

**Deed of obligation pursuant to Section 106 Town and Country
Planning Act 1990 and Other Powers**

relating to land west of Bradmore Road and North of Wysall Road and land west of Wysall,
Nottingham NG12 5QZ

Planning Application: 24/00161/FUL

Planning Appeal reference: APP/P3040/W/25/3375110

Dated [XX] March 2026

Davill Solar Limited

-and-

John A Wells Limited

-and-

Timothy Frank Kirk

-and-

Exagen Old Wood Limited

-and-

Exagen Wymeswold Ltd

-and-

HSBC UK Bank Plc

to

Rushcliffe Borough Council

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This unilateral deed of obligation is given by

- (1) **DAVILL SOLAR LIMITED** incorporated and registered in England and Wales with company number 15793352 whose registered office is at [REDACTED] [REDACTED] ("**First Owner**")
- (2) **JOHN A WELLS LIMITED** incorporated and registered in England and Wales with company number 701875 whose registered address is at [REDACTED] [REDACTED] ("**Second Owner**")
- (3) **TIMOTHY FRANK KIRK** of [REDACTED] [REDACTED] (the "**Third Owner**"); and
- (4) **EXAGEN OLD WOOD LIMITED** incorporated and registered in England and Wales with company number 13440771 whose registered office is at [REDACTED] [REDACTED] ("**First Developer**")
- (5) **EXAGEN WYMESWOLD LTD** incorporated and registered in England and Wales with company number 13440766 whose registered office is [REDACTED] [REDACTED] (the "**Second Developer**"); and
- (6) **HSBC UK BANK PLC** incorporated and registered in England and Wales with company number 9928412 whose registered office is at [REDACTED] [REDACTED] (the "**Mortgagee**");

To

- (7) **RUSHCLIFFE BOROUGH COUNCIL** of Rushcliffe Arena, Rugby Road, West Bridgford, Nottingham, NG2 7YG (the "**Council**")

on the terms set out herein.

Recitals

- A The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Development is situated.
- B The First Owner is the registered freeholder of that part of the Site with title absolute registered at the Land Registry under Title Number NT303023 and free from encumbrances that would prevent the First Owner from entering into this Deed.
- C The Second Owner is the registered freeholder of that part of the Site with title absolute registered at the Land Registry under Title Numbers NT467713 and NT516883 and free from encumbrances that would prevent the Second Owner from entering into this Deed.
- D The First Developer has the benefit of the Option Agreements to carry out the Development and is therefore a person interested in the Site within the terms of section 106 of the 1990 Act.
- E The Third Owner is the registered freeholder of the Offsite Skylark Mitigation Land with title absolute registered at the Land Registry under Title Number NT280542 and free from encumbrances that would prevent the Third Owner from entering into this Deed, save as set out within recital F below.

- F The Mortgagee has an interest in the Offsite Skylark Mitigation Land by a Charge dated 17 November 1992 and registered against Title Number NT280542.
- G The Second Developer has the benefit of the Offsite Skylark Mitigation Land Option Agreement to carry out the Skylark Mitigation Works and is therefore a person interested in the Offsite Skylark Mitigation Land within the terms of section 106 of the 1990 Act.
- H Exagen Development Limited, a group company of the First Developer and the Second Developer, submitted the Planning Application. This was subsequently refused by the Council on 19 June 2025 (the "**Refusal**").
- I The Appeal was submitted to the Planning Inspectorate by Exagen Development Limited pursuant to section 78 of the 1990 Act against the Refusal on 24 October 2025.
- J The Owners and the Developers give this deed of unilateral obligation in order to secure the planning obligations contained in this Deed. The covenants contained herein shall bind the Site and the Offsite Skylark Mitigation Land on the terms set out in this Deed and shall be planning obligations for the purposes of Section 106 of the 1990 Act.
- K The Developers are satisfied that the obligations in this Deed are compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and are material considerations for the purposes of determining the Appeal.

1 Definitions and Interpretation

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings unless the context requires otherwise:

1990 Act means the Town and Country Planning Act 1990 (as amended);

Appeal means the appeal made to the Planning Inspectorate against the Refusal and given appeal reference APP/P3040/W/25/3375110;

Commencement of Development means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the 1990 Act but disregarding for this Deed, and for no other purpose, the following operations (1) ground investigations; (2) site survey works; (3) archaeological investigations; and/or (4) erection of any fences and hoardings around the Site;

and "**Commenced**" and "**Commences**" and "**Commence Development**" shall be construed accordingly;

Deed means this deed and any schedules to it;

Developers means the First Developer and Second Developer;

Development means the construction, operation and subsequent decommissioning of a renewable energy park comprising ground mounted solar PV with co-located battery energy storage system (BESS) at the point of connection, together with associated infrastructure, access, landscaping and cabling as set out in detail in the Planning Application;

Inspector means a planning inspector appointing by the Secretary of State to hear/determine the Appeal;

Leases means leases of part or all of the Site for the Development to be granted pursuant to the terms of the Option Agreements;

Notice of Approval means written notice that a Skylark Mitigation Strategy has been approved pursuant to this Deed enclosing therewith a complete copy of the approved Strategy;

Notice of Commencement means written notice confirming the date that Commencement of Development has occurred;

Notice of Subsequent Approval means written notice that a Skylark Monitoring Report has been approved pursuant to the terms of this Deed enclosing therewith a complete copy of the approved Skylark Monitoring Report in question;

Offsite Skylark Mitigation Land means the area labelled "Offsite Skylark Mitigation Land" and shown edged blue on the Plan for identification purposes only;

Offsite Skylark Mitigation Land Lease means a lease of part or all of the Offsite Skylark Mitigation Land for the Skylark Mitigation Works, to be granted pursuant to the terms of the Offsite Skylark Mitigation Land Option Agreement;

Offsite Skylark Mitigation Land Option Agreement means the Option Agreement dated 23 June 2022 made between (1) the Third Owner, (2) Investacc Limited and the Third Owner (as trustees of the Minerva SIPP for Timothy Frank Kirk) and (3) Exagen SPV05 Wymeswold Ltd (now known as the Second Developer), as varied by a Deed of Variation dated 17 July 2025 made between (1) the Third Owner, (2) Investacc Limited and the Third Owner (as trustees of the Minerva SIPP for Timothy Frank Kirk (0717)) and (3) the Second Developer relating to the Offsite Skylark Mitigation Land;

Option Agreements means together:

(a) an Option Agreement dated 3 December 2021 made between (1) John A. Wells Limited and (2) Exagen SPV03 Limited (now Exagen Old Wood Ltd) relating to land at Lodge Farm, Bradmore Road, Wysall, Nottingham NG12 5QR, forming part of the Site; and

(b) an Option Agreement dated 10 March 2023 made between (1) Norman Ernest Davill and (2) Exagen Old Wood Ltd relating to land on the north side of Costock Road, Wysall, forming part of the Site;

Owners means the First Owner, the Second Owner and the Third Owner;

Plan means the site location plan with drawing number LL02A-EXG-00-00-D-K021 P02 and dated 6 March 2026, appended to this Deed at Schedule 2;

Planning Application means the application for planning permission for the Development of the Site submitted by Exagen Development Limited (a group company of the Developers) to the Council, validated on 16 February 2024 with application reference 24/00161/FUL;

Planning Permission means the planning permission granted pursuant to the Appeal as may be varied from time-to-time by a subsequent application pursuant to section 73 of the 1990 Act;

Secretary of State shall mean the Secretary of State for Housing Communities and Local Government;

Site means the land west of Bradmore Road and North of Wysall Road and land west of Wysall, Nottingham NG12 5QZ as registered at the Land Registry under title numbers NT303023, NT467713 and NT516883 shown edged red on the Plan for identification purposes only;

Skylark Mitigation Purpose means to mitigate the loss of onsite breeding habitat on the Site upon which the Development is to be carried out, and subsequent displacement of open habitat for Skylark as a result of carrying out the Development;

Skylark Mitigation Strategy means the strategy to be submitted by Exagen Development Limited, the First Developer or the Second Developer to and approved by the Council pursuant to the Planning Permission to satisfy the Skylark Mitigation Purpose and which shall include the Skylark Mitigation Works;

Skylark Mitigation Works means the creation of a skylark habitat on the Offsite Skylark Mitigation Land pursuant to the Skylark Mitigation Strategy; and

Skylark Monitoring Report means a report approved from time to time pursuant to this Deed.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to Clauses and Schedules are to the Clauses and Schedules of this Deed.

- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.16 This Deed shall not be enforceable against statutory undertakers to the extent that their interest in the Site and/or the Offsite Skylark Mitigation Land relates solely to discharge of their statutory undertaking.

2 Legal Basis

- 2.1 This Deed is given pursuant to Section 106 of the 1990 Act with the intent that it creates planning obligations binding the Owners', the Developers' and the Mortgagee's interests in the Site and the Offsite Skylark Mitigation Land (as applicable).
- 2.2 No person shall be liable for any breach of any provisions of this Deed after it shall have parted with its entire interest in the Site or the Offsite Skylark Mitigation Land or the part of the Site or Offsite Skylark Mitigation Land (as applicable) in relation to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest.

3 Conditionality

- 3.1 Subject to Clauses **Error! Reference source not found.** to 3.8, this Deed is effective on the date hereof.
- 3.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed or is modified by any statutory procedure or expires before the Development is Commenced or is at any time revoked.
- 3.3 If the Secretary of State or their Inspector in determining the Appeal expressly states in his/her decision letter that the whole or any part of an obligation set out in this Deed is not a material consideration in the granting of the Planning Permission pursuant to the Appeal and/or does not meet any one or more of the statutory tests for planning obligations set out in Regulation 122 of the CIL Regulations then that obligation shall be deemed to be reduced, varied or vitiated to the extent so expressly stated in his/her decision letter but otherwise all obligations and other matters set out in this Deed shall be deemed to remain in full force and effect.
- 3.4 Clause 4 of this Deed is conditional upon and does not come into effect unless all of the following are satisfied:
- 3.4.1 the Planning Permission has been granted pursuant to the Appeal;
- 3.4.2 Commencement of Development has taken place; and
- 3.4.3 Notice of Commencement has been given to the Third Owner not later than seven calendar days following the date upon which Commencement of Development occurs.
- 3.5 In addition to the pre-conditions set out in Clause 3.4, Clause 4.1 is conditional upon and does not come into effect unless all of the following are also satisfied:

- 3.5.1 the Skylark Mitigation Strategy approved from time to time pursuant to this Deed requires the implementation of Skylark Mitigation Works on the Offsite Skylark Mitigation Land; and
- 3.5.2 Notice of Approval has been given to the Third Owner not later than seven calendar days following the date upon which any Skylark Mitigation Strategy is approved pursuant to the terms of this Deed.
- 3.6 In addition to the pre-conditions set out in Clause 3.4, Clause **Error! Reference source not found.** is conditional upon and does not come into effect unless all of the following are also satisfied:
- 3.6.1 the Skylark Mitigation Strategy approved from time to time pursuant to the terms of this Deed requires the implementation of Skylark Mitigation Works on the Offsite Skylark Mitigation Land; and
- 3.6.2 Notice of Implementation has been given to the Third Owner not later than seven calendar days following the date upon which any Skylark Mitigation Works carried out on the Offsite Skylark Mitigation Land have been completed.
- 3.7 In addition to the pre-conditions set out in Clause 3.4, Clause **Error! Reference source not found.** is conditional upon and does not come into effect unless all of the following are also satisfied:
- 3.7.1 the Skylark Monitoring Report approved from time to time pursuant to the Skylark Mitigation Monitoring Condition requires the implementation or retention of Skylark Mitigation Works on the Offsite Skylark Mitigation Land; and
- 3.7.2 Notice of Subsequent Approval has been given to the Third Owner not later than seven calendar days following the date upon which each Skylark Monitoring Report is approved pursuant to terms of this Deed.
- 3.8 This Deed terminates and ceases to have effect on the date that the Development is decommissioned in accordance with the terms of the Planning Permission.

4 The Third Owner's Covenants

- 4.1 The Third Owner covenants with the Council:
- 4.1.1 to implement the Skylark Mitigation Strategy approved from time to time pursuant to the terms of this Deed on the Offsite Skylark Mitigation Land including the provision of any Skylark Mitigation Works thereon;
- 4.1.2 to comply with the Skylark Mitigation Strategy insofar as it relates to the Offsite Skylark Mitigation Land until the date that the Development is decommissioned in accordance with the terms of the Planning Permission.
- 4.1.3 not to permit or allow activities on the Offsite Skylark Mitigation Land during the lifetime of the Development that may prevent the Skylark Mitigation Purpose from being and continuing to be achieved following the implementation of the Skylark Mitigation Strategy without the express prior written consent of the Council; and
- 4.1.4 that following the implementation of the Skylark Mitigation Strategy, it shall not do or permit to be done anything that would prevent ongoing compliance with the Skylark Mitigation Strategy in accordance with the terms of this Deed;

- 4.1.5 to implement the requirements of any Skylark Monitoring Report approved from time to time pursuant to the Skylark Mitigation Monitoring Condition on the Offsite Skylark Mitigation Land; and
- 4.1.6 to comply with the Skylark Monitoring Report insofar as it:
- (a) relates to the Offsite Skylark Mitigation Land; and
 - (b) contains requirements in respect of the Offsite Skylark Mitigation Land which differ from those set out in the most recently approved Skylark Mitigation Strategy or Skylark Monitoring Report.
- 4.2 The Third Owner hereby acknowledges that the Offsite Skylark Mitigation Land shall be subject to the obligations, restrictions and covenants set out in this Clause, such obligations being planning obligations for the purposes of section 106 of the 1990 Act.

5 Miscellaneous

- 5.1 The Developers shall pay to the Council the Council's reasonable and proper legal costs incurred in the negotiation of this Deed.
- 5.2 This Deed shall not be enforceable by any person pursuant to the Contract (Rights of Third Parties) Act 1999.
- 5.3 If any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 5.4 Where this Deed requires that a Notice of Approval, Notice of Commencement or Notice of Subsequent Approval is to be given to the Third Owner such notice:
- 5.4.1 must be:
- (a) sent to the proprietor for the time being of any legal estate (whether freehold or leasehold) registered at HM Land Registry in respect of the Offsite Skylark Mitigation Land;
 - (b) by means of the special delivery service; and
 - (c) addressed to "the Owner" at the relevant address for service recorded for that proprietor at HM Land Registry;
- 5.5 may be given by the First Developer, the Second Developer, the Council or any other person.

6 Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7 Value added tax

- 7.1 Each amount stated to be payable under or pursuant to this Deed is exclusive of VAT (if any).

7.2 If any VAT is at any time chargeable on any supply made by the Council, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

8 Mortgagee's consent

The Mortgagee hereby consents to:

- 8.1 the Third Owner entering into this Deed; and
- 8.2 the Mortgagee's interest in the Offsite Skylark Mitigation Land being bound by the terms of this Deed providing it shall have no liability for the obligations set out herein unless and until it becomes a mortgagee in possession of the Offsite Skylark Mitigation Land.

9 Developers' interest

The Developers shall not incur any liability for any breach of the obligations contained in this Deed (save in respect of Clause 5.1) unless and until they (or a group company of the Developers) completes the Leases and the Offsite Skylark Mitigation Land Lease and are in possession of the Site and the Offsite Skylark Mitigation Land.

10 Governing law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

IN WITNESS of which the parties have executed but not delivered this Deed until the date first shown above.

the First Owner:

Executed as a deed by)
Davill Solar Limited acting by a Director)
)
)

Director Name: (Capitals)

Director Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
 Witness Address:)
)
)
)

The Second Owner:

Executed as a deed by)
John A Wells Limited acting by a Director)
)
)

Director Name: (Capitals)

Director Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
Witness Address:)
)
)
)

The Third Owner:

Executed as a deed by)
Timothy Frank Kirk)
)
)

Name:) TIMOTHY FRANK KIRK

Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
Witness Address:)
)
)
)

The First Developer:

Executed as a deed by)
Exagen Old Wood Limited acting by a)
Director)
)

Director Name: (Capitals)

Director Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
Witness Address:)
)
)
)

The Second Developer:

Executed as a deed by)
Exagen Wymeswold Ltd acting by a)
Director)
)

Director Name: (Capitals)) **EMILY GRACE WHITE**

Director Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
Witness Address:)
)
)
)

The Mortgagee:

Executed as a deed by)
HSBC UK Bank Plc acting by a Director)
)
)

Director Name: (Capitals))

OFFICIAL

Director Signature:)

In the presence of: [Witness details]:)
)

Witness Name(Capitals):)
Witness Address:)
)
)
)

Director/Secretary Signature:)

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Schedule 1 – Developers' and Owners' Covenants

Part 1: Commencement of Development

1. The First Owner, the Second Owner and the First Developer covenant with the Council and the Third Owner

(a) not later than seven calendar days following the date of Commencement of Development, to give a Notice of Commencement to the Third Owner.

(b) For the purposes of this obligation:

(i) the date on which the Development Commences shall be taken to be the earliest date on which any material operation within the meaning of section 56 of the Town and Country Planning Act 1990 (other than any excluded operations) comprised in the Development begins to be carried out; and

(ii) the excluded operations are the following operations:

(1) ground investigations;

(2) site survey works;

(3) archaeological investigations; and

(4) the erection of any fences and hoardings around the site;

(iii) the prescribed recipients are:

(1) the local planning authority; and

(2) the proprietor for the time being of any legal estate of the Offsite Skylark Mitigation Land.

Part 2: Skylark Mitigation Strategy

1. The First Owner, the Second Owner and the First Developer covenant with the Council that:

(a) no Development shall Commence unless the Skylark Mitigation Strategy has first been submitted to and approved in writing by the Council;

(b) the Skylark Mitigation Strategy:

(i) shall include mitigation works on the whole of the Offsite Skylark Mitigation Land; and

(ii) may include mitigation works on the Site,

in order to satisfy the Skylark Mitigation Purpose;

(iii) and shall include the detailed methodology, location and timetable for provision of the Skylark Mitigation Works;

(iv) shall include management practices and prescriptions such as a prohibition on the use of pesticides and spot treatment of herbicide;

(v) shall include management practices to encourage nesting and foraging of Skylark;

(vi) shall ensure that the Skylark Mitigation Purpose is upheld, whilst allowing for arable cultivation, the use of set-aside, spring sown cereals or a combination to be in place across the field areas of the Offsite Skylark Mitigation Land for the lifetime of the development unless otherwise approved in writing by the local planning authority in advance of any changes; and

(vii) shall identify the persons responsible for implementing the strategy.

2. The Third Owner and the Developers covenant with the Council that the Skylark Mitigation Strategy shall be implemented as approved and as varied from time-to-time in accordance with the terms of this Deed.

Part 3: Skylark Mitigation Implementation

1. The Third Owner and the Second Developer covenant with the Council:

(a) not later than seven calendar days following the date upon which those Skylark Mitigation Works are completed, notice (“the Skylark Mitigation Works **Completion Notice**”) must be given to the prescribed recipients specifying the date on which those Skylark Mitigation Works were completed.

(b) for the purposes of this condition the prescribed recipients are:

(i) the local planning authority; and

(ii) the proprietor for the time being of any legal estate (whether freehold or leasehold) registered at HM Land Registry in respect of Skylark Mitigation Works carried out on the Offsite Skylark Mitigation Land.

Part 4: Skylark Mitigation Monitoring

The Owners and Developers covenant with the Council:

(a) the Skylark Mitigation Report shall be submitted to the Council from time to time detailing the ongoing delivery (including any remedial measures taken) and monitoring of the efficiency of the Skylark Mitigation Works set out in the Skylark Mitigation Strategy as approved pursuant to the terms of this Deed or any previous Skylark Monitoring Report approved pursuant to the terms of this Deed.

(b) where it is reasonably necessary in order to achieve the Skylark Mitigation Purpose for the Skylark Mitigation Works required by the Skylark Mitigation Strategy approved pursuant to this Deed or any Skylark Monitoring Report previously approved pursuant to this Deed to be amended, the Skylark Monitoring Reports submitted for approval pursuant to this Deed must in addition to the matters set out in this Part 4 also:

(i) specify any proposed amendments to the Skylark Mitigation Works necessary to satisfy the Skylark Mitigation Purpose;

(ii) specify management practices and prescriptions such as a prohibition on the use of pesticides and spot treatment of herbicide;

(iii) specify management practices to encourage nesting and foraging of Skylark;

(iv) whilst ensuring that the Skylark Mitigation Purpose is upheld, shall allow arable cultivation, the use of set-aside, spring sown cereals or a combination which must be in place across the field areas of the Offsite Skylark Mitigation Land for the lifetime of the Development; and

(v) include the identity of the persons responsible for implementing the amended Skylark Mitigation Works.

The Owners and Developers covenant with the Council:

(c) that Skylark Monitoring Reports shall be submitted to the Council no later than:

(i) the end of the period of two calendar years following the date specified in the Skylark Mitigation Works Completion Notice given pursuant to this Deed; and then

(ii) the fourth, sixth, eighth and tenth anniversaries of that date; and then

(iii) every four years thereafter until the Development is decommissioned in accordance with the terms of the Planning Permission.

(d) The Skylark Mitigation Works set out in each approved Skylark Monitoring Report shall be implemented and/or retained (as the case may be) in accordance with the most recently approved Skylark Monitoring Report until the development is decommissioned in accordance with this planning permission.

(e) All Skylark Monitoring Reports submitted for approval pursuant to this condition shall be prepared by a person, organisation or company possessing the requisite qualifications, skills, experience and expertise necessary to comply effectively with this condition.

Schedule 2 – Plan

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