

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2024- **10**

Introduced By: Mr. Meany
Co-Sponsors: Mr. Ali, Mr. McGregor

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A WORK AGREEMENT WITH DIFIORE FAMILY PROPERTIES, LLC

WHEREAS, as part of the Middleburg Heights Community Master Plan the revitalization of the Southland Business District ensures a sustainable future for the Southland Shopping Center; and

WHEREAS, the City of Middleburg Heights, its duly authorized employees, agents, and contractors require access to certain property for the purposes of performing work in accordance with the plans and specifications prepared by Osborn Engineering Company for the revitalization of the Southland Business District; and

WHEREAS, DiFiore Family Properties, LLC, the owner of the property located at 13353 Smith Road is authorizing entry upon said property for the purposes of performing work as described in Exhibit 1 attached.

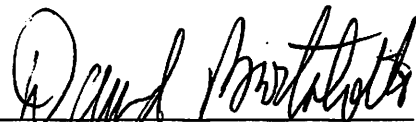
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into a Work Agreement, a copy of which is attached hereto and marked "Exhibit A", with DiFiore Family Properties, LLC for the purposes of performing the work described in Exhibit 1 of the attached agreement.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: _____

2/13/24



President of Council

Attest: M. Meola
Clerk of Council

Approved On: 2-15-24

Presented to Mayor: 2/14/24

Matthew Casella
Mayor

	Yea	Nay
Bortolotto	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ali	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Meany	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McGregor	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ference	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2024-10 adopted by the Council of the City of Middleburg Hts., on 2/13/24 was posted for a period of fifteen days, beginning 2/15/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
Clerk

CERTIFICATE
I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2024-10 passed on the 15th day of February 2024 by said Council.

Mary Ann Meola
Clerk of Council

WORK AGREEMENT

by and between

DIFIORE FAMILY PROPERTIES, LLC

and

CITY OF MIDDLEBURG HEIGHTS, OHIO

DiFiore Family Properties, LLC, the owner of the property located at 13353 Smith Road, Middleburg Heights, situated in Cuyahoga County, Ohio ["Owner"] in consideration of there being no costs, assessments, or other expenses to Owner for the work hereinafter described, hereby authorizes the City of Middleburg Heights ["the City"], and its duly authorized employees, agents, and contractors to enter upon said property for the purposes of performing the work described in Exhibit 1 attached hereto and by this reference incorporated herein.

This authority to enter granted to the City shall commence on April 1, 2024, and will terminate on November 1, 2024.

The work described in Exhibit 1 shall be performed in accordance with the plans and specifications prepared by Osborn Engineering Company for the construction and/or improvements detailed in the Smith Road Streetscaping project drawings.

Owner hereby releases the City and its employees from any and all damages or claims for damages resulting by reason of the above described work and operations, excepting those arising from said plans and specifications. It is understood that any contractor engaged for the purposes described above is an *Independent Contractor*, and is solely responsible for any and all damages arising from any conduct within the control of the City.

It is further understood that the City assumes no obligation for the maintenance of any area outside the limits of the permanent right of way.


Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Owner and the City and their respective heirs, executors, administrators, successors and assigns.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is made in writing, cites this Agreement, and is signed by Owner and the City.

IN WITNESS WHEREOF, DiFiore Family Properties, LLC has caused its name to be subscribed by Tony DiFiore, its duly authorized agent on the 30 day of JANUARY, 2024.

DiFIORE FAMILY PROPERTIES, LLC



Tony Guido DiFiore, Sole Member

Date: 1-30-24

The foregoing instrument was acknowledged before me this 30 day of JANUARY 2024 by Tony DiFiore, Sole member of DiFiore Family Properties, LLC, on behalf of the corporation. No oath or affirmation was administered to Tony DiFiore, with regard to the notarial act.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal on the day and year last aforesaid.



APRIL KINNEY
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
09-20-2026

NOTARY PUBLIC

My Commission expires: 09.20.2026

CITY OF MIDDLEBURG HEIGHTS


Matthew Castelli, Mayor

Date: 2-15-24

STATE OF OHIO, COUNTY OF CUYAHOGA SS:

BE IT REMEMBERED, that on the 15 day of February, 2024, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Matthew Castelli, the duly authorized representative of the City of Middleburg Heights, who signed or acknowledged the signing of the foregoing instrument to be the voluntary act and deed of the City of Middleburg Heights.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal on the day and year last aforesaid.



MICHELINA RUGGIERO
Notary Public, State of Ohio
My Commission Expires
September 18, 2028



NOTARY PUBLIC

My Commission expires: 2-18-28
mR.

EXHIBIT 1

TERMS OF WORK AGREEMENT

by and between

DIFIORE FAMILY PROPERTIES, LLC

and

CITY OF MIDDLEBURG HEIGHTS, OHIO

- The Contractor shall have access to the Grantee's property to perform necessary work to remove and install electric and lighting improvements as indicated on the "Smith Road Streetscaping" project drawings.
- During the time that construction is taking place, the Contractor may close a maximum of ten (10) parking spaces along the east parking lot curb line. The spaces may be closed for a maximum of seven (7) consecutive calendar days. The property owner shall be contacted a minimum of ten (10) calendar days prior to this closing.
- The Contractor shall clean all mud and construction debris off the existing asphalt at the end of each work day.
- At the conclusion of the work, all disturbed grassed areas shall be seeded and mulched by the Contractor and maintained through the establishment of the grass.
- No equipment or materials shall be allowed to be stored within the Grantee's property.

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, That, DiFiore Family Properties, an Ohio limited liability company, with a mailing address of 5200 West 130th Street, Brook Park, Ohio 44142, collectively and individually, hereinafter referred to as the "Grantor", claiming title by virtue of instrument recorded in Cuyahoga County Recorder's Document Number 201405290435, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations received to its full satisfaction of **THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**, an Ohio corporation, having its principal place of business at 76 South Main Street, Akron, Ohio, 44308, hereinafter referred to as the "Grantee", does hereby grant unto Grantee, its successors and assigns, an easement and right-of-way, together with the rights and privileges hereinafter set forth, for lines for the distribution of electric current, including communication facilities, in, under and across the following described premises:

Situating in the City of Middleburg Heights, County of Cuyahoga, State of Ohio and recorded in AFN #201405290435 of the Cuyahoga County, Ohio Records, further described as Permanent Parcel Number 372-30-017, 372-32-001, and 372-32-002 (listed together) ("Premises").

The easement areas, which are under and across the above-described premises, is described as follows:

See Legal Description attached hereto as Exhibit "A".

In addition to said easement and right-of-way, the following rights are hereby granted to Grantee:

(1) To install, construct, inspect, operate, replace, repair, patrol, maintain and remove in, under and along said easement area across Premises such cables, wires, pipes, conduits, service pedestals, above-surface and sub-surface transformers, transformer pads, service hand-holes and other usual fixtures and appurtenances as may by Grantee be deemed necessary or become necessary for or in connection with the underground distribution of electric current, including communication facilities;

(2) To enter and pass on, over and across any part of Premises when reasonably necessary for access to and from said easement area, and to use the portion of Premises that is parallel to and adjoining the boundaries of the easement area for piling dirt and for the operation of apparatus, appliances and equipment in exercising any of its rights enumerated herein;

(3) To trim, cut, remove or control by any means at any and all times any trees, limbs, roots, underbrush or other obstructions within or near said easement area which may in the judgment of the Grantee interfere with, limit access to or endanger transformers, service pedestals, cables or their appurtenances, or their efficient operation;

(4) To install, construct, inspect, operate, replace, repair, patrol, maintain and remove in, under and along said easement area and within the street limits cables, wires, pipes, conduits, street light standards and other usual fixtures and appurtenances as may by Grantee be deemed necessary or become necessary for or in connection with the operation of streetlights.

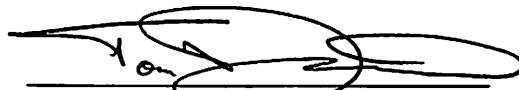
Grantor reserves the right to use the easement area, but only for the purpose of planting grass, flowers, and ornamental shrubbery and subject to Grantee's rights enumerated herein. In the event Grantee digs up the easement area or a portion thereof, or otherwise uses the easement area for any of the purposes herein enumerated, which requires the removal of said flowers or shrubbery, Grantee shall exercise ordinary care in removing and replanting them but will not assure the continued life of the flowers or shrubbery so removed and replanted.

TO HAVE AND TO HOLD the said easement, rights and right-of-way and its appurtenances unto said Grantee, its successors, and assigns, forever; and the Grantor represents that it is the owner of the Premises herein described.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Grantor(s) hereunto have set their hands this 30th day of January, 2024.

DIFIORE FAMILY PROPERTIES, LLC



Tony Guido Difiore, Sole Member

Date: 1-30-24

STATE OF Ohio

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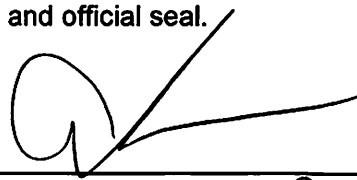
COUNTY OF Cuyahoga

On this, the 30 day of January, 2024, before me, a Notary Public, the undersigned, personally appeared Tony Difiore, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
09-20-2026



Notary Public
My Commission Expires 09-20-2026



OSBORN
ENGINEERING

**LEGAL DESCRIPTION
FOR
CEI EASEMENT NO. 1
PPN 372-30-017
CITY OF MIDDLEBURG HEIGHTS**

Situated in the City of Middleburg Heights, County of Cuyahoga, and State of Ohio and known as being part of Original Middleburg Township Lot No. 2, Turnpike Tract, and bounded and described as follows:

Beginning on the Southwesterly right-of-way line of Smith Road (80 feet wide) at the Easterly line of land conveyed to DiFiore Family Properties, LLC by deed dated May 29, 2014, and recorded in AFN #201405290435 of the Cuyahoga County, Ohio Records.

Thence South 34°51'05" West along the Easterly line of said land conveyed to DiFiore Family Properties, LLC, 110.00 feet to a point;

Thence North 55°08'55" West, 10.00 feet to a point;

Thence North 34°51'05" East, 112.13 feet to a point on the Southwesterly right-of-way line of Smith Road;

Thence along the southwesterly right-of-way line of Smith Road along the arc of a curve deflecting to the left a distance of 10.22 feet, said arc having a radius of 1015.43 feet and a chord which bears South 43°07'59" East, 10.22 feet to the Place of Beginning and containing 0.026 acres as calculated and described by Daniel J. Gerson, PS 8137 for Osborn Engineering Company in November 2023.

Be the same more or less, but subject to all legal highways.

The courses used in this description are given to an assumed meridian and are used to indicate angles only.

☉ SMITH ROAD

$R = 1,015.43'$: $ARC = 10.22'$
 $CH = S 43^{\circ}07'59'' E 10.22'$

EX. PAV.

P.O.B.

PPN 372-30-017
DIFIORE FAMILY
PROPERTIES, LLC
AFN #201405290435

N 34°51'05" E 112.13'
110.00' S 34°51'05" W

PPN 373-31-008
US POSTAL SERVICE
AFN #200008080795

N 55°08'55" W
10.00'

EASTERLY PROPERTY LINE
DIFIORE FAMILY PROPERTIES, LLC



OSBORN
ENGINEERING
www.osborn-eng.com

CEI EASEMENT #1
FOR
PPN 372-30-017

OSBORN PROJ: 20211574.000
SCALE: 1"=20'
DATE: NOVEMBER 2023



**LEGAL DESCRIPTION
FOR
CEI EASEMENT NO. 2
PPN 372-30-017
CITY OF MIDDLEBURG HEIGHTS**

Situated in the City of Middleburg Heights, County of Cuyahoga, and State of Ohio and known as being part of Original Middleburg Township Lot No. 2, Turnpike Tract, and bounded and described as follows:

Beginning on the Southwesterly right-of-way line of Smith Road (80 feet wide) at the Westerly line of land conveyed to DiFiore Family Properties, LLC by deed dated May 29, 2014, and recorded in AFN #201405290435 of the Cuyahoga County, Ohio Records;

Thence South $30^{\circ}33'40''$ East along the Southwesterly line of Smith Road, 150.83 feet to a point, said point being the Principal Place of Beginning for the parcel herein described;

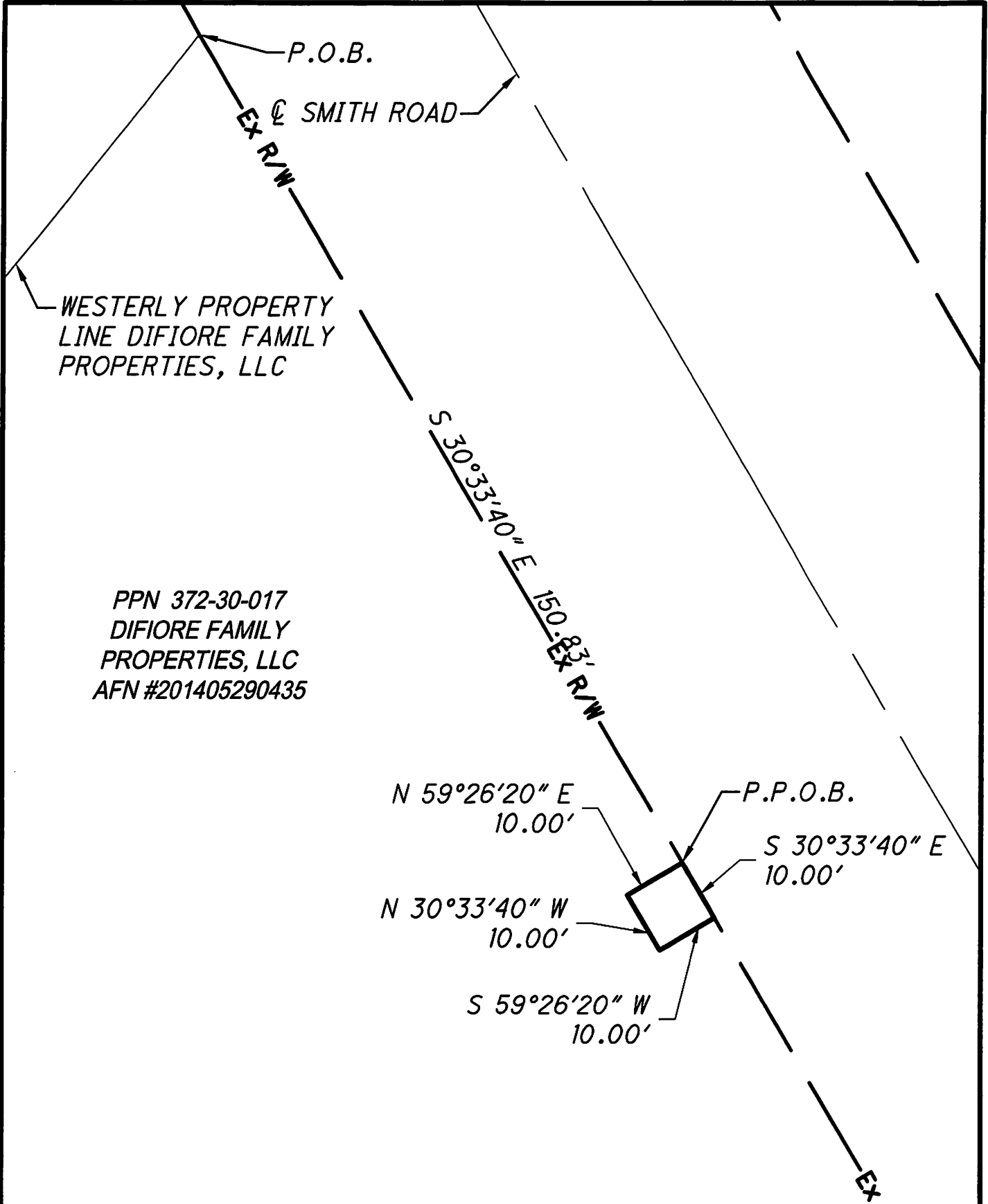
Thence South $30^{\circ}33'40''$ East along the Southwesterly line of Smith Road, 10.00 feet to a point;

Thence South $59^{\circ}26'20''$ West, 10.00 feet to a point;

Thence North $30^{\circ}33'40''$ West, 10.00 feet to a point;

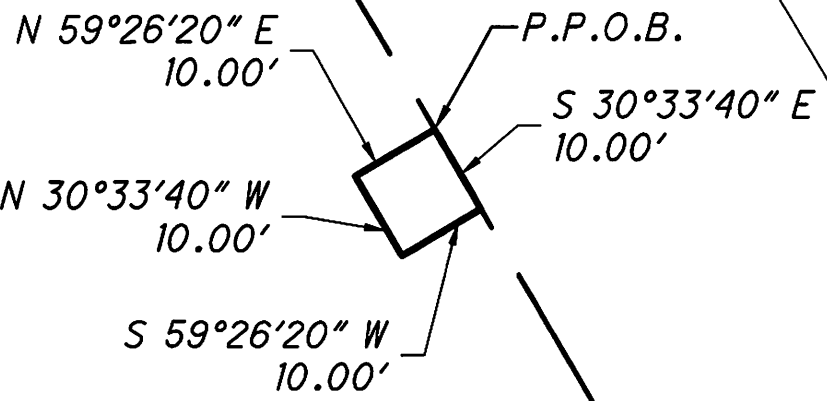
Thence North $59^{\circ}26'20''$ East, 10.00 feet to the Principal Place of Beginning and containing 0.002 acres of land as calculated and described by Daniel J. Gerson, PS 8137 for Osborn Engineering Company in November 2023, be the same more or less, but subject to all legal highways.


The courses used in this description are given to an assumed meridian and are used to indicate angles only.



WESTERLY PROPERTY
LINE DIFIORE FAMILY
PROPERTIES, LLC

PPN 372-30-017
DIFIORE FAMILY
PROPERTIES, LLC
AFN #201405290435



 OSBORN ENGINEERING www.osborn-eng.com	CEI EASEMENT #2 FOR PPN 372-30-017	OSBORN PROJ: 20211574.000 SCALE: 1"=20' DATE: NOVEMBER 2023
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