

RESOLUTION R-62-12

**A RESOLUTION APPROVING A
TEMPORARY ACCESS AND CONSTRUCTION EASEMENT GRANT
AND PERMANENT EASEMENT GRANT
FOR THE NORTH MAIN STREET FLOOD CONTROL PROJECT
(Car Wash Facility)**

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous of constructing a public flood control project along and within Winfield Creek at North Main Street, between Cole Avenue and Park Circle ("Project"); and

WHEREAS, Louis Michael Ruffolo and Laura Ruffolo are the owners of a parcel of property at 1733 N. Main Street improved with a car wash facility ("Owners Parcel"); and

WHEREAS, the City desires to secure from the owners a temporary access easement and construction easement to utilize a portion of the Owners Parcel for the purpose of designing, engineering, excavating, constructing, and restoring the Project; and

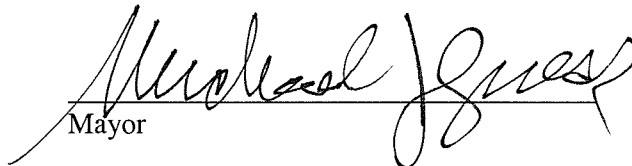
WHEREAS, the City also desires to secure from the owners a permanent easement for the redesign, reconstruction, maintenance, and operation of the Project upon completion of the Project; and

WHEREAS, the Owner has presented a temporary access and construction easement grant and a permanent easement grant to the City for approval.

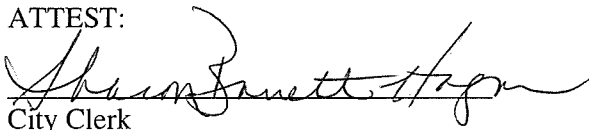
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Temporary Access and Construction Easement Grant and Permanent Easement Grant signed by the owners and dated May 4, 2012, is hereby approved.

IT IS FURTHER RESOLVED that the Mayor is authorized to sign the approval form and the City Clerk is authorized and directed to attest to the signature of the Mayor and attach a certified copy of this resolution of acceptance to the Easement Grant.

ADOPTED this 20th day of August, 2012.


Mayor

ATTEST:


City Clerk

Roll Call Vote

Ayes: Councilman Scalzo
Councilman Suss
Councilwoman Ives

Councilman Mouhelis
Councilman Rutledge
Mayor Gresk
Councilwoman Pacino Sanguinetti

Nays: None
Absent: None

Motion Carried Unanimously

**TEMPORARY ACCESS AND CONSTRUCTION EASEMENT
AND PERMANENT EASEMENT GRANT**

THIS GRANT OF EASEMENT (“Grant”), made this 4 day of MAY 2012, by Louis Michael Ruffolo and Laura Ruffolo, husband and wife (“Owners” or “Grantor”) to the City of Wheaton, DuPage County, Illinois, a municipal cooperation, having principal offices at 303 W. Wesley Street, Wheaton, Illinois 60187 (“City” or “Grantee”):

RECITALS:

A. Owners is the owners in fee title to the real estate legally described and depicted on Exhibit “A” (“Owners Parcel”); and

B. City desires to secure a temporary access and construction easement to utilize a portion of the Owners Parcel, as depicted on Exhibit “B” (“Easement Premises”), for the purpose of designing, engineering, excavating, constructing, and restoring a flood control project and appurtenant improvements (“Temporary Easement”) along and within Winfield Creek at, in, on and about its crossing with North Main Street (“Project”) and in compliance with those plans and specifications identified and incorporated herein by reference in Exhibit “C” (“Plans and Specifications”); and

C. City also desires to secure a permanent easement (“Permanent Easement”) upon completion of the Project, for the purposes described below; and

D. The location and dimensions of the Temporary Easement and Permanent Easement are depicted on Group Exhibit “B”; and

E. City agrees to accept the Permanent Easement for the perpetual reasonable maintenance and reasonable repair of the Permanent Easement within Winfield Creek and within that surface portion of the Permanent easement not within Winfield Creek notwithstanding that the later surface improvements are associated with the private use of the Owners Parcel.

F. Grantor agrees to grant the City the Temporary Easement and the Permanent Easement as depicted on Group Exhibit B subject to the covenants and conditions hereinafter set forth.

Now therefore in consideration of the benefits to be derived from the Project for the Owners Parcel and other valuable considerations as recited herein, the sufficiency and receipt of which are hereby acknowledged, the undersigned Grantor hereby grants to the City a Temporary Easement and Permanent Easement over, under, upon and across the Easement Premises, as a part and in furtherance of the City’s execution and completion of the Project.

TEMPORARY EASEMENT

The terms and conditions of the Temporary Easement shall be as follows:

1. The foregoing recitals are incorporated herein as representing the intent of the parties and as substantive terms and covenants of this Agreement.
2. The Project shall be performed by the City and/or its agents, contractors, employees, successors and assigns, at the City's sole expense, in full compliance with the Plans and Specifications and shall be carried out in a prompt, professional, first class and workmanlike manner.
3. Upon the commencement of any portion of the Project which disturbs, damages or removes any of the improvements currently located on the Easement Premises ("**Site Work**") ("**Work Commencement Date**"), the City shall cause the Site Work to be completed within approximately ninety (90) days following the Work Commencement Date ("**Completion Date**"). The Completion Date may be extended due to events beyond the control of the City such as but not limited to, extraordinary weather conditions, labor strikes, restrictions on the delivery of critical materials, epidemics or cataclysmic events or unknown site conditions. The City shall notify the Owners in writing no less than thirty (30) days prior to the Work Commencement Date to enable the Owners to undertake any efforts to notify its customers of the anticipated closing dates. The Owners and City staff shall inspect the Owners premises no less than seven (7) days prior to the City or its contractors occupying the Temporary Easement to memorialize the pre-Project condition of the Easement Premises. During the period of the Temporary Easement the property will be posted by the City with "Keep Out" construction signs and the Owners shall only go onto the Easement Premises with the City Engineer or his designee. The City Engineer or his designee shall make themselves available to the Owners as may be reasonable during City business hours.
4. All existing improvements located within the Easement Premises, including, but not limited to all asphalt pavement, underground electric, vacuums and vacuum islands which are disturbed, damaged or removed shall be repaired, replaced or restored by the City, at its sole expense, in compliance with the Plans and Specifications prior to the Completion Date.
5. The City, its contractors, successors and assigns, shall indemnify, defend and hold harmless Grantor from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or property occasioned directly or indirectly as a result of any act or omission by the City, or any person or entity acting by, through, or under the City on the Easement Premises. The City shall require all of its contractors performing work within the Easement Premises at all time during the term of this Temporary Easement to carry broad form general insurance with combined single limit coverage of not less than \$2,000,000.00, naming Grantor and Continental Enterprises, Inc. as an additional insured thereunder. The City shall provide copies of any insurance certificates of its contractors to the Grantor.
6. The Temporary Easement shall automatically, and without further action by any party, expire and be of no further force and effect upon completion of the Project.

7. The City as further consideration for the Temporary Easement shall pay the Owners:

a.) Seventeen thousand five hundred dollars (\$17,500.00) maximum, per month, but computed on a per diem basis for each day in a month the City or its contractors occupy the Temporary Easement in such manner that the Owners Parcel is closed for business as a physical result of that occupancy; and

b.) Thirty five thousand dollars (\$35,000.00) for business interruption.

c.) Partial payments of the per diem payments described in sub paragraph (a) shall be made within fifteen (15) business days after completion of a partial or whole month of occupancy where the occupancy exists as of the end of the month or within fifteen (15) business days of the termination of any partial month within which the occupancy ends before the end of the month. The payment described in subparagraph (b) shall be made within fifteen (15) business days after the Work Commencement Date.

PERMANENT EASEMENT

The terms and conditions of the Permanent Easement shall be as follows:

1. The Owner hereby grants to the City a Permanent Easement over a portion of the Easement Premises as depicted on Group Exhibit "B" for the perpetual privilege, right and authority, but not the obligation, to operate and maintain by construction, design, survey, reconstruction, repair, observation or maintenance of the flood control improvements ("Work"). If the Work requires access outside the Permanent Easement, the City shall not commence the Work without the Owner's grant of a new temporary easement or upon a temporary easement granted pursuant to eminent domain. No Work, except design, survey, observation and basic maintenance shall be done without seven (7) days written notice to the Owner.

2. The City shall pay the Owners One Thousand Dollars (\$1,000.00) as full and final consideration for the Permanent Easement. The payment shall be made within fifteen (15) business days after City acceptance of the terms and conditions of this Grant.

3. The Owners agree that there is no damage to the remainder resulting from the Permanent Easement and the payments for the Temporary Easement include all "damage to the remainder" resulting from the Temporary Easement.

GENERAL TERMS

1. Any notice required or desired to be given under this Grant shall be in writing and shall be deemed to have been given when delivered personally, or on the date deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owners: Louis Michael and Laura Ruffolo
26W411 Glen Eagles Drive
Winfield, IL 60190
Fax no. _____

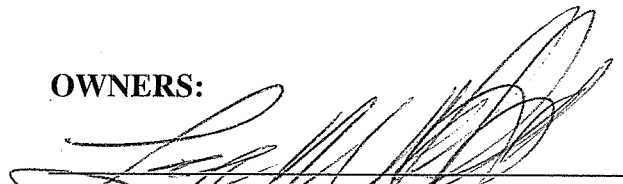
If to City: City of Wheaton
303 W. Wesley Street
PO Box 727
Wheaton, IL 60187-0727
Attn: Director of Engineering
Fax no. (630) 260-2195

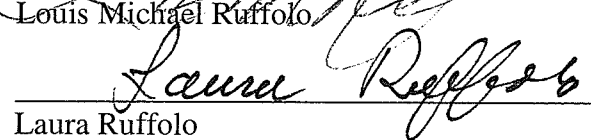
Or to other such address as either party may from time to time specify in writing to the other in accordance with the terms hereof.

2. Except as otherwise provided herein, this Grant may be amended or modified by, and only by, a written instrument duly authorized and executed by the parties hereto.
3. This Grant shall be governed by the laws of the State of Illinois.
4. This Agreement may only be modified in writing executed by both the Owners and City.

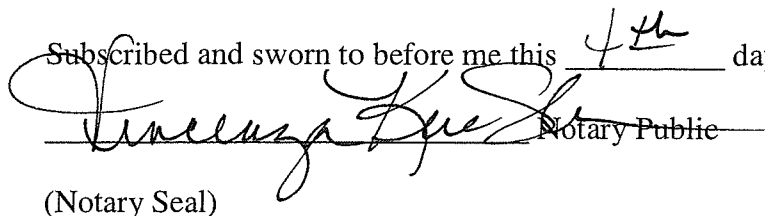
IN WITNESS WHEREOF, Grantor has executed this indenture this 4 day of MAY, 2012.

OWNERS:



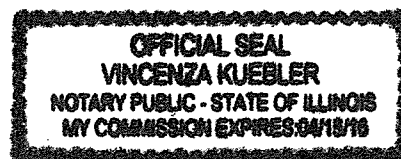
Louis Michael Ruffolo


Laura Ruffolo

Subscribed and sworn to before me this 4th day of May, 2012.


Notary Public

(Notary Seal)



CITY ACCEPTANCE

The above and foregoing Grant of Temporary Access and Construction Easement and the terms and conditions set forth therein are hereby approved and accepted by the City of Wheaton. Following execution by the City this instrument may be recorded against the Owners Parcel at the City's expense.

City of Wheaton, an Illinois municipal corporation

By: Michael J. Greas
Mayor

Attest: Sharon Bonetto Hagan
City Clerk



EXHIBIT "A"

LEGAL DESCRIPTION (RUFFOLO PROPERTY):

THE SOUTH 82 FEET OF THE WEST 150 FEET OF LOT 5 AND THE NORTH 68 FEET OF THE WEST 150 FEET OF LOT 6 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS.

1733 N. Main Street, Wheaton, IL 60187

P.I.N.: 05-09-108-006

GROUP EXHIBIT "B"

LEGAL DESCRIPTION (TEMPORARY EASEMENT-RUFFOLO PROPERTY):

THAT PART OF LOT 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, A DISTANCE OF 18.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 82 FEET OF SAID LOT 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, 150.02 FEET ALONG SAID NORTH LINE TO A POINT ON THE EAST LINE OF THE WEST 150 FEET OF SAID LOT 5; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 64.79 FEET ALONG SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 45 SECONDS WEST, 150.02 FEET TO A POINT ON THE WEST LINE OF SAID LOT 5; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 65.04 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

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GROUP EXHIBIT "B"

LEGAL DESCRIPTION (PERMANENT EASEMENT-RUFFOLO PROPERTY):

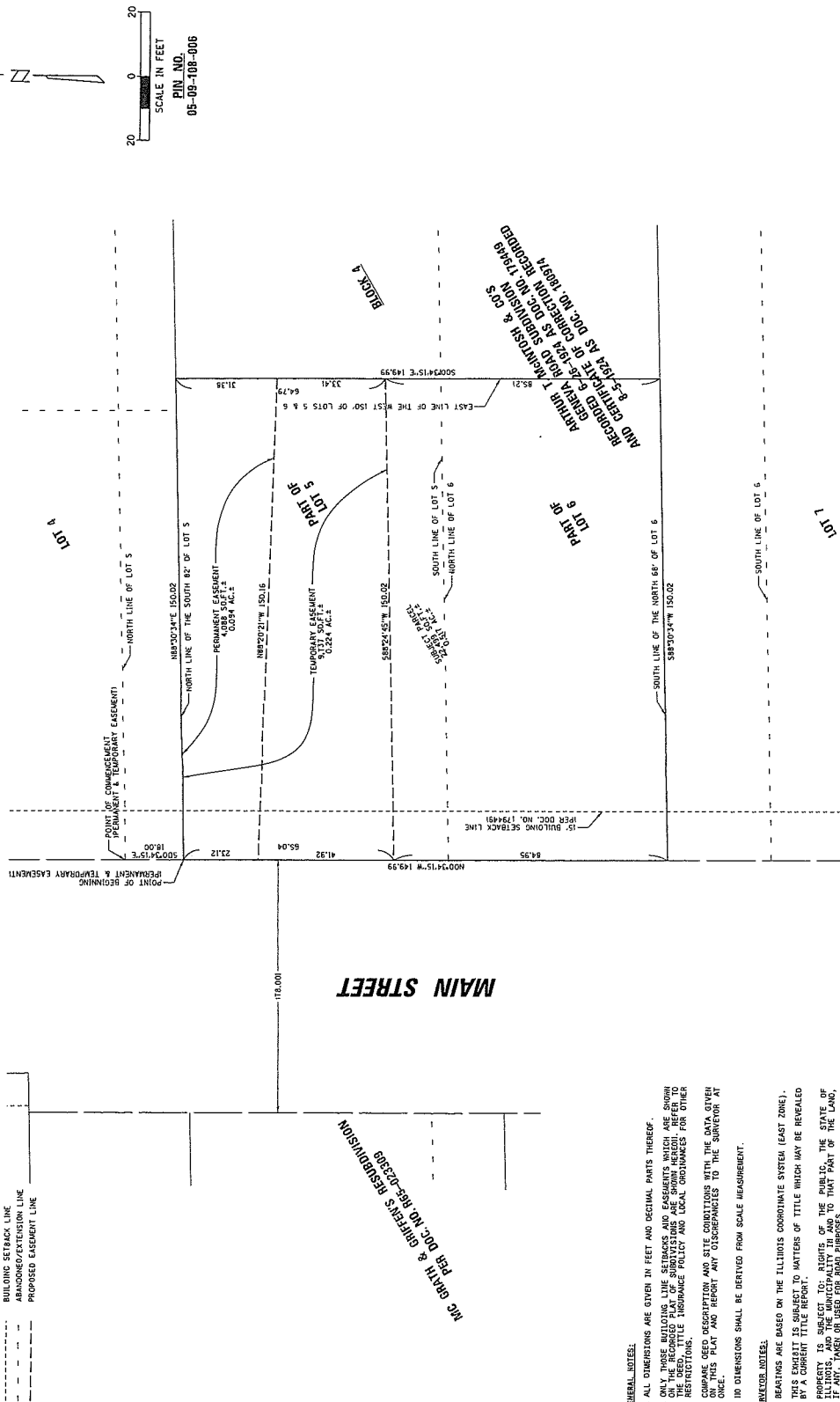
THAT PART OF LOT 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, A DISTANCE OF 18.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 82 FEET OF SAID LOT 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, 150.02 FEET ALONG SAID NORTH LINE TO A POINT ON THE EAST LINE OF THE WEST 150 FEET OF SAID LOT 5; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 31.38 FEET ALONG SAID EAST LINE; THENCE NORTH 88 DEGREES 20 MINUTES 21 SECONDS WEST, 150.16 FEET TO A POINT ON THE WEST LINE OF SAID LOT 5; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 23.12 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

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LEGEND

- 00.00 MEASURED
- 100.00 RECORD
- PROPERTY LINE
- PROPOSED EASEMENT LINE
- BUILDING SETBACK LINE
- ABANDONED/EXTENSION LINE
- PROPOSED EASEMENT LINE



PIN NO.
05-09-108-006

MAIN STREET

MC GRATH & GIER'S REBURNING

ACTING TOWNSHIPS & COS
GENERAL ROAD SUBDIVISION
RECORDED AS DOC. NO. 19498
AND EXTENDED AS DOC. NO. 18494

GENERAL NOTES:

1. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS THEREOF.
2. ONLY THOSE BUILDING LINE SETBACKS AND EASEMENTS WHICH ARE SHOWN ON THE RECORDED PLAT OF SUBDIVISIONS ARE SHOWN HEREON. REFER TO THE RECORDED PLAT OF SUBDIVISIONS FOR EASEMENT POLICY AND LOCAL ORDINANCES FOR OTHER RESTRICTIONS.
3. COMPARE DEED DESCRIPTION AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT ANY DISCREPANCIES TO THE SURVEYOR AT ONCE.
4. ALL DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENT.

SURVEYOR NOTES:

1. BEARINGS ARE BASED ON THE ILLINOIS COORDINATE SYSTEM (EAST ZONE).
2. THIS SURVEY IS SUBJECT TO MATTERS OF TITLE WHICH MAY BE REVEALED BY A CURRENT TITLE REPORT.
3. PROPERTY IS SUBJECT TO: RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS, AND THE MUNICIPALITY IN AND TO THAT PART OF THE LAND, AIR, AND UNDERGROUND WHICH IS USED FOR ROAD PURPOSES.
4. THIS SURVEY IS BASED ON FIELD WORK PERFORMED ON JULY THRU SEPTEMBER 2010.

CHRISTOPHER B. BURKE
ENGINEERING, L.L.D.
9575 West Higgins Road, Suite 600
Rosemont, Illinois 60018
(847) 823-0500

RUFFOLO PROPERTY EASEMENT EXHIBIT
IN
CITY OF WHEATON, ILLINOIS
PREPARED FOR
CITY OF WHEATON

PROJECT NO.	010250C
SHEET 1 OF 1	
DRAWING NO.	EX1010250C-A
DATE:	02-15-2012
CALC.	KJR
CHKD.	AKK
SCALE:	1"=20'

Group Exhibit "B"

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