



TEXAS GENERAL LAND OFFICE

COASTAL SURFACE LEASE NO. SL20120044

STATE OF TEXAS
COUNTY OF NUECES

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KNOW ALL MEN BY THESE PRESENTS:

This Surface Lease, (the "Lease"), is granted by virtue of the authority granted in Section 51.121, et seq., TEX. NAT. RES. CODE ANN. 31 TEX. ADMIN. CODE § 13 (Land Resources), et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable regulations promulgated from time to time.

ARTICLE I. PARTIES

1.01. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through the Commissioner of the Texas General Land Office, on behalf of the Permanent School Fund of the State of Texas (the "State"), hereby grants to City of Corpus Christi, whose address is PO Box 9277, Corpus Christi, TX, 78469-9277 ("Lessee"), the right to use the surface estate of certain Permanent School Fund land (the "Leased Premises") for the purposes identified in Article V below.

ARTICLE II. PREMISES

2.01. The Leased Premises is described below and further described or depicted on Exhibits attached hereto and collectively incorporated by reference for all purposes:

Approximately 3.0 acres of filled submerged land in Submerged Land Tracts 749 & 788

2.02. **LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE LEASED PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE PREMISES, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE PREMISES. THE STATE DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS LEASE. THE STATE AND LESSEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE OR THE LEASED PREMISES ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE ALL RECORDS OF THE STATE AND COUNTY IN WHICH THE LEASED PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

ARTICLE III. TERM

3.01. This Surface Lease No. SL20120044 is for a term of two (2) years, commencing on November 1, 2012 and terminating on October 31, 2014, unless earlier terminated as provided herein. The State reserves the right to review, amend, cancel or otherwise modify this agreement at any time during its term upon 60-day written notice to Lessee as prescribed in 3.01.

3.02. Provided that Lessee has complied with all terms of this Lease, Lessee shall have the right to extend and renew this Lease for a two (2) year extension upon the same terms and conditions herein, except that consideration shall increase according to Article IV. Lessee must give Lessors written notice of its intent to extend this Lease no less than 90 days prior to the expiration of the then-current term, as it may be extended.

ARTICLE IV. CONSIDERATION

4.01. A. As consideration ("Consideration") for the granting of this Lease, Lessee shall pay rent ("Rent") to the State (payable to the Commissioner of the General Land Office at Austin, Texas) **Six Thousand And 00/100 Dollars (\$6,000.00) per year, with payments of \$500 per month beginning November 1, 2012 and ending October 31, 2014.**

B. If Lessee exercises its option to extend the Lease pursuant to Section 3.02, then Lessee shall pay rent to the State in the amount of **Ten Thousand and 00/100 (\$10,000) per year with payments of \$833.33 per month beginning November 1, 2014 and ending October 31, 2016.**

C. Past due Rent and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid, as provided in Section 51.301, TEX. NAT. RES. CODE ANN. Failure of Lessee to make a payment on or before the date the same becomes due shall, at the State's option, make all payments due and payable immediately.

ARTICLE V. USE OF THE PREMISES

5.01. The Leased Premises may be used by Lessee solely for the storage of reefing material for use in constructing an offshore artificial reef and for no other purpose. The Leased Premises are to remain in their current topographical and hydrologic condition during the term of the Lease. Lessee is specifically prohibited from modifying the premises in any manner not authorized herein, and from using, or allowing the use by others of the Leased Premises for any other purpose

5.02. Lessee shall not use, or permit the use of, the Leased Premises for any illegal purpose. Lessee will comply with, and will cause its officers, employees, agents and invitee to comply with, all applicable federal, State and local laws, ordinances and rules concerning the use of the Leased Premises.

5.03. The State reserves the exclusive right to grant easements, rights-of way and/or other grants of interest authorizing use of the Leased Premises, provided such use does not unreasonably interfere with Lessee's use thereof.

5.04. Lessee shall not grant other rights in or to the Leased Premises to any other person or entity, and any attempt to do so shall be void and of no effect and shall constitute a default by Lessee hereunder.

5.05. State reserves the right to enter upon the Leased Premises at any time with or without prior notice to Lessee to inspect the condition thereof and/or take action authorized by this Lease.

5.06. The Leased Premises are subject to prospecting, production and development of oil, gas and other minerals and other materials of commercial value by the State, its lessees, permittee, licensees or other agents, assigns or representatives. Lessee shall not interfere with such use of the Leased Premises and shall allow any lessee, permit holder, licensee or other agent, assignee or representative of the State and/or the School Land Board the right of ingress and egress over, across and through, and the use of, the Leased Premises for any and all purposes authorized by State.

5.07. Lessee may not charge State's authorized lessees, permit holders, licensees or other agents, assigns or representatives surface damages, or any other fee, for use of the Leased Premises; provided, however, the foregoing shall not limit the liability of any person or entity to Lessee for damages caused to property owned by Lessee.

5.08. Lessee's use of the Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions"):

1. Before placing any construction materials or equipment on the Premises, User shall conduct a photographic survey of the Premises to identify, document and record its physical condition prior to User's use of the Premises under this Agreement. Upon request, User shall deliver to State, at no expense to State, color copies of any and all photographs taken of the Premises by or for User.
2. User may not maintain or allow nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance.
3. User shall, at User's sole cost and expense, inspect the Premises and perform general maintenance and repair duties on the Premises to ensure that the Premises are maintained in a reasonably safe and orderly condition. User shall be responsible for the collection and disposal of all trash associated with its operations at the Premises (whether or not such trash is generated by User or its customers and invitees). In addition, User shall promptly inform the State of any additional maintenance or repair needs with respect to the Premises that come to the attention of User. If mutually agreed to by the State and User, and only upon the State's prior express written approval, User shall perform additional maintenance or such repairs according to an agreed amount and repayment plan.

4. User shall not allow the presence on or within the Premises of any Hazardous Substance in any manner that violates any federal, state or local laws or regulations. "Hazardous Substances" shall mean any substance or material defined or designated as a hazardous waste, toxic substance or other pollutant or contaminant, by any law or regulation. User shall not allow any Hazardous Substances to migrate off the Premises or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air in violation of any federal, state or local laws or regulations. If User violates any law or regulation concerning the presence or use of Hazardous Substances at or affecting the Premises or the handling or storing of Hazardous Substances at or affecting the Premises, User shall promptly take whatever action is necessary to determine the type or extent of the release, to mitigate and to correct the violation. If User does not act in a prudent and prompt manner after reasonable notice by the State to User specifying what actions the State requires to be performed, the State may, but is not obligated to, come onto the Premises, act in place of User and take any such action as the State has specified in such notice and that User has not taken to ensure compliance with such law or regulation or to mitigate any violation thereof. If the State reasonably believes that User is in violation of any law or regulation, or that User's actions or inactions present a threat of violation of any federal, state or local law or regulation or a threat of damage to the Premises, the State may, enter the Premises and take such corrective or mitigating action as the State has specified as necessary and that User has not taken. All direct costs and actual expenses incurred by the State in connection with any such actions shall become immediately due and payable by User upon presentation of an invoice therefor.

ARTICLE VI. ASSIGNMENTS

6.01. Lessee shall not assign the Premises or the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of the State, which may be granted or denied in the State's sole discretion. Any unauthorized assignment shall be void and of no effect and such assignment shall not relieve Lessee of any liability for any obligation, covenant, or condition of this Agreement. This provision, and the prohibition against assignment contained herein, shall survive expiration or earlier termination of this agreement. For purposes of this agreement, an assignment is any transfer, including by operation of law, to another of all or part of the property, interest or rights herein granted.

ARTICLE VII. PROTECTION OF NATURAL AND HISTORICAL RESOURCES

7.01. Lessee shall take no action on the premises which results in the discharge of any solid or liquid material. Lessee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Lessee shall comply with all applicable rules and regulations of the Texas General Land Office and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of Lessee's (or Lessee's employees, contractors, invitees and agents) acts or omissions, Lessee shall immediately notify the State, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING ANY ACTIVITY ON THE PREMISES, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY STATE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

ARTICLE VIII. INDEMNITY

8.01. LESSEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. TO THE EXTENT PERMITTED BY LAW LESSEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE STATE, THE STATE'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE STATE, THE STATE'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM LESSEE'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS PSF LAND) OR FROM ANY BREACH BY LESSEE OF THE TERMS, COVENANTS OR CONDITIONS CONTAINED HEREIN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

ARTICLE IX. DEFAULT, TERMINATION AND EXPIRATION

9.01. If, following 30 days prior written notice from the State specifying a default or breach, Lessee fails to pay any money due hereunder or is in breach of any term or condition of this Agreement, the State shall have the right, at its option and its sole discretion, to terminate this Agreement and all rights inuring to Lessee herein by sending written notice of such termination to Lessee in accordance with ARTICLE XI of this Agreement. Upon sending of such written notice, this Agreement shall automatically terminate and all rights granted herein to Lessee shall revert to the State. Such termination shall not prejudice the rights of the State to collect any money due or to seek recovery on any claim arising hereunder.

9.02. If Lessee fails to remove its personal property from the Leased Premises within the time specified in Section 9.01. above, or if Lessee fails to remove improvements placed or constructed on the Leased Premises by or behalf of Lessee pursuant to a notice by the State to do so pursuant to Section 9.01. above, then State may, at its sole option, remove and dispose of such property (with no obligation to sell or otherwise maintain such property in accordance with the Uniform Commercial Code), at Lessee's sole cost and expense, or the State may elect to own such property by filing a notice of such election pursuant to Section 51.302, et seq., TEXAS NATURAL RESOURCES CODE ANNOTATED. If the State elects to remove Lessee's property and dispose of it pursuant to this section, then in such an event Lessee shall be obligated to reimburse the State for the reasonable costs of such removal and disposal within ten (10) days of State's demand for reimbursement. **THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

9.03. **IF LESSEE CONTINUES TO OCCUPY THE LEASED PREMISES OR OTHERWISE INTERFERE WITH ITS USE BY THE STATE OR THE GENERAL PUBLIC AFTER THE EXPIRATION OF THIS LEASE, LESSEE SHALL REMAIN A TENANT AT SUFFERANCE, SUBJECT TO THE TERMS AND OBLIGATIONS OF THIS LEASE, INCLUDING PAYMENT OF RENT, BUT RENT SHALL BE INCREASED TO 200% OF THE AMOUNT PREVIOUSLY PAYABLE HEREUNDER, PRORATED ON A MONTHLY BASIS, AND LESSEE MAY BE EJECTED BY THE STATE WITHOUT NOTICE AT ANY TIME.**

9.04. The Leased Premises are subject to or trade. In the event the Leased Premises are offered for trade, the State may terminate this Lease upon sixty (60) days written notice to Lessee. Upon conveyance or award of the Leased Premises to a party acquiring the Leased Premises by trade, this Lease shall automatically terminate unless otherwise agreed in writing by such party and Lessee

9.05. The State reserves the right to remove from this Lease such acreage as the State may determine necessary for purposes other than those described herein, in which event this Lease shall be canceled as to the part so removed by the State and Rent shall be prorated on the remaining acreage.

9.06. In addition to the above, Lessee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Agreement may be levied on or assessed against the Premises or the Improvements constructed thereon, provided such taxes result from Lessee's use of this easement. Lessee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Lessee shall have the right in good faith at its sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

9.07. **TO THE EXTENT PERMITTED BY LAW LESSEE AGREES TO AND SHALL PROTECT AND HOLD THE STATE HARMLESS FROM LIABILITY FOR ANY AND ALL SUCH TAXES, CHARGES, AND ASSESSMENTS, TOGETHER WITH ANY PENALTIES AND INTEREST THEREON, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.**

ARTICLE X. HOLDOVER

10.01. If Lessee holds over and continues in possession of the Premises after expiration or earlier termination of this Agreement, Lessee will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this Agreement shall be increased such that the Consideration payable under Article IV of this Agreement and any other sums payable hereunder shall be two hundred percent (200%) of the amount payable to the State by Lessee for the applicable period immediately preceding the first day of the holdover period. Lessee acknowledges that in the event it holds over, the State's actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Lessee further acknowledges that acceptance of hold over Consideration does not imply State consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the State, Lessee pays Consideration in excess of the amount due and payable and the State accepts such payment, the acceptance of such payment will not operate as a waiver by the State of the notice of termination unless such waiver is in writing and signed by the State. Any such excess amounts paid by Lessee and accepted by the State shall be promptly refunded by the State after deducting therefrom any amounts owed to the State.

ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Agreement shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the State to Deputy Commissioner, Professional Services, addressed to his attention, 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5304, and if for Lessee, to City of Corpus Christi, PO Box 9277, Corpus Christi, TX 78469-9277. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by Lessee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Agreement, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. Lessee shall provide written notice to the State of any change in Lessee's name, address, corporate structure, legal status or any other information relevant to this Agreement.

B. Lessee shall provide to the State any other information reasonably requested by the State in writing within fifteen (15) days following such request or such other time period approved by the State (such approval not to be unreasonable withheld).

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Agreement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Agreement, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. This Agreement shall be binding upon and shall accrue to the benefit of the State, its successors and assigns, Lessee, Lessee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the State to any assignment by Lessee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person Lessee, refers to the instances previously referred to in this sentence and also circumstances in which title to Lessee's interest under this Agreement passes, after the demise of Lessee, pursuant to Lessee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Lessee hereunder (or any portion thereof) to the State nor failure by the State to complain of any action, non-action or default of Lessee shall constitute a waiver as to any breach of any covenant or condition of Lessee contained herein nor a waiver of any of the State's rights hereunder. Waiver by the State of any right for any default of Lessee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the State hereunder or covenant, duty or obligation of Lessee hereunder shall be deemed waived by the State unless such waiver be in writing, signed by a duly authorized representative of the State.

13.04. No provision of this Agreement shall be construed in such a way as to constitute the State and Lessee joint ventures or co-partners or to make Lessee the agent of the State or make the State liable for the debts of Lessee.

13.05. In all instances where Lessee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the State ever be liable hereunder for consequential damages or special damages. The terms of this Agreement shall only be binding on the State during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, the State shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Agreement term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the State and Lessee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of Lessee to pay all Consideration and other sums hereunder provided to be paid by Lessee and the obligation of Lessee to perform Lessee's other covenants and duties under this Agreement constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Agreement and not otherwise. Lessee waives and relinquishes all rights which Lessee might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the State by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that the State is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Grantor not expressly set forth in this Agreement.

13.09. In the event of a conflict between any provision of this Agreement and any administrative rule promulgated by the General Land Office and/or the School Land Board, this Agreement shall control.

ARTICLE XIV. FILING

14.01. Lessee shall, at its sole cost and expense, record a memorandum of lease in the Nueces County Real Property Records and provide a file marked copy of same to Lessor within 60 days after this Lease is executed by all parties.

ARTICLE XV. ENTIRE AGREEMENT

15.01. This Lease, including any exhibits to the same, constitutes the entire agreement between the State and Lessee; no prior written or prior oral contemporaneous oral promises or representations shall be binding. The submission of this Lease for examination by Lessee or the State and/or execution thereof by the Lessee or the State does not constitute a reservation of or option for the Leased Premises and this Lease shall become effective only upon execution of all parties hereto and deliver of a fully executed counterpart thereof by the State to the Lessee. This Lease shall not be amended, changed or extended except by written instrument signed by both parties thereto.

IN TESTIMONY WHEREOF, witness my hand and Seal of Office.

THE STATE OF TEXAS

LESSEE: City of Corpus Christi

By: _____
JERRY E. PATTERSON
Commissioner, General Land Office

By: _____
(Signature)

(Printed Name)

(Title)

Date: _____

Date: _____

APPROVED:

Contents: _____
Legal: _____
Deputy: _____
Executive: _____

ACKNOWLEDGMENT

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____,

by _____.
(Lessee representative signing this document)

(Notary Signature)

Notary Stamp

Notary Public, State of _____

My commission expires: _____

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