

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

August 13, 2021

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

SUBJECT: Consent to Assign Sublease Under Harbor Lease No. H-82-4,  
GKM, Inc., Lessee, Honokohau Food Service, Inc., Assignor,  
Harbor House Kona, LLC, Assignee, Kealakehe, Kailua-Kona,  
Hawaii, Tax Map Key: (3) 7-4-008:042.

APPLICANT:

GKM, Inc. a Hawaii corporation, as Sublessor, Honokohau Food Service, Inc., Assignor,  
Harbor House Kona, LLC, Assignee

LEGAL REFERENCE:

Section 171-36(a)(5) and 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honokohau Small Boat Harbor situated at Kealakehe,  
Kailua-Kona, Hawaii, identified by Tax Map Key: (3) 7-4-008:042, as shown on the  
attached map labeled Exhibits A-1 and A-2.

AREA:

4.083 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_ NO X

**Item J-2**

LEASE CHARACTER OF USE:

GKM, Inc., Lease No. H-82-4 relative to "use" reads, in part:

"for the construction of certain improvements which shall be used principally for marine or marine-related activities which shall include the following:

Sales:

1. Marine hardware and supplies
2. Marine paints and other finish material

Services:

1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
2. Repair facility for the maintenance and repair of boats
3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor.

Sales:

1. Sailboats and power boats and other watercraft (new and brokerage)
2. Charts, maps and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait

6. Outboard and inboard engines and supplies.

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment
3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or icehouse
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

The Lessee is made aware that the Lessor does not guarantee that the additional permitted activities listed above shall be for the exclusive use of the Lessee within the boundaries of the Honokohau Small Boat Harbor.”

SUBLEASE CHARACTER OF USE:

Restaurant/Bar with wait service, serving food, and only beer and wine (no hard alcohol).

TERM OF LEASE:

Fifty-five (55) years.

Original term of thirty-five (35) years commencing April 1, 1984 and ending on March 31, 2019.

At its meeting on March 24, 2006, under agenda item J-1, the Board approved a twenty (20) year lease extension commencing April 1, 2019 and end on March 31, 2039.

TERM OF SUBLEASE:

5 years, commencing on January 1, 2020 and ending on December 31, 2024.

ANNUAL RENTAL:

Rent for the first 5 years was set at \$25,000 per year and renegotiates at 5-year intervals.

Original Lease Term (35 Years)

April 1, 1984 to March 31, 1989 - \$25,000/year  
April 1, 1989 to March 31, 1994 - \$60,000/year  
April 1, 1994 to March 31, 1999 - \$60,000/year  
April 1, 1999 to March 31, 2004 - \$60,000/year  
April 1, 2004 to March 31, 2009 - \$75,500/year  
April 1, 2009 to March 31, 2014 - \$75,500/year  
April 1, 2014 to March 31, 2019 - \$120,184/year

Extended Lease Term (20 Years)

April 1, 2019 to March 31, 2024 - \$200,000/year  
April 1, 2024 to March 31, 2029 – Rent Reopens  
April 1, 2029 to March 31, 2034 – Rent Reopens  
April 1, 2034 to March 31, 2039 – Rent Reopens

ANNUAL SUBLEASE RENTAL:

\$184,689.30

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

Harbor Lease No. H-82-4 ("Lease") was sold at public auction in 1982 to Gentry-Pacific, LTD.

("Gentry"). The lease was executed on April 8, 1983, with term of thirty-five years beginning April 1, 1984, and ending March 31, 2019.

On October 15, 2002 Gentry assigned the lease to GKM, Inc. ("GKM").

At its meeting held on March 24, 2006, under agenda item J-1, the Board agreed to the extension of the lease for an additional twenty years, from April 1, 2019, through March 31, 2039.

At its meeting held on June 12, 2020, under agenda J-2, the Board approved the mediated rent settlement of \$200,000 per year for the period commencing April 1, 2019 and ending March 31, 2024.

At its meeting on May 8, 2020, under agenda item J-2, the Board consented to the sublease of Harbor Lease No. H-82-4 between GKM, Inc., as sublessor and Honokohau Food Service, Inc., as sublessee, for a period of four (4) years, commencing January 1, 2020 and ending December 31, 2024.

Honokohau Food Services wishes to assign its interest in the sublease to Harbor House Kona, LLC.

RECOMMENDATION:

That the Board consents to the assignment of sublease under Harbor Lease No. H-82-4 GKM, Inc., as Sublessor, and Honokohau Food Service, Inc., as Assignor, Harbor House Kona, LLC, as Assignee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Require assignee to name the State of Hawaii as additional insured;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

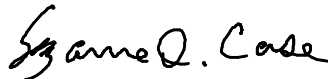
Respectfully Submitted,



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Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case  
Chairperson

Attachments:

Exhibit A-1 and A-2: Site Plan

Exhibit B: Assignment of Lease Document

**Exhibit A-1**  
**GKM, Inc. Sublessee Spaces ##**

**Honokohau  
Small Boat Harbor**



**GKM, Inc. Master Lease H-82-4 Area**

Honokohau Food Service, Inc., Assignor  
to Harbor House Kona, LLC, Assignee  
Spaces 4 & 5

Exhibit A-2

GMK, Inc. Honokohao  
Sublessee

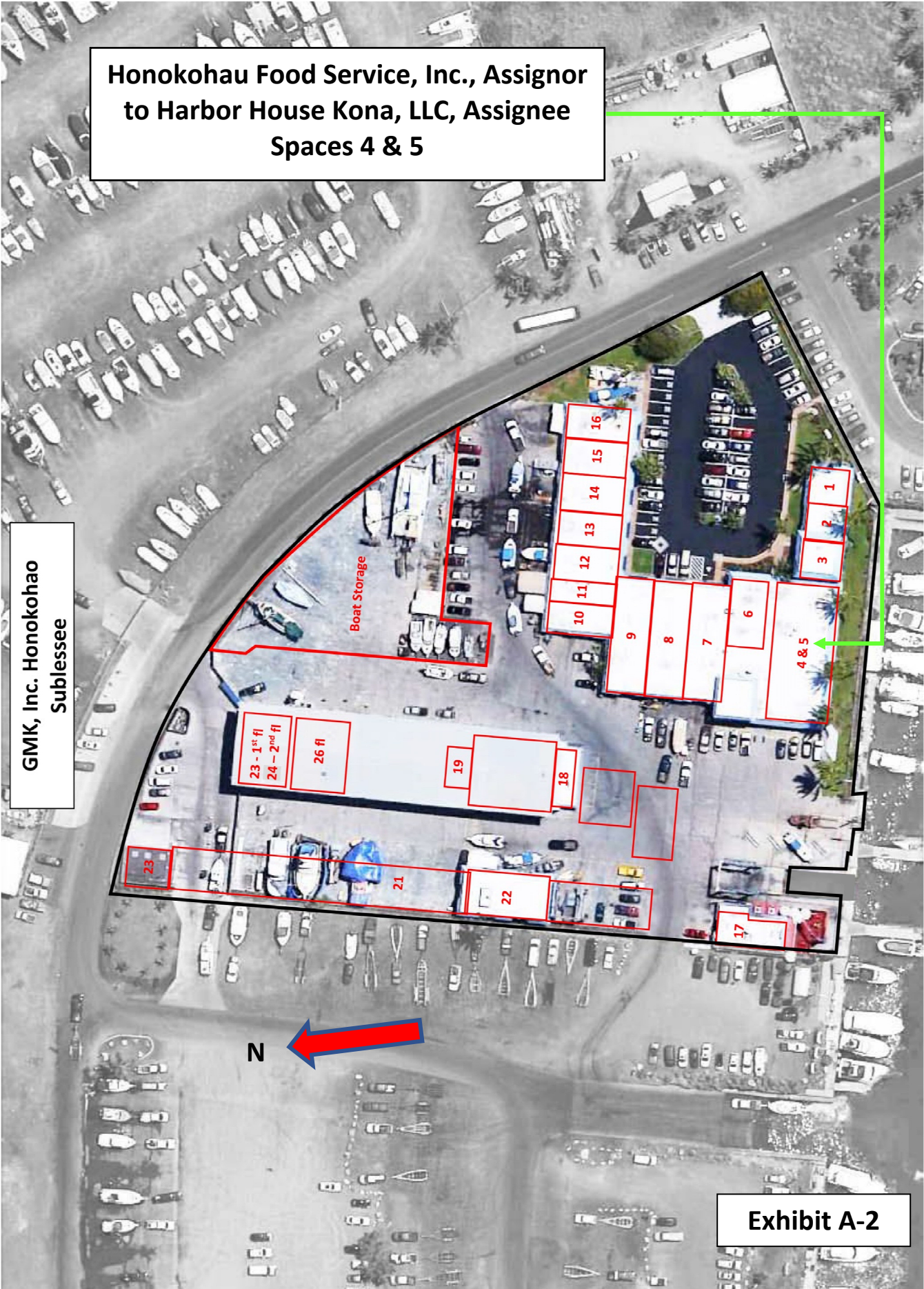


Exhibit A-2



# EXHIBIT B

## AGREEMENT FOR ASSIGNMENT OF SUBLEASE

**ASSIGNOR:** Honokohau Food Service, Inc.  
74-425 Kealakehe Parkway, Ste. 4  
Kailua-Kona, HI 96740

**ASSIGNEE:** Harbor House Kona, LLC  
P.O. Box 2429  
Kailua-Kona, HI 96745

**SUBLESSOR:** GKM, Inc.  
74-425 Kealakehe Parkway  
Kailua-Kona, HI 96740

This Agreement for Assignment of Sublease (the “**Agreement**”) is made this 4th day of June 2021 by and between Honokohau Food Service, Inc., a Hawai‘i corporation (“**Assignor**”), Harbor House Kona, LLC, a Hawai‘i limited liability company (“**Assignee**”), and GKM, Inc., a Hawai‘i corporation (“**Sublessor**”) (collectively, the “**Parties**” and each individually a “**Party**”).

WHEREAS, Sublessor and Assignor entered into that certain Gentry’s Kona Marina Sublease for Space No. 4 and 5, which was executed on or about August 19, 2019 (the “**Sublease**”), covering those certain spaces designated as Spaces No. 4 and 5, as more particularly described in the Sublease (collectively the “**Premises**”), located in Gentry’s Kona Marina.

WHEREAS, Assignor desires to assign all of its rights and obligations under the Sublease to Assignee, and Assignee desires to have the same assigned to it by Assignor and assume all rights and obligations under the Sublease; and

WHEREAS, Landlord desires to consent to the assignment of the Sublease under the terms and conditions specified herein;

THEREFORE, in consideration of the foregoing and the promises herein, the Parties agree as follows:

1. Assignment of Interests. In consideration of Assignor’s agreement to assign its interests in the Sublease and Assignee agreeing to assume the Sublease, Assignor hereby assigns and transfers to Assignee all its interests in the Sublease.
2. Assumption of Obligations. Assignee hereby assumes all obligations previously held by Assignor under the Sublease pursuant to this Agreement.
3. Landlord’s Consent. As required by the Sublease, Landlord consents to the assignment of the Sublease under the terms and conditions set forth herein.
4. Guarantee of Sublease. In consideration for the Landlord’s consent, the principals of Assignee agree to have executed a guarantee of the Sublease in the form attached hereto as Exhibit A (the “**Guarantee**”).

5. Approval of Board of Land and Natural Resources. Pursuant to the terms of Sublessor's underlying lease of the premises, this assignment and assumption of the Sublease requires and is subject to approval and consent of the State of Hawai'i's Board of Land and Natural Resources ("BLNR"). The Parties agree to use their reasonable best efforts to obtain approval and consent from BLNR.

6. Effective Date. The assignment and assumption of the Sublease shall be effective on a date to be mutually agreed upon by Assignor and Assignee that is no more than thirty days after approval of the assignment by BLNR.

7. If any provision of this Agreement is determined to be invalid or unenforceable, that determination shall not affect the legality, validity, or enforceability of the rest of the Agreement.

8. This Agreement shall be governed by the laws of the State of Hawai'i.

9. This Agreement is binding upon and inures to the benefit of the Parties and their successors and assigns.

10. This Agreement states the entire agreement between the parties concerning the matters herein and supersedes any prior agreements, understandings, or representations with respect thereto. Any addition or modification to this Agreement must be made in writing and signed by both Parties.

11. This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. The Parties agree that an emailed copy of the executed Agreement shall be treated as an original executed Agreement and shall be valid and binding upon all parties.

*[Remainder intentionally blank; signatures follow.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

**HONOKOHAU FOOD SERVICE, INC.,  
“Assignor”**

**HARBOR HOUSE KONA, LLC,  
“Assignee”**

\_\_\_\_\_  
By Chihomi Kanzaki, Its Presidentr

*Matthew Mather*  
\_\_\_\_\_  
By Matthew Mather, Its Manager

**GKM, Inc., “Landlord”**

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

**HONOKOHAU FOOD SERVICE, INC.,**  
"Assignor"



By Chihomi Kanzaki, Its President

**HARBOR HOUSE KONA, LLC,**  
"Assignee"



By Matthew Mather, Its Manager

**GKM, Inc., "Landlord"**



By Gary Lambert  
Its Vice Pres.

## Exhibit A

### GUARANTEE OF SUBLEASE

GUARANTEE by the undersigned Guarantor with respect to the sublease between GKM, Inc., a Hawai'i corporation ("**Sublessor**"), and Harbor House Kona, LLC, a Hawai'i limited liability company ("**Tenant**"), dated approximately August 19, 2019 (i) Sublessor entered into with Tenant's predecessor in interest and (ii) was assigned to and assumed by Tenant on June 4, 2021.

THE UNDERSIGNED GUARANTOR, does hereby unconditionally guarantee to Sublessor and its successors and assigns, the full and timely payment of the rent and all other amounts provided to be paid under the Sublease and do also guarantee the full and timely observance and performance of all the other covenants, terms and conditions of the Sublease on the part of Tenant to be observed and performed, and do hereby waive any and all notices of default, nonpayment, demand, presentment or protest and agree that any extensions, modifications or amendments of the Sublease shall not in any manner release the undersigned Guarantor(s), and that Sublessor may at any time, with or without notice, release any person, corporation or entity other than Tenant liable for observance or performance of any covenants required to be observed or performed under the Sublease, and may extend the time for payment or modify or extend the time for compliance with any covenant of the Sublease, or in any other way amend, change or modify the Sublease without in any way releasing the undersigned Guarantor(s).

The liability of Guarantor(s) hereunder shall be primary. If at any time, default shall be made by Tenant in the performance or observance of any of the terms, covenants or conditions of the Sublease on Tenant's part to be kept, performed or observed, Guarantors will keep, perform and observe the same, as the case may be, in place and stead of Tenant. If any right of action shall accrue to Sublessor under the Sublease, Sublessor may, at Sublessor's option, proceed against Guarantor(s) without having commenced any action or having obtained any judgment against Tenant.

The liability of Guarantor(s) hereunder shall in no way be affected by (a) the release or discharge of Tenant in any creditors', receivership, bankruptcy, or other proceedings, (b) the impairment, limitation, or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or any remedy for the enforcement of Tenant's said liability under the Sublease, resulting from the operation of any present or future provision of the Federal Bankruptcy Code or other federal and state statutes or from the decision in any court, (c) the rejection or disaffirmance of the Sublease in any such proceedings, (d) the assignment or transfer of the Sublease by Tenant or (e) any disability of Tenant.

Until all of the covenants and conditions of the Sublease on Tenant's part to be performed and observed are fully performed and observed, Guarantor(s) (a) shall have no right of subrogation against Tenant by reason of any payments or acts or performance by Guarantor(s), in compliance

with the obligation of Guarantor(s) hereunder, (b) waive any right to enforce any remedy which Guarantor(s) now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor(s) hereunder, and (c) subordinate any liability or indebtedness of Tenant now or hereafter held by Guarantor(s) to the obligation of Tenant to the Sublessor under the Sublease.

The undersigned Guarantor(s) further agree to pay all costs of enforcement of the Sublease and this Guarantee, including attorneys' fees in the event that counsel is retained or suit is instituted to enforce this Guarantee.

This instrument may not be changed, modified, discharged or terminated orally or any manner other than by agreement in writing signed by Guarantor(s) and Sublessor.

IN WITNESS WHEREOF, the undersigned have executed this Guarantee as of June 4, 2021.

*Hilary Jandl*

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HILARY JANDL as Trustee of the FANTAIL  
IRREVOCABLE TRUST

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**FILE NAME** Assignment%20of%2...Execution-%20.pdf  
**DOCUMENT ID** b2b717287cad58a90a9b1d601fb9644141b8c15f  
**AUDIT TRAIL DATE FORMAT** MM / DD / YYYY  
**STATUS** • Completed

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Sent for signature to Harbor House Holding LLC (mogmather@yahoo.com) and Hilary Jandl (hjandl@kghinvest.com) from jessica@bfl.law  
IP: 72.130.95.114



**06 / 05 / 2021**  
03:57:56 UTC

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IP: 107.77.231.199



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IP: 107.77.231.199



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