

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

BORDERS GROUP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 11-10614 (MG)

(Jointly Administered)

ORDER AUTHORIZING DEBTORS TO TERMINATE UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY, STORE NO. 356 (SAN JUAN, PUERTO RICO)

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for an order pursuant to sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) seeking (i) approval of the bidding and auction procedures for the sales of nonresidential real property leases, (ii) authority to conduct the sales (the “Sales”) of such leases free and clear of all interests, including liens, claims, and encumbrances (collectively, the “Interests”) and to assume and assign or to terminate leases and (iii) related relief; and upon the record of the hearing for approval of bidding procedures conducted on August 10, 2011, and the Court’s Order,³ dated August 11, 2011, approving bidding and auction procedures (the “Bidding Procedures”) in connection with the Debtors’ efforts to identify the highest and best bidder in the Sales; and upon the results of the bidding process; and upon the record of the hearing held on November 29, 2011 (the “Lease Termination Hearing”); and upon the Debtors’ revisions to the proposed form of this Order made based on upon the Court’s comments at the Lease Termination

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

² All terms not otherwise defined herein shall have the meanings assigned to them in the Motion.

³ [Docket No. 1519].

Hearing, which revisions are consented to by the Landlord; and upon the consents confirmed below by The Washington Advisory Group and DSW Shoe Warehouse, Inc. to the releases set forth in Paragraph 5 of this Order; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion having been given and it appearing that no other notice need be given; and the Court having heard any objections made to the relief sought in the Motion; and after due deliberation and sufficient cause therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The relief granted herein is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

B. The notice of the Motion and the Lease Termination Hearing given by the Debtors constitutes due and sufficient notice thereof.

C. The Debtors have provided good and sufficient reasons and have demonstrated a compelling and sound business justification for the Court to approve the termination of the nonresidential real property lease identified in **Exhibit 1** hereto (the "Lease") with the party identified therein (the "Landlord") on the terms and conditions set forth in the termination agreement attached hereto as **Exhibit 2** (the "Termination Agreement").

D. The Debtors and their professionals marketed the Lease and conducted a sale process as set forth in and in accordance with the Motion. Based upon the record of these

proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Lease.

E. The consideration to be provided by the Landlord under the Termination Agreement is the highest and best offer received by the Debtors for the Lease from a Qualified Bidder (as defined in the Bidding Procedures), and, except for the Landlord, no parties have submitted Qualified Bids (as defined in the Bidding Procedures) for the Lease.

F. The Debtors and the Landlord have resolved the Landlord's objection [Docket No. 1797] to the auction for the Lease conducted on September 13, 2011 (the "Auction"), and, at such time as this Order becomes final and non-appealable, that objection shall be deemed withdrawn.

G. The Debtors have demonstrated good, sufficient, and sound business purpose and justification for termination of the Lease on the terms set forth in the Termination Agreement, all of which is in the best interests of the Debtors, their estates, and their creditors.

H. As set forth in the *Notice of (I) Filing of Proposed Order Approving Termination Agreement for Store No. 356 (San Juan, Puerto Rico) and (II) Hearing Regarding Same*, the Creditors' Committee reviewed and approved the proposed form of this Order and the Termination Agreement. On or about October 31, 2011, the Debtors served a copy of the proposed form of this Order to The Washington Advisory Group and DSW Shoe Warehouse, Inc., requested that any objections to entry of this Order be raised on or before November 14, 2011, and received no such objections.

I. Based on the foregoing findings of fact and conclusions of law,

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.

2. All objections with regard to the relief sought in the Motion as it pertains to the Lease that have not been withdrawn, waived, or settled, are overruled on the merits.

3. Pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized to terminate the Lease on the terms and conditions set forth in the Termination Agreement, which termination shall be effective as of the Termination Date (as defined in the Termination Agreement), and the Landlord and the Debtors are granted all necessary and appropriate relief under the Bankruptcy Code (subject to section 362 of the Bankruptcy Code) to implement the transactions contemplated by the Termination Agreement.

4. Within five (5) business days of the Termination Date, the Landlord shall pay a lease termination fee of \$425,000 to the Debtors as provided in the Termination Agreement, and the Landlord shall have 30 days from the date of entry of this Order to file or amend its proof of claim in the Borders, Inc. case to assert general unsecured claims of the Landlord, if any, that are reserved to the Landlord under the Termination Agreement.

5. Effective as of the date hereof (and in addition to the releases between the Landlord and the Debtors set forth in the Termination Agreement), each of (i) the Debtors, (ii) the Committee, (iii) any subsequent trustee or other representative of the Debtors, the bankruptcy estate of the Debtors or the Committee, (iv) The Washington Advisory Group and (v) DSW Shoe Warehouse, Inc., shall be deemed to have released and discharged any claims to the Lease and any and all past, present and future claims, actions or causes of action against the Landlord, whether known or unknown, fixed or contingent, arising out of, or related to, the Auction and the bidding process related to the sale of the Lease.

6. This Order shall be effective and enforceable immediately upon entry and shall not be stayed pursuant to Rules 6004(h).

7. To the extent that any provisions in the Termination Agreement conflict with this Order, the Order shall govern; provided, however, that in the event the Termination Agreement does not go effective pursuant to the terms therein, then this Order shall be deemed null and void and of no further force or effect.

8. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order. The Landlord has acknowledged and consented to such jurisdiction, has waived any right to trial by jury in connection with any disputes related to the Auction, the Termination Agreement or this Order and is deemed to have submitted itself to the jurisdiction of the Bankruptcy Court for purposes of determination of any such disputes.

Dated: December 14, 2011
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

CONSENTED TO AS TO PARAGRAPH 5 BY:

THE WASHINGTON ADVISORY GROUP

By: /s/ Amaury Rivera

Its: President

DSW SHOE WAREHOUSE, INC.

By: /s/ Steven Ramey

Its: Vice President

EXHIBIT 1

Store Number	City, State	Landlord
356	San Juan, Puerto Rico	Plaza Las Americas, Inc.

EXHIBIT 2

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "Agreement") is made this 27th day of October, 2011, by and between PLAZA LAS AMERICAS, INC., a Puerto Rico corporation ("Landlord"), and BORDERS, INC., a Colorado corporation, Debtor in Possession ("Tenant"), with reference to the following facts:

RECITALS:

- A. Landlord and Tenant entered into that certain Lease Agreement dated December 30, 1998 (as amended, the "Lease"), relating to Store #356 (the "Premises") located at the Plaza Las Americas Shopping Center, 525 F.D. Roosevelt Boulevard, Hato Rey, Puerto Rico.
- B. Tenant and affiliated entities (collectively "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on February 16, 2011 ("Petition Date"), in jointly administered cases entitled In re Borders Group, Inc., et al., Case No. 11-10614 (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.
- C. Tenant has vacated and surrendered the Premises as of September 19, 2011 (the "Surrender Date"), but has not formally rejected the Lease.
- D. Landlord and Tenant have agreed to terminate the Lease, subject to and upon the terms as more particularly provided in this Agreement.

NOW, THEREFORE, for and in consideration of and the mutual promises, covenants, and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. Termination of Lease.

- (a) Tenant shall permanently and irrevocably relinquish to Landlord all of its right, title and interest in and to the Lease as of the date of satisfaction of all the conditions set forth in Paragraph 3 below (the "Termination Date"), and the Lease shall be deemed terminated as of the Termination Date. Debtors, on behalf of Tenant, have previously delivered to Landlord (i) any keys or keypad access codes to the Premises, and (ii) contact information and/or instructions with respect to any alarm and energy management system serving the Premises, and Tenant agrees that Landlord has the right to enter upon the Premises. From and after the Termination Date, Tenant's rights in the Lease shall be as fully extinguished as if that were the date provided for the expiration of the term of the Lease.
- (b) Tenant hereby acknowledges and agrees that, with respect to the Auction (as that term is defined in the Lease Sale Bidding Procedures (the "Bidding Procedures") approved by the Bankruptcy Court pursuant to that Order Pursuant to Sections 105, 363, and 365 (I) Approving Bidding And Auction Procedures For Sale Of Unexpired Nonresidential Real Property Leases, and (II) Setting Sale Hearing Dates And Objection Deadlines entered on August 11, 2011 [Docket No. 1519]) held on September 13, 2011, for the Lease (the

“PLA Auction”), Landlord’s position is that neither Washington Advisory Group nor DSW Shoe Warehouse, Inc. (each an “Other Bidder” and, collectively, the “Other Bidders”) was a Qualified Bidder (as that term is defined in the Bidding Procedures), and Tenant will use its best efforts to oppose on that basis any claims by either of the Other Bidders to any rights to the Lease or otherwise against Landlord arising out of the PLA Auction.

- (c) If, on or before January 12, 2012, the Bankruptcy Court Order (as defined in Paragraph 3 below) is not entered in substantially the form attached hereto as Exhibit B for any reason or does not become final and unappealable, (i) Landlord shall have no obligation to make the Termination Payment (as defined in Paragraph 2 below), (ii) the Releases set forth in Paragraphs 5 and 6 below shall be null, void and of no further force or effect, (iii) all of the Debtors’ claims against the Landlord arising out of the PLA Auction are fully reserved and may be pursued by the Debtors, (iv) all of the Landlord’s objections to the PLA Auction, including without limitation the objections set forth in the Objection of Plaza Las Americas, Inc. to Auction Process and Request for Disqualified Bidders and Relief from Wrongfully Coerced Overbids filed in the Bankruptcy Case on September 16, 2011 [Docket No. 1797] and Landlord’s right to claim a refund of the Deposit (as defined in Paragraph 2 below) are fully reserved and may be asserted by the Landlord, and (v) all of Debtors’ and Landlord’s rights under the Bankruptcy Code, including without limitation Landlord’s rights under Section 365(d)(4) of the Bankruptcy Code, are fully reserved.

2. Termination Payment. Within five (5) business days after the Termination Date, Landlord shall pay to Tenant the total sum of Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00) (the “Termination Payment”). Landlord has heretofore made a deposit in the amount of \$102,500 with Tenant (the “Deposit”) and shall pay the balance of the Termination Payment (\$322,500) to Tenant by wire transfer in accordance with the wire transfer instructions attached hereto as Exhibit A.

3. Approval By Bankruptcy Court. Landlord’s obligation to make the Termination Payment as provided in Paragraph 2 above and the Releases as provided in Paragraphs 5 and 6 below are conditioned on, and shall only take effect upon, the entry of a final, non-appealable Order in the Bankruptcy Case authorizing the termination of the Lease on the terms set forth in this Agreement and approving the Termination Payment on or before January 12, 2012 (the “Bankruptcy Court Order”), which Order shall be substantially in the form attached hereto as Exhibit B and in all regards reasonably acceptable to the Landlord and the Debtors. The Debtors and the Landlord shall undertake good faith efforts to obtain entry of the Bankruptcy Court Order and to oppose any objections or challenges thereto.

4. Condition of Premises.

- (a) The Premises shall be in the condition otherwise prescribed in the Bankruptcy Court order dated March 16, 2011 [Docket No. 399], concerning condition of premises upon lease rejection by the Debtors (including Tenant) (the “Premises Condition”).
- (b) Any furniture, fixtures, equipment or other personal property that remains in or on the Premises following the Termination Date (“Abandoned Personal Property”) shall be deemed abandoned by Tenant pursuant to the procedures, rights and remedies set forth in the Bankruptcy Court order dated July 21, 2011 [Docket No. 1377], which, among other things, authorizes the Debtors to engage liquidators to conduct going out of business sales.

- (c) As of the Surrender Date, Tenant shall have fully and finally terminated all utilities (electricity, water and telephone) servicing the Premises and shall have paid in full all charges, fees or other amounts due to all utility providers in respect of the Premises (the "Utility Charges"), and Tenant agrees to indemnify and hold Landlord harmless from any and all such Utility Charges.
- (d) Except as otherwise provided in this Paragraph 4, Landlord accepts the Premises in its "as is" condition as of the Termination Date.

5. Release by Landlord.

- (a) Conditioned upon (i) the entry of the Bankruptcy Court Order, and (ii) Tenant's return of possession of the Premises to Landlord on or prior to the Termination Date, Landlord ("Releasing Landlord Party"), does hereby release and forever discharge Tenant and all other Debtors, and their respective bankruptcy estates, legal predecessors, successors and assigns, their officers, directors, shareholders, affiliates, representatives, agents, servants, employees and attorneys and each of them (collectively the "Released Tenant Parties"), of and from any and all claims, demands, damages, debts, liabilities, actions, and causes of action of every kind and nature whatsoever, whether now known or unknown, which the Releasing Landlord Party ever had, now has, or may hereafter have, against the Released Tenant Parties, arising out of, based upon, or relating to, any act, omission, event, matter or thing with respect to the Premises, the Lease and the auction and bidding process related thereto, save and except for (a) the rights created or reserved by this Agreement and (b) any indemnification obligations arising from third party claims asserted with respect to or arising from Tenant's obligations prior to the Termination Date for which Tenant had a duty to indemnify Landlord pursuant to the Lease and which expressly survive the expiration or termination of the Lease, including, without limitation, Tenant's indemnification obligation with respect to any Utility Charges as provided in Paragraph 4(c) above.
- (b) Landlord's release under this Paragraph 5 expressly includes any claim for unpaid rent (including but not limited to annual or base rent, percentage rent (if applicable), and additional rent) and charges under the Lease accrued or billed prior to the Petition Date, any claims for unpaid post-petition rent accruing prior to the Termination Date, any claims for base or annual rent and additional rent (including, without limitation, real estate taxes, common area maintenance or deferred maintenance charges, and any other charges due up to and including the Termination Date regardless of when billed), charges not previously paid for any time after the Petition Date (i.e., February 16, 2011), and any claim by Landlord for lease termination and rejection damages under Bankruptcy Code Section 502(b)(6).

6. Release by Tenant. Conditioned upon (i) the entry of the Bankruptcy Court Order, and (ii) the receipt by Tenant of the Termination Payment as provided herein, the Tenant and all other Debtors, and their respective bankruptcy estates, legal predecessors, successors and assigns, and each of them (collectively, "Releasing Tenant Parties") do hereby release and forever discharge Landlord and its legal successors and assigns, their officers, directors, shareholders, affiliates, representatives, agents, servants, employees and attorneys, and each of them (collectively the "Released Landlord Parties"), of and from any and all claims, demands, damages, debts, liabilities, actions, and causes of action of every kind and nature whatsoever, whether now known or unknown, which Releasing Tenant Parties ever had, now has, or may hereafter have, against the Released Landlord Parties, arising out of, based upon, or relating to, any act, omission, event, matter or thing with respect to the Premises, the Lease and the

auction and bidding process related thereto, including, but not limited to, any obligations of Landlord to refund to Tenant or credit against any base or annual rent, percentage rent (if applicable), or additional rent and charges due under the Lease or any overpayment by Tenant for any common area charges or ad valorem taxes and assessments in accordance with the annual reconciliations of such charges as set forth in the Lease, save and except for (a) the rights created or reserved by this Agreement and (b) any indemnifications obligations arising from third party claims asserted with respect to or arising from Landlord's obligations prior to the Termination Date for which Landlord had a duty to indemnify Tenant pursuant to the Lease and which expressly survive the expiration or termination of the Lease.

7. Discovery of Additional Facts or Law. Each party acknowledges that it is aware that it may hereafter discover facts or law different from or in addition to those which it now knows or believes to be true in respect to the claims, demands, damages, debts, liabilities, actions or causes of action herein released, each of the parties hereto agrees that these releases shall be and remain in effect as complete, general, and mutual releases as to the matters released, notwithstanding any such additional facts or law.

8. No Assignment. Each party represents and warrants that it has not heretofore assigned or transferred or purported to transfer or assign to any person, firm, or corporation, any claim, demand, damages, debt, liability, action, or cause of action herein released. Each party hereto agrees to indemnify and hold harmless the other parties against any claim, demand, damages, debt, liability, action, cause of action, cost or expense including, but not limited to, attorneys' fees and disbursements actually paid or incurred, arising out of or in connection with any such transfer or assignment or purported or claimed transfer or assignment.

9. Advice of Counsel. Each party represents and warrants that it has had the opportunity to consult with counsel in connection with this Agreement and all matters covered by it, and that he, she or it has been fully advised by counsel with respect to its releases, rights and obligations under this Agreement.

10. Capitalized Terms. All undefined terms when used herein shall have the same respective meanings as are given such terms in the Lease unless expressly provided otherwise in this Agreement.

11. Conflict With Lease. In the event of a conflict between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall control.

12. Further Assurances. Landlord and Tenant hereby agree to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement. In addition, Tenant shall cause any guarantor of Tenant's obligations under the Lease to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective legal successors, heirs, administrators and assigns, and each of them.

14. Headings. This section and paragraph heading contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

15. Governing Law; Jurisdiction. This Agreement shall be construed under and shall be governed by the laws of the state in which the Premises is located. Except as otherwise provided in Paragraph 1 herein, all controversies arising under or related to this Agreement shall be resolved in the Bankruptcy Case. Landlord and Tenant, and each of them, consent to personal jurisdiction before the United States Bankruptcy Court for the Southern District of New York for such purpose.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be an original, and all of which shall constitute an agreement.

17. Entire Understanding. This Agreement sets forth the entire understanding of the parties in connection with the subject matter hereof. None of the parties hereto has made any statement, representation, or warranty in connection herewith which has been relied upon by any other party hereto or which has been an inducement for any party to enter into this Agreement, except as expressly set forth herein. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the parties hereto. The parties agree that all agreements are merged into this Agreement which alone sets forth the understanding of the parties, and that they will make no claim at any time that this Agreement has been altered or modified or otherwise changed by oral communication of any kind or character.

18. Authority.

(a) Landlord warrants and represents to Tenant that: (i) Landlord is the current holder of the Landlord's interest under the Lease; (ii) each individual executing, attesting and/or delivering this Agreement on behalf of Landlord is duly authorized to do so on behalf of Landlord; (iii) this Agreement is binding upon and enforceable against Landlord and its successors and assigns; and (iv) Landlord is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located.

(b) Tenant warrants and represents to Landlord that: (i) each individual executing, attesting and/or delivering this Agreement on behalf of Tenant is duly authorized to do so on behalf of Tenant; (ii) this Agreement is binding upon and enforceable against Tenant and its successors and assigns; and (iii) Tenant is duly organized and legally existing in the state of its organization and is qualified to do business in the state in which the Premises are located.

19. Ambiguity. Each of Landlord and Tenant expressly declares that it participated in the negotiation of this Agreement, and that therefore no ambiguities in this Agreement may be resolved in favor of one party because the other party is the drafter of this Agreement.

20. Brokers. Each party represents and warrants that, except for DJM Realty, LLC (whose fee or commission shall be paid by Tenant pursuant to separate Agreement), it dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Agreement. Each party shall, and does hereby, indemnify, defend and save the other parties harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of its foregoing representation including, without limitation, reasonable attorneys' fees and expenses. The foregoing indemnity shall survive the termination of this Agreement.

21. Facsimile Signatures. The parties shall be bound by their signatures transmitted by facsimile or electronic mail (in .pdf format) as if such signatures were original "ink" signatures. They further agree to forward original "ink" signatures promptly following the transmission of facsimile or electronic signatures. This Agreement shall be enforceable with facsimile or electronic signatures if one or more parties does not deliver an original signature.

22. Consent to Jurisdiction. Each of the parties hereto irrevocably and unconditionally submits, for itself and its properties, to the exclusive jurisdiction of the Bankruptcy Court, in any action or proceeding arising out of or relating to this Agreement.


23. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT AND ASSUMPTION. EACH PARTY HERETO ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS PARAGRAPH 23.

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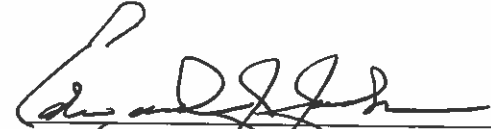
IN WITNESS WHEREOF, the parties hereto set their hands below:

LANDLORD

TENANT

 BORDERS, INC.,
a Colorado corporation, debtor-in-possession

By: _____
Name: _____
Its: _____

By: 
Name: Edward J. Tschida
Its: Vice President

IN WITNESS WHEREOF, the parties hereto set their hands below:

LANDLORD

TENANT

PLAZA LAS AMERICAS, INC.
a Puerto Rico corporation

BORDERS, INC.,
a Colorado corporation, debtor-in-possession

By: Raúl Ubarri Benítez
Name: RAUL UBARRI BENITEZ
Its: Sec.

By: _____
Name: _____
Its: _____

EXHIBIT A

TENANT'S WIRE INSTRUCTIONS

EXHIBIT B

BANKRUPTCY COURT ORDER

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