare and safety of the residents of the State and the County.

(8) The Bonds of any series and the interest thereon are limited obligations of the County the principal of, premium, if any, and interest on which are payable solely from Loan (as defined herein) repayments (both principal and interest) made to the County by the Facility Applicant pursuant to the terms of the Loan Agreement (as defined herein), as the same may be amended from time to time, or from other moneys paid by or on behalf of the Borrower to the County in connection with the financing, refinancing or reimbursing the Facility Applicant for the costs of the Project. The Bonds of any series and the principal thereof and premium (if any), and interest thereon are not debts or charges against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and may not give rise to any pecuniary liability of the County under either the Act or the County Charter.

(9) Neither the proceeds of the Bonds of any series nor the payments of the principal of and premium, if any, and interest on the Bonds of any series will be commingled with the County's funds or will be subject to the absolute control of the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the County to insure that the proceeds of the Bonds of any series are used to accomplish the public purposes of the Act and this Resolution. The transactions provided for hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use. The Project does not constitute a capital project of the County within the meaning of any statutory or charter provision. The public purposes expressed in the Act are to be achieved by facilitating the financing, refinancing or reimbursing the Facility Applicant for the costs of the Project.

SECTION 3. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That this Resolution among other things, evidences the present intent of the County to issue, sell, and deliver the Bonds in accordance with the terms and provisions of this

Resolution. The County Executive is hereby authorized, empowered, and directed to accept the Letter of Intent on behalf of the County in order to further evidence the present intent of the County to issue and sell the Bonds in accordance with the terms and provisions of this Resolution. The County acknowledges that the Facility Applicant may proceed with the acquisition and improvement of the Project prior to the issuance of the Bonds. The County and the Facility Applicant contemplate that, upon the effectiveness of this Resolution, the Facility Applicant may commence the financing, refinancing or reimbursing the Facility Applicant for the costs of the Project prior to the issuance, sale and delivery of the Bonds, and that costs of the Project incurred prior to the effectiveness of this Resolution may be financed, refinanced or reimbursed with the proceeds of the Bonds, to the extent permitted by law, including, without limitation, the applicable provisions of the Internal Revenue Code. The determinations in this section are intended (in addition to any other declaration of official intent heretofore executed by any official of the County) to constitute the official intent on behalf of the County with respect to reimbursement of capital expenditures with respect to the Project in order to comply with the requirements of Section 1.150-2 of the Income Tax Regulations of the United States Treasury Department.

SECTION 4. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County is hereby authorized to issue, sell and deliver the Bonds, at any time or from time to time and in one or more series, in the maximum aggregate principal amount of \$10,000,000, subject to the provisions of this Resolution.

The County will lend the proceeds of the Bonds of any series to the Facility Applicant (the “Loan”) pursuant to the terms and provisions of a loan agreement (within the meaning of the Act and, hereinafter, the “Loan Agreement”), such proceeds to be used by the Facility Applicant for the sole and exclusive purpose of financing, refinancing or reimbursing the Facility Applicant for the costs of the Project (to the fullest extent permitted by the Act). The Loan may be accomplished through the issuance and delivery of the Bonds in exchange for evidence of indebtedness of the Facility Applicant, the proceeds of which were used for the sole and exclusive purpose of financing and refinancing the costs (to the fullest extent permitted by the Act) of the financing, refinancing or reimbursing the Facility Applicant for the costs of the Project.

The Loan Agreement entered into with respect to the Bonds of any series will require that (1) the proceeds of the Bonds of such series be used solely to financing, refinancing or reimbursing the Facility Applicant for the costs of the Project (to the fullest extent permitted by the Act and the Internal Revenue Code) and the necessary expenses as permitted by the Act and the Internal Revenue Code, and (2) the Facility Applicant make payments which will be sufficient to enable the County to pay the principal of and interest

and premium, if any, on the Bonds of such series when and as the same become due and payable.

The authority to issue the Bonds is intended to and shall include the authority to issue refunding revenue bonds. References herein to the “Bonds” shall include refunding revenue bonds where appropriate. In the event that any refunding revenue bonds are issued pursuant to this Resolution, the outstanding principal amount of any “refunded bonds” (as hereinafter defined) shall not be taken into account in determining the aggregate principal amount of Bonds issued, sold and delivered hereunder. The term “refunded bonds” means any Bonds (i) for the payment of which (both principal and interest) provision has been made from the proceeds (including any earnings on the investment thereof) of Bonds issued pursuant to this Resolution or (ii) which have been paid from such proceeds, whether such provision for payment, or such payment, is made at or prior to the maturity of such Bonds.

SECTION 5. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County reserves the right, in its sole and absolute discretion, to take any actions deemed necessary by the County in order to insure that the County (a) complies with present federal and State laws and any pending or future federal or State legislation, whether proposed or enacted, which may affect or restrict the issuance of its bonds, and (b) issues its bonds within the limits imposed by such present laws or any such pending or future legislation or any future local laws to finance those facilities which the County determines, in its sole and absolute discretion, will provide the greatest benefit to the residents of the County and the State.

In particular, the County reserves the right to choose to issue its bonds (within the meaning of the Act and any present or future State or local laws) for facilities other than the Project, and in such order of priority as it may determine in its sole and absolute discretion.

Pursuant to the provisions of this Section 5, the County reserves the right in its sole and absolute discretion, to, among other things, (1) never issue the Bonds, (2) issue only a portion of the aggregate principal amount of the Bonds required by the Facility Applicant, (3) restrict the use of the proceeds of the Bonds, (4) delay indefinitely the issuance of the Bonds, or (5) take any other actions deemed necessary by the County, in its sole discretion, in order to ensure that the County achieves the goals set forth in the Act and in this Resolution.

SECTION 6. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the Bonds authorized by this Resolution may be issued at any time or from time to time and in one or more series, and each series of the Bonds shall be identified by the

year of issue or by some other or additional appropriate designation; provided, however, except as otherwise provided in Section 5 of this Resolution, that the Bonds shall be issued and delivered within one year of the date of enactment of this Resolution, unless the Bonds are issued within any time period specified in any time extension for issuance of the Bonds provided pursuant to a resolution of the County Council supplemental to this Resolution.

SECTION 7. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the Bonds shall be executed in the name of the County and on its behalf by the County Executive, by his or her manual or facsimile signature, and by the Director of Budget and Finance, by his or her manual or facsimile signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Executive Secretary to the County Executive or the Secretary to the County Council, by his or her manual or facsimile signature. The signatures of the County Executive, the Director of Budget and Finance, the Secretary to the County Council and the Executive Secretary to the County Executive on the Bonds may be executed by facsimile, provided that at least one signature required or permitted to be placed on the Bonds is manually subscribed. If the Bonds are required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, any other signature required or permitted to be placed on the Bonds may be executed by facsimile.

The County Executive, the Director of Budget and Finance, the Secretary to the County Council and the Executive Secretary to the County Executive are hereby authorized and empowered to do all such acts and things and to execute, acknowledge, seal and deliver such documents and certificates, including (without limitation) the Loan Agreement, as the County Executive may determine to be necessary to carry out and comply with the provisions of this Resolution, subject to the limitations set forth in the Act and any limitations set forth in this Resolution. If any officer whose signature or a facsimile thereof appears on the Bonds or on any of the aforesaid documents ceases to be such officer before the delivery of the Bonds or any of the aforesaid documents, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

SECTION 8. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That as permitted by the Act, the Bonds of any series shall be placed or sold at private (negotiated) sale and at par, unless the County Executive deems it to be in the best interests of the County, with the consent of the Facility Applicant, to sell the Bonds of any series at public

sale or above or below par, for cash or other consideration with the consent of the Facility Applicant, in either or both of which events the Bonds of such series shall be sold in such manner and upon such terms as the County Executive deems to be in the best interest of the County, with the consent of the Facility Applicant.

SECTION 9. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That prior to the issuance, sale and delivery of the Bonds of any series, the County Executive, by executive order or otherwise, may approve the issuance of the Bonds and:

(1) shall prescribe the form, tenor, terms and conditions of and security for the Bonds of such series;

(2) shall prescribe the principal amount, rate or rates of interest, method of determining the rates of interest, denomination or denominations, date, maturity or maturities (within the limits prescribed by the Act and the Internal Revenue Code), and the time and place or places of payment of the Bonds of such series, and the terms and conditions and details under which the Bonds of such series may be called for redemption prior to their stated maturity or maturities;

(3) if necessary, may appoint a trustee, a bond registrar and a paying agent or agents for the Bonds of such series;

(4) shall approve the form and contents of, and execute and deliver (where applicable), the Loan Agreement, and such other documents, including (without limitation) trust agreements, assignments, mortgages, deeds of trust, guaranties and security instruments to which the County is a party and which may be necessary or desirable to effectuate the issuance, sale and delivery of the Bonds of such series;

(5) may prepare and distribute, in conjunction with representatives of the Facility Applicant and the prospective purchasers of or underwriters or placement agents for the Bonds of any series, both a preliminary and a final official statement, offering memorandum or other similar document in connection with the sale or placement of the Bonds of any series, if determined to be necessary or desirable in connection with the sale or placement of the Bonds of such series, provided, however, that any such preliminary official statement, offering memorandum or other similar document shall be clearly marked to indicate that it is subject to completion and amendment;

(6) may execute and deliver a contract or contracts for the purchase and sale or placement of the Bonds of any series (or any portion thereof) in form and content satisfactory to the County Executive;

(7) shall determine the time of execution, issuance, sale and delivery of the Bonds of such series and prescribe any and all other details of the Bonds of such series;

(8) shall determine the method, and shall approve the terms, of the sale of the Bonds of such

series, as provided in Section 8 of this Resolution, which may include the issuance and delivery of the Bonds in exchange for evidence of indebtedness of the Facility Applicant;

(9) shall provide for the direct payment by the Facility Applicant of all costs, fees and expenses incurred by or on behalf of the County in connection with the Bonds (whether before, concurrent with or after the issuance of the Bonds), including but not limited to all costs, fees and expenses incurred in connection with the issuance, sale and delivery of the Bonds of such series, including (without limitation) costs of printing (if any) and issuing the Bonds of such series, legal fees and expenses (including the fees and expenses of the County's counsel and bond counsel) and compensation to any person (other than full-time employees of the County) performing services by or on behalf of the County in connection therewith;

(10) may provide for the issuance and sale (subject to the passage at the time of any appropriate resolution authorizing the same) of one or more series of additional bonds (which may be on a parity with, or subordinate to, the Bonds) and one or more series of refunding bonds;

(11) may provide for the funding of reserves for the Bonds of such series and for the payment of interest on the Bonds of such series in such amounts and for such period as the County Executive deems reasonable; and

(12) may specify, prescribe, determine, provide for or approve such other matters, details, forms, documents or procedures, make any necessary elections or designations required with respect to the Bonds or the proceeds thereof (including, without limitation, designation of the Bonds as "recovery zone facility bonds" under the Internal Revenue Code), and do any and all things necessary, proper or expedient in connection with the authorization, sale, security, issuance, delivery or payment of or for the Bonds of such series and in order to accomplish the legislative policy of the Act and the public purposes of this Resolution, subject to the limitations set forth in the Act and any limitations prescribed by this Resolution.

The County Executive is hereby authorized to prescribe procedures to facilitate the prompt determination and approval of one or more of the matters set forth above. Such procedures may include telephonic approval and subsequent written confirmation by facsimile transmission or otherwise of one or more of such matters by a designated officer of the County within guidelines or parameters prescribed by the County Executive. The County Executive is further authorized (i) to establish procedures for the utilization of variable or floating rates of interest, (ii) to enter into arrangements with a bank or other appropriate institution to facilitate the purchase, repurchase, sale, transfer or payment of Bonds, including (without limitation) the use of general or standby letters of credit, revolving credit facilities, repurchase agreements or other similar arrangements and (iii) to take such actions as may be necessary to implement a program for the issuance of Bonds in the nature of commercial paper, demand notes or floating rate obligations.

Orders issued pursuant to this Resolution shall be deemed to be administrative in nature and shall be effective upon the effective date specified therein.

SECTION 10. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That before or after the issuance, sale and delivery of the Bonds of any series, regardless of the date on which such Bonds are issued, the County Executive is hereby authorized and empowered, by executive order or otherwise, to supplement the executive order provided for by Section 9 of this Resolution and thereby approve on behalf of the County any amendments or supplements to or substitutes for the forms and provisions of the Bonds, the Loan Agreement, any trust agreement or similar agreement and all other documents executed and delivered on behalf of the County in connection with the issuance, sale and delivery of the Bonds pursuant to the provisions of such documents, provided that (1) each such supplemental executive order or orders and each amendment, supplement or substitute to such document shall be in accordance with the provisions of all applicable laws and regulations, the provisions of the Act, this Resolution, and the documents executed and delivered in connection with the Bonds and then in effect and (2) all of the foregoing shall be subject to any approval by the County Council as may be required pursuant to federal tax law.

SECTION 11. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the provisions of this Resolution are severable, and if any provision, sentence, clause, section or part hereof is held to be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Resolution or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Resolution would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Resolution or any part hereof is inapplicable had been specifically exempted herefrom.

SECTION 12. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That the County hereby approves Abramoff, Neuberger and Linder, LLP to act as Bond Counsel and the County's counsel in connection with the issuance and sale of the Bonds, compliance with the Internal Revenue Code and applicable Treasury Regulations and the other transactions contemplated by the Resolution.

SECTION 13. AND BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That this Resolution shall take effect upon adoption by the County Council and the subsequent approval by the County Executive.

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