

**RESOLUTION NO. 2018-98**

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO EXECUTE A  
STORMWATER EASEMENT AGREEMENT WITH CASEY'S MARKETING  
COMPANY FOR CASEY'S GENERAL STORE**

**WHEREAS**, the Caledonia Utility District has conditionally approved a Storm Water Management Plan and a Site Grading & Drainage Plan for Casey's Marketing Company for the construction of a Casey's General Store located on the Northeast corner of 4 Mile Road and Charles Street. The Storm Water Management Plan and the Site Grading & Drainage Plan for the development requires the installation Drainage Facilities on the property. As a condition of approval of the Storm Water Management Plan and Site Grading & Drainage Plan for Casey's General Store, a Stormwater Easement Agreement shall be granted over the Drainage Facilities.

**WHEREAS**, the Owner, Casey's Marketing Company has executed said Stormwater Easement Agreement and the President and Secretary of the Caledonia Utility District and the President and Clerk of the Village need to execute the Stormwater Easement Agreement in order to allow it to be recorded.

**NOW, THEREFORE, BE IT RESOLVED** by the Caledonia Village Board that the execution of the Stormwater Easement Agreement as set forth in Exhibit A, which is attached hereto and incorporated herein by reference, is authorized and approved and that the Village President and Village Clerk are authorized to execute said Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin,  
this 15<sup>th</sup> day of October, 2018.

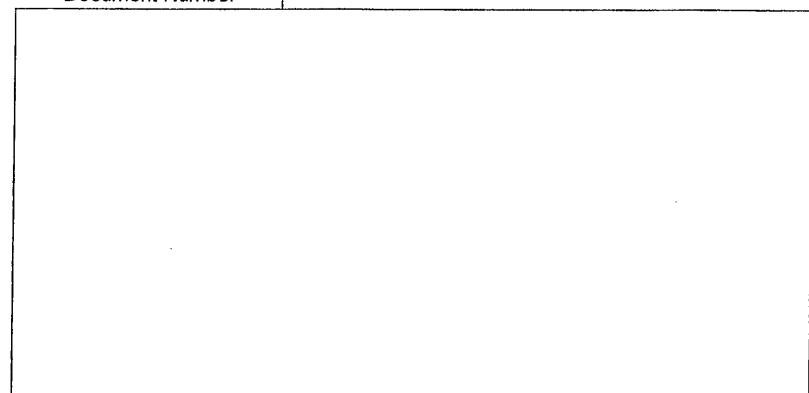
VILLAGE OF CALEDONIA

By: James R Dobbs  
James R Dobbs, Village President

Attest: Karie Torkilsen  
Karie Torkilsen, Village Clerk

**Stormwater Easement Agreement:  
Casey's Marketing Company**

Document Number



Name and Return Address  
**Mr. Anthony A. Bunkelman P.E.**  
**Village of Caledonia**  
**Engineering Department**  
**5043 Chester Lane**  
**Racine, Wisconsin 53402**

Parcel Identification Number (PIN)

104-04-23-21-051-000

**STORMWATER EASEMENT AGREEMENT:**  
**Casey's Marketing Company**

This Stormwater Easement Agreement ("Agreement") is made the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **CASEY'S MARKETING COMPANY**, an Iowa corporation with offices located at One SE Convenience Blvd., Ankeny, Iowa, referred to in this Agreement as "Owner", and the **VILLAGE OF CALEDONIA**, Racine County, Wisconsin, and **VILLAGE OF CALEDONIA STORM WATER UTILITY DISTRICT**, a utility district of the Village of Caledonia, Racine County, Wisconsin. The Village of Caledonia and Village of Caledonia Storm Water Utility District are collectively referred to in this Agreement as the "Grantees".

**RECITALS**

A. The Owner is the fee simple holder of certain real property in the Village of Caledonia, Racine County, State of Wisconsin, as more particularly described in attached Exhibit A, which exhibit is hereby incorporated herein by reference. Said real property is referred to in this Agreement as the "Property".

B. As a part of the approval by the Grantees of a development of the Property, the Grantees have required the Owner to construct, at Owner's own cost and expense, a storm water drainage plan within the area of the Property described and depicted on Exhibit B attached hereto and incorporated herein. Said stormwater drainage plan includes, in part, an underground Stormwater Retention Tank (the "Tank") described therein and herein, and is referred to in this Agreement as the "Plan". The Grantees have further required as part of said approval that the Owner enter into an agreement with Grantees setting forth the Owner's responsibility to maintain the Plan and provide Grantees with an access easement.

C. The Grantees have requested that the Owner grant a permanent easement (referred to in this Agreement as the "Stormwater Drainage Easement") over that portion of the Property described in attached Exhibit B, hereinafter referred to in this Agreement as the "Stormwater Drainage Easement Area". The location of the Stormwater Drainage Easement Area with respect to the Property is as shown and described in Exhibit B.

D. The Grantees have requested that the Owner grant a permanent access easement (referred to in this Agreement as the "Ingress/Egress Easement") over certain portions of the Property (the "Ingress/Egress Easement Area") described and depicted on Exhibit B, that will grant to the Grantees, and their employees, officials, commissioners, contractors, consultants, and agents, pedestrian and/or vehicular ingress and egress to and from the Stormwater Drainage Easement Area.

E. The Stormwater Drainage Easement Area and the Ingress/Egress Easement Area are collectively referred to in this Agreement as the "Utility Easement Area".

F. As used in this Agreement, the term "Drainage Facilities" shall mean the Plan (including the said Stormwater Retention Tank), the Stormwater Drainage Easement Area, the Ingress/Egress Easement Area, the drainage swales, drainage ditches, pipelines, laterals, culverts, storm sewers and any other structures or improvements that are constructed or

installed upon the Utility Easement Area from time to time by the Owner or Grantees, or any other person or entity, or their contractors, successors and assigns, for the conveyance of surface and storm water over, across, under and through the Property.

### AGREEMENT

For \$1.00 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Construction, Use, Operation, Cleaning, Maintenance, Altering, Repairs and Replacements of the Drainage Facilities. The Owner agrees to construct, use, operate, clean, maintain, alter, repair and replace the Drainage Facilities, so that the Drainage Facilities function properly and to their design capacity for the conveyance of storm water and so that there are no obstructions interfering with the location, construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities. Said obligations shall include the obligation to construct, use, operate, clean, maintain, alter, repair and replace the Drainage Facilities both during the construction thereof and thereafter and in conformity with this Agreement and the Ordinances of the Village of Caledonia and any recorded restrictive covenants applicable to the Property. The Owner shall prevent the Drainage Facilities from becoming a nuisance.

2. Failure to Construct, Clean, Maintain, Alter, Repair and Replace the Pond and Drainage Facilities. The Grantees shall have the right, but not the responsibility, to enter upon the Property in order to perform construction, cleaning, maintenance, alterations, repairs and replacements of the Drainage Facilities if the Owner fails to do so after receiving a written request from the Grantees. The Owner shall be given at least five business days after the date of said written request to perform whatever construction, cleaning, maintenance, alterations, repairs and replacements are deemed reasonable and necessary by the Grantees as stated in said notice. Provided, however, that in the event the Grantees determine that emergency action should be performed, then the Grantees may enter upon the Property immediately and perform said emergency action. The Owner shall reimburse Grantees for all reasonable costs incurred by the Grantees in performing said construction, cleaning, maintenance, alterations, repairs, replacements and emergency action, including, without limitation, any construction, engineering, legal and administrative costs with respect to the same, upon receiving an invoice for said costs. If Owner fails to pay said costs, then said costs may be assessed upon the Property by the Grantees as a special charge as provided in Wisconsin Statutes Sections 66.0627 and 66.0703, and Owner consents to said assessments and waives notice and hearing with respect to the levying of said assessments in accordance with Wisconsin Statutes Section 66.0703.

3. Alteration or Changes of the Pond or Drainage Facilities. The Owner shall not make or construct any alteration or change of the Drainage Facilities, including, without limitation, any alteration or change in the size, shape, capacity, rate of inflow or rate of outflow of the Drainage Facilities, unless the Grantees approve the alteration or change in writing prior to the making or construction of said alteration or change (such approval not to be unreasonably withheld).

4. Indemnification. Owner shall, and hereby does, indemnify and hold harmless the Grantees, and their employees, officials, commissioners, contractors, consultants, and agents from and against any claims, actions, judgments, damages, costs, and expenses (including, but not limited to, reasonable actual attorney fees) and/or liability of any nature whatsoever, that may arise, directly or indirectly, as a result of the use of, or activities on, and/or entry onto the

Utility Easement Area, whether by members of the public and/or the Grantees (or the officials, employees, consultants, contractors, and/or agents or representatives of the Grantees), except to the extent arising out of the negligent and/or intentional conduct of the Grantees, and/or the Grantees' contractors, employers, officials, consultants, representatives, or agents.

5. Insurance. Owner shall, at Owner's own cost and expense, and prior to the construction of the Drainage Facilities, obtain and maintain a policy of general liability insurance, from a Wisconsin-licensed insurance carrier, that (i) has coverage and policy limits satisfactory to the Grantees, and (ii) has the Grantees named as additional insureds. Such insurance shall be kept and maintained by the Owner throughout the entire term of this Agreement.

6. Grant of Easement. The Owner hereby grants to the Grantees, and to the Grantees' employees, officials, commissioners, contractors, consultants, agents, successors, and assigns, the easement rights described herein (which shall be non-exclusive, provided that any other use of the Utility Easement Area does not interfere with the easement rights of the Grantees under this Agreement), over, across, under, and through the Utility Easement Area, for the purposes of (i) performing its duties, responsibilities, and easement rights imposed upon and/or granted to the Grantees under this Agreement, and/or (ii) inspecting, monitoring, and/or testing the Drainage Facilities and/or the Utility Easement Area, and (iii) for conveying and/or storing surface and storm waters in, over, across, under, and/or through the Utility Easement Area and the Drainage Facilities.

7. Removal of Obstructions. Owner hereby grants to the Grantees, and to Grantees' employees, officials, commissioners, contractors, consultants, and agents the right to:

- (a) Cut down and remove or trim all trees, bushes or other vegetation existing within the Utility Easement Area, and to cut down and remove or trim all trees, bushes and other vegetation located outside of the Utility Easement Area that interfere with (i) the construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Utility Easement Area, or (ii) ingress and egress through the Ingress/Egress Easement Area.
- (b) Remove any fences, structures or improvements located within the Utility Easement Area to the extent necessary to (i) carry out the construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Utility Easement Area, or (ii) maintain ingress and egress through the Ingress/Egress Easement Area.

8. Further Owner Requirements.

(a) No fences, structures or improvements will be erected, and no trees, bushes or other obstructing vegetation will be planted, within the Utility Easement Area without the written consent of the Grantees (which will not be unreasonably withheld); and

(b) The elevation of the existing ground surface within the Utility Easement Area will not be altered by more than six inches (6") without the written consent of the Grantees.

(c) Owner shall construct and comply with the provisions and requirements of (i) the Plan, being the Storm Water Management Plan for the Property, to be prepared by Owner's consulting engineers, as may be approved and/or amended from time to time by the Grantees, and (ii) the Memorandum(s), if any, from Anthony A. Bunkelman, P.E., to Owner, pertaining to the Stormwater Management Plan.

9. Restoration of Surface. The Grantees shall reasonably restore the surface of the Property disturbed by the Grantees' (i) construction, use, operation, cleaning, maintenance, alteration, repair and replacement of the Drainage Facilities within the Utility Easement Area. Said restoration shall be to the condition that existed prior to the Grantees' entry on the Property; provided, however that the Grantees shall only be required to (i) restore any disturbed areas of soil and/or vegetation with grass seed, and (ii) restore any disturbed paved portion or gravel portion of the Property with similar materials.

10. Non-Use. Non-use or limited use of the rights granted to the Grantees in this Agreement shall not prevent the Grantees from the later use of said rights to the fullest extent authorized in this Agreement.

11. Covenants Run With Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land that is the Property and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the Grantees and their respective successors and assigns.

12. Warranty. The Owner does hereby warrant and covenant that the Owner owns the Property in fee simple and is lawfully seized and possessed of the Property; that the Owner has a good and lawful right to grant the rights granted to the Grantees hereunder; that the Property is free and clear of all liens and encumbrances, except for recorded easements and recorded covenants and/or liens and encumbrances that do not have a material adverse effect on the exercise of rights by the Grantees hereunder, that the persons executing this Agreement on behalf of the Owner are fully authorized to execute this Agreement on behalf of the Owner; and that this Agreement is the binding obligation of the Owner.

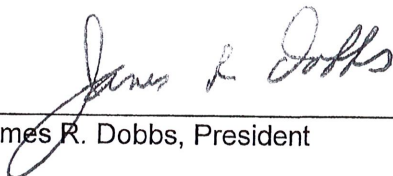
13. Term. The term of this Agreement shall continue indefinitely, in full force and effect, unless and until amended and/or terminated with the written approval of the Grantees (which approval shall not be unreasonably withheld).

14. Deposit Agreement. Attached hereto, as Exhibit C, is a Deposit Agreement that the parties shall sign and deliver contemporaneously with the execution of this present Agreement. Owner shall timely pay to Caledonia the Ten Thousand Dollar (\$10,000.00) Deposit that is required under the Deposit Agreement.

**OWNER:**  
Casey's Marketing Company

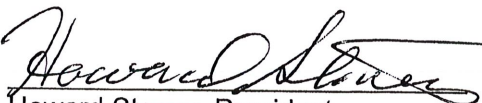
**GRANTEES:**  
Village of Caledonia


BY:   
Michael R. Richardson, President

BY:   
James R. Dobbs, President

Attest:   
Karie Torkilsen, Village Clerk

**Village of Caledonia Storm Water  
Utility District**

BY:   
Howard Stacey, President

Attest:   
Harry Garnette, Secretary

**AUTHENTICATION**

Signatures of Michael R. Richardson, as President of Casey's Marketing Company; James R. Dobbs, Village President, and Karie Torkilsen, Village Clerk, of the Village of Caledonia; and Howard Stacey, President, and Harry Garnette, Secretary, of the Village of Caledonia Storm Water Utility District, authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
John M. Bjelajac  
Member: State Bar of Wisconsin  
State Bar No. 1015325

This document drafted by:  
Atty. John M. Bjelajac  
State Bar No. 1015325  
601 Lake Avenue  
Racine, Wisconsin 53403  
Attorney for the Village of Caledonia  
and the Village of Caledonia  
Storm Water Utility District

## EXHIBIT A

### Description of Owner's Property

The Southwest 1 / 4 of the Southwest 1 / 4 of the Southwest 1 / 4 of Section 21, Township 4 North, Range 23 East. Excepting therefrom that part of the Southwest 1 / 4 of Section 21, Township 4 North, Range 23 East, bounded as follows: Begin at a standard Racine County monument marking the Southwest corner of said Section 21; run thence North 00°24'46" West 662.22 feet on the West line of said Section 21; thence North 88°37'34" East 38.00 feet, thence South 00°24'46" East 662.16 feet to the South line of said Section 21; thence South 88°32'09" West 38.01 feet on the South line of said Section 21 to the point of beginning.

Also excepting therefrom the Easterly 330 feet of the Southerly 330 feet of the 10 acre parcel at the Northeast corner of Charles Street and Four Mile Road. Also excepting therefrom the North 1 / 2 of the Southwest 1 / 4 of the Southwest 1 / 4 of the Southwest 1 / 4 of Section 21, Township 4 North, Range 23 East. Subject to the right of the public in and to Charles Street. Said land being in the Village of Caledonia, County of Racine, State of Wisconsin.

#### ALSO DESCRIBED AS:

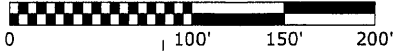
A parcel of land located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 21, Township 4 North, Range 23 East, Racine County, Wisconsin, described as follows: Commencing at a standard Racine County monument at the Southwest corner of Southwest Quarter of said Section 21; thence North 88°29'27" East along the South line of the Southwest Quarter of said Section 21, a distance of 38.01 feet to the Southeast corner of the premises conveyed by Mildred Gloede Mordja and Louis E. Mordja to the Town of Caledonia by Warranty Deed recorded April 10, 1985 in Volume 1748 of Records on page 527 as Document No. 1166733 in the Register's Office of Racine County, Wisconsin, said point being on the Southerly extension of the East line of a public road designated as Charles Street; thence North 0°25'01" West along the East line of said premises so conveyed, a distance of 331 .06 feet to the South line of the North Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 21-4-23, said point also being the Northwest corner of the premises conveyed by Hellmich's Real Estate II, LLC to RKC Real Estate, LLC by Quit Claim Deed recorded December 27, 2016 as Document No. 2454011 in said Register's Office; thence North 88°32'09" East along the South line of the North Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 21-4-23 and the North line of said premises conveyed by Hellmich's Real Estate II, LLC to RKC Real Estate, LLC, a distance of 293.88 feet to the West line of the Easterly 330 feet of the Southerly 330 feet of the 10 acre parcel at the Northeast corner of Charles Street and Four Mile Road; thence South 0°23'55" East along said West line of the Easterly 330 feet of the Southerly 330 feet of the 10 acre parcel at the Northeast corner of Charles Street and Four Mile Road, a distance of 330.83 feet to the South line of the Southwest Quarter of said Section 21; thence South 88°29'27" West along the South line of the Southwest Quarter of said Section 21, a distance of 293.78 feet to the point of beginning, all being situated in the Village of Caledonia, County of Racine and State of Wisconsin

Tax Parcel Number: 51-1 04-04-23-21-051-000



# EXHIBIT B

SCALE: 1" = 100'



MONUMENT KEY:

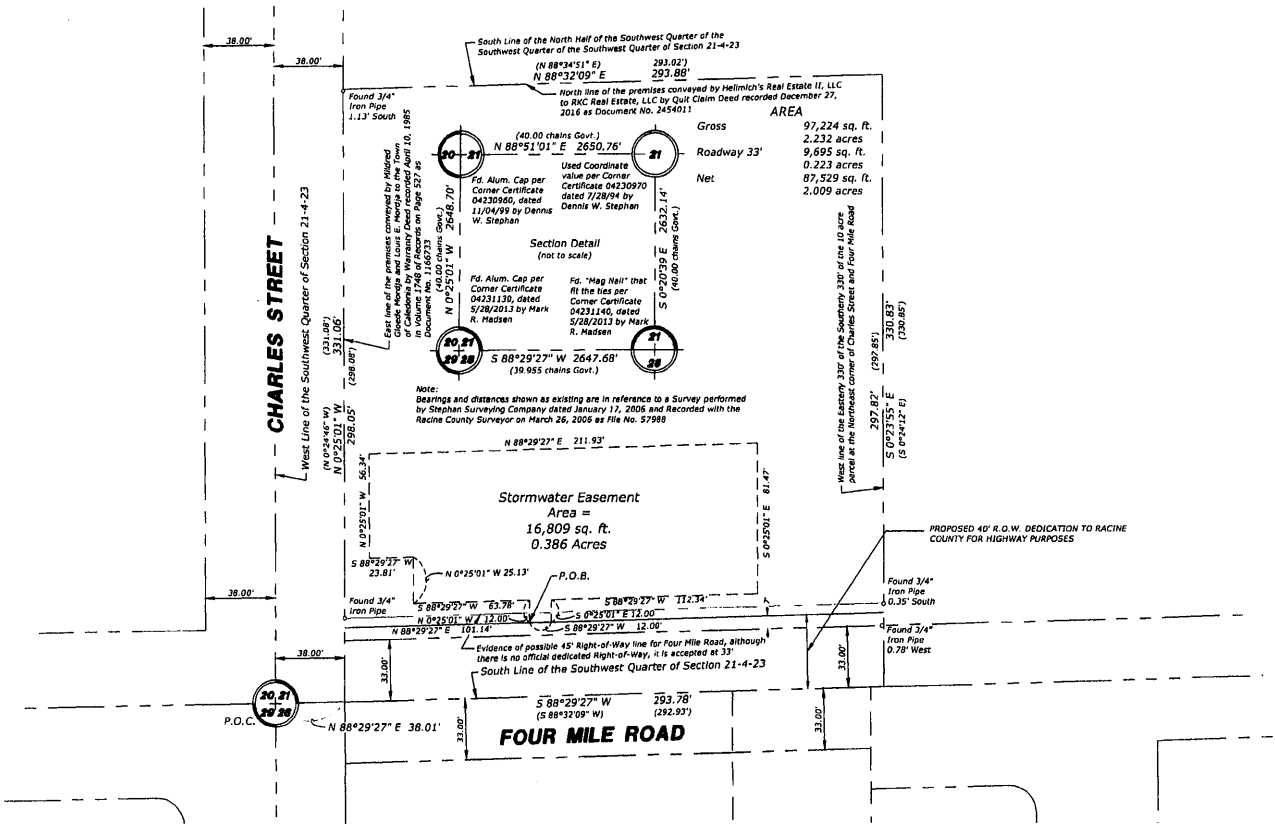


Bearings are based upon G.P.S. observations of the South Line of the Southwest Quarter of Section 21-4-23 which as observed bears N 88°29'27" E as referenced to the Wisconsin State Plane Coordinate System (South Zone) in NAD 83

**ARC DESIGN RESOURCES INC.**

5291 ZENITH PARKWAY  
LOVES PARK, IL 61111  
VOICE: (815) 484-4300  
FAX: (815) 484-4303

www.arcdesign.com  
Design Firm License No. 184-001334



DESCRIBED AS:

A parcel of land located in the Southwest Quarter of the Southwest Quarter of Section 21, Township 4 North, Range 23 East, Racine County, Wisconsin, described as follows:

Commencing at a standard Racine County monument at the Southwest corner of Southwest Quarter of said Section 21; thence North 88 degrees 29 minutes 27 seconds East along the South line of the Southwest Quarter of said Section 21, a distance of 38.01 feet to the Southeast corner of the premises conveyed by Mildred Gloede Mordja and Louis E. Mordja to the Town of Caledonia by Warranty Deed recorded April 10, 1985 in Volume 1748 of Records on Page 527 as Document No. 1166733 in the Register's Office of Racine County, Wisconsin, said point being on the Southerly extension of the East line of a public road designated Charles Street; thence North 0 degrees 25 minutes 01 second West along the East line of said premises so conveyed, a distance of 40.00 feet to the North Line of a proposed 40' Right-of-Way Dedication to Racine County for Highway Purposes; thence North 88 degrees 29 minutes 27 seconds East along the North Line of said proposed Right-of-Way Dedication to Racine County, a distance of 101.14 feet to the Point of Beginning for the hereinafter described easement parcel; thence North 0 degrees 25 minutes 01 second West, a distance of 12.00 feet; thence South 88 degrees 29 minutes 27 seconds West, a distance of 63.78 feet; thence North 0 degrees 25 minutes 01 second West, a distance of 25.13 feet; thence South 88 degrees 29 minutes 27 seconds West, a distance of 23.81 feet; thence North 0 degrees 25 minutes 01 second West, a distance of 56.34 feet; thence North 88 degrees 29 minutes 27 seconds East, a distance of 211.93 feet; thence South 0 degrees 25 minutes 01 second East, a distance of 81.47 feet; thence South 88 degrees 29 minutes 27 seconds West, a distance of 112.34 feet; thence South 0 degrees 25 minutes 01 second East, a distance of 12.00 feet to a point in the North line of said proposed Right-of-Way Dedication to Racine County; thence South 88 degrees 29 minutes 27 seconds West along the North line of said proposed Right-of-Way dedication to Racine County, a distance of 12.00 feet to the Point of Beginning, containing 16,809 square feet, .386 acres, more or less, all being situated in the County of Racine and the State of Wisconsin.

Prepared by:  
ARC DESIGN RESOURCES, INC.  
5291 ZENITH PARKWAY  
LOVES PARK, IL 61111  
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