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MEMORANDUM OF UNDERSTANDING

BETWEEN

VEGPAK, INC.

AND

UNITED FARM WORKERS OF AMERICA, AFL-CIO

This Agreement is entered into this 25 of <sup>January</sup> December, ~~1982~~, effective from and including September 1, 1982 between VEGPAK, INC., hereinafter referred to as "Company," and the UNITED FARM WORKERS OF AMERICA, AFL-CIO, hereinafter referred to as "Union." It is mutually agreed that the following shall serve to bind the parties to the terms agreed to unless and until it is superceded by a fully integrated and executed copy of the 9/1/82-8/31/84 Agreement between the parties. It is also agreed that all articles of the 9/12/79-8/31/82 Agreement between the parties which are not mentioned in this Memorandum are incorporated herein by reference and shall continue in full force and effect for the duration of this Agreement.

ARTICLE 5 - GRIEVANCE AND ARBITRATION PROCEDURE

This section shall become effective March 1, 1983. Until that date previous contract language as set forth in Article 5: Grievance and Arbitration shall remain in effect. The date of occurrence of grievance will determine which procedure shall apply.

A. The parties to this Agreement agree that all disputes which arise between the Company and the Union out of the interpretation or application of this Agreement shall be subject to the Grievance and Arbitration Procedure. The

parties further agree that the Grievance Procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising under this Agreement, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the Grievance Procedure has been exhausted. Any claim by the Union that on the job conduct by any non-bargaining unit employee is disrupting working relations may be treated as a grievance provided that such grievance is specified in detail.

B. The Company agrees to cooperate to make Union Stewards available to workers wishing to submit a grievance and to make the Grievance Committee of the Union available to perform their functions under this Agreement.

C. Grievances dropped by either party prior to an arbitration hearing shall be considered as withdrawn without prejudice to the position of either party on a similar matter in the future.

D. All time limits specified in this Article shall, except by mutual agreement, be strictly adhered to. Failure of the grieving party to comply with the time limits specified shall waive the grievance with prejudice and such grieving party shall pay the expenses and fees of the arbitrator incurred. If the party receiving the grievance fails to comply with the time limits specified such party shall be considered to have withdrawn its objections to the grievance and the grievance shall be granted in favor of the grieving party.

E. First Step: Any grievance arising under this Agreement shall within ten (10) workdays of the occurrence of the grievance or ten (10) workdays of the discovery thereof be taken up between the Company supervisor involved and the Union Steward. They shall use their best efforts to resolve the grievance. The party receiving the grievance shall have two (2) workdays thereafter to respond to the grievance.

F. Second Step: In the event the grievance is not satisfactorily resolved at the First Step the grieving party shall reduce the grievance to writing and set forth the nature of the grievance. A grievance regarding a discharge of an employee must be delivered to the other party in writing within five (5) days of the discharge. All other grievances must be delivered to the other party in writing within ten (10) workdays of the response to the grievance in the First Step. All written grievances shall include the following information:

1. Section or sections of the contract alleged to have been violated.

2. Action or actions claimed to have violated the contract.

3. Remedies sought and for whom. *Am*

4. Persons in the grievance. *for*

Not later than five (5) workdays of the delivery of the written grievance, the grievance shall be discussed in a meeting between the Grievance Committee and the Company representative delegated to resolve such matters.

If the grievance is not satisfactorily resolved in such meeting, the party receiving the grievance shall give a written response to the other regarding its position, including reasons for denial, within ten (10) workdays from the close of the Step Two meeting.

A Union representative may fully participate in the Second Step grievance meeting.

G. Step Three: If the grieving party is not satisfied with the written response, it must file a written notice to the other party within thirty (30) workdays of the receipt of such written notice.

If timely written notice of appeal is given, the matter shall be referred to arbitration. The arbitrator shall consider and decide the grievance referred to him.

The arbitrator shall not have the authority or jurisdiction to modify, add to, or detract from, or alter any provision of this Agreement. Within that limitation among other things he shall have authority to award back pay for any loss of earnings from the Company including the right to revoke any form of discipline including discharge. He shall also have the authority to apply the Agreement and order compliance by all parties within the terms of the Agreement.

The arbitrator in his discretion may render a bench decision, or may allow briefs, but in any event shall issue a decision in writing to the parties within fifteen (15) days after the date of the close of the hearing sessions.

The decision of the arbitrator shall be binding on the Company, the Union and the workers.

All expenses and fees of the arbitrator shall be borne by the losing party. If a question arises as to who is the losing party of the arbitration, the arbitrator shall determine who pays expenses and fees of the arbitrator. Each party shall pay the cost of presenting its own case.

H. Selection of the Arbitrator: Within 30 work days of the signing of this Agreement the parties shall prepare a list of arbitrators to be used for the duration of this Agreement. The parties shall prepare such list from panels requested from the State Conciliation Service and/or the Federal Mediation and Conciliation Service.

Within seven (7) workdays of the notice of referral to arbitration the parties shall meet to select an arbitrator for that grievance. If the parties cannot agree upon the selection of an arbitrator then they shall alternately strike names from the list of arbitrators mentioned above. The party to strike first shall be selected by a coin toss. The arbitrator remaining after each party has alternately struck names shall be the arbitrator designated for that grievance.

Immediately upon selection of an arbitrator the appropriate letter shall be sent to the arbitrator to arrange for dates and places for the arbitration. If the arbitrator cannot hear the grievance within ninety (90) workdays of the receipt of such letter the parties may, at

the request of either party, meet to select another arbitrator who can hear the grievance at a sooner date.

I. Expedited Grievance and Arbitration: The parties agree that the primary purpose of the grievance procedure is to resolve grievances as speedily as possible and to maintain good relations between the Union, the Company, and the workers.

It is recognized that there are times and there are certain issues that may arise, wherein it is to the best interest of all concerned to have a resolution of the matter more quickly than provided in the above procedure.

Accordingly, it is agreed that grievances specified elsewhere in this Agreement as subject to the expedited Grievance and Arbitration Procedure may at the request of the grieving party and with written notice to the other party be expedited to arbitration.

After such a grievance has been reduced to writing, the grieving party may request and there shall be a Second Step meeting within two workdays and the responding party will immediately provide its answer in writing, if denied, setting forth the reasons for denial. The grieving party may then request, with notice to the responding party, that the grievance be referred to the arbitrator within three (3) workdays from the written responsive answer. If such a grievance is presented to the arbitrator, it is agreed that it will take precedence, as to investigation, hearing date, and issuance of decision over any other case.

J. The arbitrator may make a field examination in any case he deems it advisable.

K. In the event that any dispute causes a work interruption of any kind, the parties agree to make an immediate joint effort to end such interruption which may include contacting the arbitrator. The arbitrator shall order an end to such interruption, personally, if possible, or by telephone, and shall immediately attempt to resolve the dispute. This in no way alters the obligation or liability of either party under the collective bargaining agreement.

#### ARTICLE 14 - HEALTH AND SAFETY

E. Delete this paragraph.

I. Add to end of paragraph "The Foreman shall provide and have available at all times tools, equipment and protective garments at the job site."

M. Add to end of paragraph "A place will be provided on the bus for all tools and lunches."

#### ARTICLE 17 - UNION LABEL

Amend paragraph B third sentence to read as follows:

It is agreed that during the term of this Agreement, each shipping package or container harvested and packed by Union members, and shipped by the Company, may, at the option of the Company, bear the Union label or seal.

#### ARTICLE 23 - BEREAVEMENT PAY

Delete current language and substitute the following:

To make funeral arrangements and to attend the funeral of a member of the immediate family (father, mother, child,



brother, sister, husband or wife, mother-in-law, father-in-law, grandfather, or grandmother), a worker will be paid what he would have earned had he been working for the Company, not to exceed three (3) days. However, in cases where the funeral requires travel of more than three hundred (300) miles one way, an additional one (1) day leave with pay shall be granted, and in cases where the funeral requires travel of more than four hundred (400) miles, one way, a total of five (5) days leave with pay shall be granted. The Company may require a death certificate or other evidence of death.

ARTICLE 30 - ROBERT F. KENNEDY MEDICAL PLAN

A. 1. The Company shall, commencing September 6, 1982, contribute to the Robert F. Kennedy Farmworkers Medical Plan \$.55 per hour for each hour worked by each worker; provided, however, that the Company shall make a guaranteed eight (8) hour contribution per day for each piece rate worker who completes his scheduled day of work.

2. The Employer and the Union are negotiating rates exclusively for Company workers. In the event the Union hereafter agrees with any other Employer to a rate less than that specified in paragraph A - 1, to maintain the benefits provided as of September 6, 1982 as defined in paragraph D below (hereinafter referred to as "the existing benefits"), during the term of this collective bargaining agreement, the Company in such case shall contribute such lower rate. In the event a higher rate than that specified in paragraph A 1 is hereafter agreed to or arbitrated, as hereinafter

provided, with the Company to maintain the existing benefits, and if the Union thereafter agrees with any other Employer to a rate lower than such increased rate, the Company, in such case, shall contribute such lower rate.

B. In the event the trustees of the Plan determine that an increase in the amount contributed by the Employer is necessary to maintain the existing benefits, then the following provisions shall apply:

1. The number of increases during the term of this agreement shall be limited to not more than two (2), neither of which shall be effective prior to the first payroll period in March, 1983, nor effective later than the first payroll period in March, 1984.

2. The following time sequence will be strictly adhered to by all parties and the arbitrator. In the event the due date for any action falls on a Sunday or a holiday, the time shall be extended to the next business day.

- a. Union gives information and notice to Employer.  
Union requests list of arbitrators. 0 days.
- b. Company analyzes and responds. Arbitrator is selected. 60 days.
- c. Union analyzes response  
(including mailing time from Company). 10 days.
- d. Company and Union meet. 1 day.
- e. Preparation for or Cancellation of Arbitration. 14 days.
- f. Arbitration. 2 days.

g. Briefs. Postmarked 4 business days after close of hearing.

h. Arbitrator's Decision. 20 days after close of hearing.

3. Union shall deliver to the Employer by personal service or by certified mail written notice of such increases, specifying the amount and effective date of same.

4. Such notice (hereinafter called "Union Notice") shall be received by the Employer no later than thirty (30) days prior to the date the rate increase will be effective.

5. In addition to such notice, the Union shall provide the following information in writing by personal service or by certified mail to the Employer no later than thirty (30) days prior to the proposed rate increase:

(a) The following items will be provided for the twelve (12) consecutive months ending with the second month preceding the month in which notice is given, or, where available, for the twelve (12) consecutive months ending with the month preceding the month of notice.

(1) Amount of Contributing Employers' contributions and Employee Self Payments to the Plan by month.

(2) Expenses of the Plan by month including but not limited to administrative expenses and claims paid by the Plan.

(3) Total number of claims paid by Plan by month.

(4) Total amount paid by Plan by benefit category by month.

(5) For each month's paid claims, a breakdown showing the months and years in which such claims were incurred: i.e , Months of Medical Service.

(6) Income and Expense Statements by month.

(7) Investment and interest income by month.

(8) Number of eligible participants per month per Plan module.

(9) Amount of premiums paid for dental and vision insurance by month.

(b) The following shall be provided with the Union Notice:

(1) The inflation factor and how it is utilized.

(2) Information concerning material changes, whether adverse or positive, as reported by the Plan's outside auditors.

(3) The most recent complete outside audit report including but not limited to auditor's notes concerning examination of claims procedures and verification of totals by benefit category.

(4) Existing Plan Instrument not previously provided during the term of this Agreement.

(c) Where applicable the following items shall be provided as often as prepared, received, and/or supplied by consultants, Plan employees, trustees, Plan agents and/or independent contractors engaged by the Plan, its consultants, trustees, contractors, or agents:

(1) If increase is requested for dental and/or vision, information concerning loss ratio and experience

versus the premium for dental and vision which has been made available to the Plan by the third party provider(s).

(2) Changes in future benefit liability and calculations including but not limited to incurred but unreported claims and other Plan payables to the extent it is included in computations for purposes of the arbitrable increase.

(3) Information concerning material changes, whether adverse or positive.

(4) Annual financial statements other than those mentioned above.

(d) The Union shall provide any additional data not specified above and used by the Plan in formulating the cost projections specified in Union Notice within fifteen (15) days after said notice or such data shall not be used as evidence in the arbitration hearing.

C. It is specifically agreed that refusal by the Union to provide all or any part of the information specified in B-5 above within the time limits prescribed in B-1, 2, 3, and 4 above shall waive any right by the Union to any increase in contributions above those currently in effect immediately prior to the notice of rate increase delivered by the Union; provided, however, where a portion of the information specified in B-5 above does not exist because of acts of God or other causes beyond reasonable control of the Plan, the failure by the Union to provide such information shall not be deemed a waiver of the right to any increase in contributions above those currently in effect immediately

prior to the notice of rate increase delivered by the Union unless the Arbitrator decides such lack of information is prejudicial (substantially affects) the Company's ability to respond to the requested increase.

D. It is specifically agreed that the Employer shall be responsible for maintaining benefits provided as of September 6, 1982 and shall have no financial responsibility whatsoever for the additional cost of any change in Plan benefits during the term of this collective bargaining agreement. Plan changes without cost impact or which reduce Plan costs shall not impair the Union's right to seek necessary increases as herein provided. Union will provide notice of Plan changes at the time they occur and an explanation of such changes. The Union Notice shall set forth the contribution rate which the Plan deems necessary to maintain existing benefits on or after the effective date of the increase. The Union Notice and any Employer Response shall disregard past gains or losses (changes in reserves) in setting forth the projected rate.

E. In the event the Employer disagrees with the amount set forth in the Union Notice, the Employer shall notify the President of the Union by certified mail at Keene, California with a copy mailed first class or personally delivered to the local Union office of its objection and the amount the Employer believes is the correct amount that it should pay (such notice herein called "Employer Response"). The Employer shall provide an explanation of its position and shall include written data it intends to introduce at

the arbitration hearing to support its position including but not limited to the inflation factor used by the Employer. Such notice shall be postmarked no later than sixty (60) days after receipt of the Union Notice.

F. The Union and Employer shall meet within eleven (11) days after the mailing of Employer's Response to attempt to resolve any difference. If the parties are unable to agree, the following procedure shall be followed:

1. The parties shall select an arbitrator from a list of a total of 21 arbitrators supplied by the State Conciliation and Mediation Service (10 names) and the Federal Mediation Service (11 names). The request for arbitrators shall be made by the Union at the time it sends Union Notice. The Union and the Company will meet within a week after receipt of the arbitration list to select an arbitrator. Any arbitrator selected must agree to meet time limits imposed herein.

2. The arbitrator shall be required to utilize an agreed upon neutral qualified expert engaged by the parties to assist him in analyzing data and information presented in an arbitration. In the event the parties cannot agree, the arbitrator shall select such neutral qualified expert. The qualified expert selected by the arbitrator must have the following qualifications:

- (a) No connection direct or indirect with any of the parties, with any Contributing Employer to the Plan, the Robert F. Kennedy Plan, or competing or like plans in agriculture.

(b) The expert shall be recognized in the insurance/health and welfare industry as qualified to project health plan costs.

3. The arbitrator's authority shall be limited to a decision on the following question: "Shall the Employer contribute to the Robert F. Kennedy Plan the sum specified in the Union Notice or the sum specified in the Employer Response in order to maintain the benefits provided as of September 6, 1982, as defined in paragraph D above?" The arbitrator shall have no authority to set an amount other than one of said specified sums; in the event the arbitrator believes the sum should be other than one of those specified, he shall choose the specified sum closest to his determination.

4. The Employer shall continue to pay the contribution rate in effect at the time of the Union Notice pending the decision of the arbitrator.

5. The arbitrator's decision shall be in writing with an explanation of reasons for his decision. The arbitrator's decision shall set forth the specified contribution rate which shall be effective retroactively to the effective date specified in the Union Notice. Such decision shall be final and binding on the Company, the Union, and the workers. If the arbitrator's decision is challenged by either party, the Court shall award reasonable attorney's fees and ERISA interest when applicable to the prevailing party.



6. Supplemental contributions, if any, awarded by the arbitrator on hours previously reported to the Plan shall be due and payable fourteen (14) calendar days after notice of the arbitration decision. Such supplemental contributions, if any, if paid within the time limits herein specified, shall bear no interest. Thereafter such supplemental contributions, if any, shall bear interest at the rate prescribed under ERISA for delinquent contributions.

7. It is understood that the \$.55 rate agreed upon above has been negotiated by the parties as part of a collective bargaining agreement. It shall not be utilized by the arbitrator as a substitute for proving any cost projections. It is also understood that because of such collective bargaining agreement, at no time shall the Employer's obligations be less than \$.55 except as specified in paragraph A-2 above.

8. All expenses of the arbitration including the fees of the arbitrator and the qualified expert shall be borne by the losing party. Each party shall pay the cost of presenting its own case including the cost of its own expert witnesses.

9. Time is of the essence in connection with this arbitration. As set forth in paragraph B.2., the arbitration shall commence no later than eighty-five (85) days after receipt by the Company of the Union Notice and agreed upon information. Briefs may be submitted to the arbitrator but must be postmarked no later than four (4) days after the close of the arbitration. The arbitrator's

decision must be rendered no later than twenty (20) days after the close of the arbitration. Time shall be extended as provided in paragraph B.2. above. Time periods may also be extended upon mutual agreement in writing between the parties.

G. Reports sent to the lock box address:

Dept. 3, 6534

Los Angeles, CA 90088

The Union shall provide, or cause to be provided, to the Company the following materials.

1. Summary Annual Report on or about July 29th of each year.

2. Summary of Plan changes during the preceding Plan year, on or about July 29th of each year.

3. A copy of the summary plan description filed with the Department of Labor each five (5) years, or as more frequently published by the Board of Trustees.

#### ARTICLE 31 - JUAN DE LA CRUZ FARMWORKERS PENSION PLAN

Delete current language and substitute the following:

A. The Company shall, commencing September 6, 1982, contribute twenty cents (20¢) per hour for each hour worked by each worker to the Juan De La Cruz Farm Workers Pension Plan.

B. In accordance with Article 33, the monies and a summary report shall be remitted to the Plan at the following address:

Dept. 2-6242

Los Angeles, CA 90088

C. In the event that the Company files in bankruptcy or Chapter 11 proceedings, it will notify the Plan of such action and will list the Plan as a separate creditor qualified as a priority claim pursuant to the Bankruptcy Act. Notification to the Union or any of the other Plans or Funds shall not constitute compliance with this Article.

D. The Union shall provide, or cause to be provided, to the Company the following materials:

1. Summary Annual Report on or about July 29th of each year.

2. Summary of Plan changes during the preceding Plan year, or or about July 29th of each year.

3. A copy of the summary plan description filed with the Department of Labor each five (5) years, or as more frequently published by the Board of Trustees.

#### ARTICLE 33 - REPORTING ON PAYROLL DEDUCTIONS AND FRINGE BENEFITS

##### A. SUBMISSION OF DUES AND REPORTS TO UNION

Paragraph 2 to read:

A payroll report is to be submitted monthly covering the four to five payroll periods falling within the reporting month. The report shall be mailed if possible by the tenth (10th) day of each month, but in any case no later than the fifteenth (15th) day of the month. The report shall include the workers' names, social security numbers, payroll periods covered, gross wages, total hours worked per worker, total number of workers and total amount of Union dues deducted during such pay periods from each reported

worker. Complete mailing directions and information for such report will be supplied by the Union.

B. SUBMISSION OF REPORTS AND CONTRIBUTIONS TO FRINGE BENEFIT PLANS.

Paragraph 1 to read:

All contributions due under this Agreement to the Robert F. Kennedy Farm Workers Medical Plan, the Juan De La Cruz Farm Workers Pension Plan and the Martin Luther King Jr. Farm Workers Fund shall be remitted monthly. The contributions due said Fringe Benefit Plans each month shall be computed on the preceding monthly payroll periods for every worker covered by this Agreement. The monthly contributions due each Plan, for the preceding payroll month, together with a monthly summary report shall be mailed, if possible, by the tenth (10th) day of each month, but in any case not later than the fifteenth (15th) day of each month, to each Plan's depository bank at the lock box address designated by each Plan Administrator. Company acknowledges receipt of the designated lock box address for each Plan and agrees that all reports, contributions, statements, notices of other communications required or provided for under this Agreement, shall be sent to such designated addresses, unless Company is notified in writing, by the Administrator of any Plan, of a change in such designated address.

ARTICLE 44 - COST OF LIVING ALLOWANCE

Delete paragraphs B and C and substitute the following for paragraph B, and change alphabetization of following paragraphs:

B. In the event that the CPI in May, 1983, shall exceed an increase of five percent (5%) over the CPI in May, 1982, a Cost-of-Living allowance of one cent (.01) per hour shall be paid for each three tenths (.3) of a point increment in the CPI over and above the five percent (5%) increase in the CPI. Any adjustment due under the above formula shall be effective July 15, 1983.

In the second year (7/15/83) the increase and the Cost of Living allowance shall not exceed the hourly rate specified in Appendix A.

ARTICLE 47 - DURATION OF AGREEMENT

Amend first sentence as follows:

This Agreement shall be in full force and effect from and including September 1, 1982 to and including August 31, 1984.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers and/or representatives.

Executed December <sup>1983</sup> 25, 1982.  
*January*

For: United Farm Workers of  
America, AFL-CIO

For: VegPak, Inc.

*Guillermo J. Chavez*  
*Isidro Mendiola*  
*Roberto Delgado*  
*Humberto Gonzalez R.*  
*Abel P. Soto*  
*Epifanio R. Nery*  
*Jose Perez*

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APPENDIX "A"

	Effective 9/1/82		Effective 7/15/83	
General Labor	\$ 6.65		\$ 7.00	
Mechanic	\$11.45		\$11.80	
Field Serviceman	\$ 8.18		\$ 8.53	
Trailer Puller	\$7.25		\$ 7.60	
<u>Broccoli Harvest (Per Bin)</u>				
4 bins/acre or more	\$9.46	+45¢/hr (COLA)	\$9.65	+45¢/hr + COLA
Less than 4 bins/acre	\$10.67	" "	\$10.88	" "
Less than 3 bins/acre	\$12.06	" "	\$12.30	" "
Less than 2 bins/acre	\$16.59	" "	\$16.92	" "
Less than 1 bin/acre	\$23.71	" "	\$24.18	" "
Shoot Harvest	\$29.64	" "	\$30.23	" "

(6) The above rates apply to how the bins are presently being filled at VegPak, Inc. As a comparison for future use the bin should be filled in the same manner as was done in the months of March to November, 1982.

The bin, for descriptive purposes should be well filled with broccoli showing above the rim when under the machine.

In the second year (7/15/83) the increase and the Cost of Living allowance shall not exceed the hourly rate specified in Appendix A.

RETROACTIVITY

The increase paid retroactive to and including the 1st of September, 1982, to be paid within two (2) weeks of the signing of this Agreement.

LETTER OF UNDERSTANDING

The Company and the Union agree that:

1. Notwithstanding the time limits set forth in Article 5, Grievance and Arbitration, the Union shall have the right, upon notice to the Company, to put a grievance or grievances in abeyance, suspending any applicable time limits to allow for a possible appeal to be processed.

2. During the time that the grievance is held in abeyance, the Company shall not be held liable for any lost wages or benefits incurred by the employee as a result of the abeyance.

For: United Farm Workers of  
America, AFL-CIO

*Antonio Mendez*

For the Company:

\_\_\_\_\_  
Name of Company

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Roberto De la Cruz*  
*Humberto Acevedo R*  
*Abel P Soto*  
*Geoffrey R Cruz*  
*Jose Perez*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



LETTER OF UNDERSTANDING

1. The Company and the Union agree that any collective bargaining agreement between the Union and E. T. Wall, Inc. in the Coachella Valley for one (1) crew of approximately thirty (30) workers is excluded from the intent of Article 30, paragraph A(2).

2. In addition, the Union shall provide claims experience or summaries and income per month for the period July 1 to September 1, 1982.

For: United Farm Workers of  
America, AFL-CIO

For: VegPak, Inc.

*Antonio M. Garcia*

*Roberto Debeling  
Heriberto Gonzalez  
Abel P. Soto  
Eugenio A. Nery  
Joe Perez*

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