

INDENTURE OF TRUST AND RESTRICTIONS

RED OAK PLANTATION

ST. LOUIS COUNTY, MISSOURI

THIS INDENTURE, made and entered into this 28 day of SEPT. 19 89 by and between FLOWER HOMES, INC., a Missouri Corporation hereinafter called First Party and, DON FLOWER, AND LARRY KONNEMAN, AND J. DOUGLAS STARK, all of the State of Missouri, Second Party, hereinafter referred to as "Trustees";

WITNESSETH THAT:

WHEREAS, pursuant to ordinance number 14088, dated September 16, 1988, the County Council of St. Louis County, Missouri approved a Planned Environment Unit Procedure for a parcel of land containing 27.6 acres, more or less, and

803 WHEREAS, First Party is the owner of the above referenced parcel of land which is more particularly described in Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, First Party contemplates that the parcel of land described in Exhibit A shall be subdivided and that the plats thereof designated Red Oak Plantation Plat No. 1, Red Oak Plantation Plat No. 2, etc., will be prepared and recorded in the St. Louis County Recorder's office pursuant to and in conformity with ordinance Section 1003.187 SLCRO; and

WHEREAS, from time to time, there may be designated, established and recited on the recorded plat of Red Oak Plantation certain cul-de-sacs, street lights, streets, easements and any other non-public items which are for the exclusive use and benefit of the residents of Red Oak Plantation except those streets or easements which are or may hereafter be dedicated to public bodies and agencies, and which have been provided for the purpose of constructing, maintaining and operating sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of Red Oak Plantation.

WHEREAS, it is the purpose and intention of this Indenture to preserve Red Oak Plantation as a restricted neighborhood and to protect the same against certain uses by the adoption of a sound urban environment plan and scheme of restrictions and apply that plan and scheme of restrictions to the portion of said land described in Exhibit A which is included in each plat of Red Oaks Plantation from and after each such plat is recorded, including all common areas, and mutually to benefit, guard and restrict future residents of Red Oak Plantation and to foster their health, welfare and safety; and

WHEREAS, All reservations, limitations, conditions, easements, and covenants contained herein (any and all of which are sometimes hereinafter termed "restrictions"), are jointly and severally for the benefit of all persons who may purchase, hold or reside upon, any of the lots situated in Red Oak Plantation; and

WHEREAS, the recording of this Indenture shall not encumber the property described in Exhibit A or any portion thereof until a subdivision plat of Red Oak Plantation is recorded containing such property;

NOW THEREFORE, in consideration of the premises and of the mutual premises, covenants and agreements made by the parties hereto each to the other, the parties hereto covenant and agree to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the lots, and parcels of land in any plat of Red Oak Plantation described herein as follows, to-wit:

I.

DURATION

The term of this Indenture shall be for the duration of the Red Oak Plantation Subdivision as developed under the ordinances of St. Louis County, Missouri. It being the intent of the First Party that the common properties held hereunder be and remain used and maintained for the common benefits of all lot owners and

residents so long as all or part of Red Oak Plantation shall be developed for residential purposes in substantially the form presently anticipated. In the event the Red Oak Plantation Subdivision is vacated, thereafter fee simple title to the common properties shall vest in the then lot owners as tenants in common. The rights of the tenants in common shall only be exercisable pertinent to and in conjunction with their lot ownership. Any conveyance or change of ownership of any lot shall convey with it ownership in the common property, and no interest in the common property shall be conveyed by a lot or unit owner except in conjunction with the sale of a lot. The sale of a lot shall carry with it all the incidents of ownership of the common property although such is not expressly mentioned in the deed; provided, however, that no right or power conferred upon the trustees shall be aggregated.

II.

RESERVATION OF EXPENDITURES

First Party reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by them for sewers, gas pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the creation of any subdivision in the tracts described in Exhibit "A" attached hereto and made a part hereof.

III.

DESIGNATION AND SELECTION OF TRUSTEES

3.1 The initial trustees shall be, DON FLOWER, LARRY KONNEMAN, AND J. DOUGLAS STARK, designated herein as Trustees, who, by their signature to this instrument, consent to serve in such capacity, subject to the terms and provisions of this paragraph. Whenever any of said Trustees or Trustee resigns, refuses to act, becomes disabled or dies, the remaining Trustees or Trustee shall appoint a successor or successors until such time that the Party of the First Part does not own any of the property

described in Exhibit A hereto attached, at which time a meeting of the then record owners in fee simple title to lots of Red Oak Plantation shall be called by notice of meeting signed by at least three (3) lot owners, sent by first class mail, to or personally served upon, all of such record lot owners at least ten (10) days before the date fixed for the meeting, for the purpose of electing new trustees. The notice shall specify the time and place of meeting, which place shall be in St. Louis County, Missouri. At such meeting, or any adjournment thereof the majority of the record owners attending such meeting, in person or by proxy, shall have the power to elect such Trustees until their successors have been duly appointed or elected and qualified. After three (3) have been elected, by lot one shall serve for a term of one (1) year, one for a term of two (2) years and one for a term of three (3) years, their successors being elected to terms of three (3) years each at such meeting, each such lot owner whether attending in person or by proxy, shall be entitled to one vote for each full lot owned by him. The results of such elections shall be certified by the persons elected Chairman and Secretary. A majority of the lot owners whether there by person or by proxy shall constitute a quorum. Meetings thereafter shall be called by the Trustees with notice given in the same manner as hereinabove provided and any business relevant or pertinent to the affairs of Red Oak Plantation subdivision may be transacted at any meeting of lot owners in conformity with this procedure. Whenever there is a vacancy among the Trustees, said vacancy shall be filled by a person designated by the remaining Trustees, to serve the unexpired terms of the Trustee replaced.

3.2 To the contrary notwithstanding, one third (1/3) of the Trustees shall be chosen by owners of developed lots after 50% of the lots in Red Oak Plantation have been sold; two thirds (2/3) of the Trustees shall be chosen by owners of developed lots after 95% in all of the lots in Red Oak Plantation have been sold; all of the Trustees shall be chosen by owners of the developed lots after all of the lots of Red Oak Plantation have been sold.

3.3 Where the provisions of such trust indenture cannot be fulfilled by reason of unfilled vacancies among the Trustees, the St. Louis County Council may upon the petition of any concerned resident or property owner of the subdivision, appoint one or more trustees to fill vacancies until such time as Trustees are elected in accordance with the trust indenture. Any person so appointed who is not a resident or property owner within the subdivision shall be allowed a reasonable fee for his services by order or appointment, which fee shall be levied as a special assessment against the property in the subdivision, and which shall not be subject to any limitations on special assessments contained in the trust indenture or elsewhere..

IV.

TRUSTEES' DUTIES AND POWERS

First Party hereby invests Trustees and their successors with the rights, powers and authorities described in this instrument, and with the following rights, powers and authorities:

4.1 To acquire and hold the common areas hereinabove described and conveyed to Trustees by separate instrument on even date herewith, which said common areas is set forth and shown on the plat of Red Oak Plantation Subdivision, all in accordance with and pursuant to the aforesaid resolution of St. Louis County and in accordance with and subject to the provisions of this instrument, and to deal with any common areas so acquired under the provisions hereinafter set forth.

4.2 To exercise such control over the easements, streets and roads (except for those easements, streets and roads which are now or hereafter may be dedicated to public bodies or agencies), entrances, lights, street lights, cul-de-sacs, (including restrictions of use of same), shrubbery, entrance markers and any other non-public items, storm water sewers, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities as may be shown on any recorded plat of Red Oak Plantation as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, street lights, entrance markers,

streets, roads, and any other non-public items by the necessary public utilities and others, including the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements and streets, sewers, pipes, poles, wires, and other facilities and public utilities for services to the lots shown on said plat.

4.3 To exercise control over cul-de-sacs shown on said plat; pay real estate taxes and assessments herein provided; to repair, maintain and improve same with shrubbery, vegetation, decorations, building, recreational facilities of any kind or description, other structures, and any and all other types or facilities in the interest of health, welfare, safety, morals, recreation entertainment, education and use of the owners of lots in Red Oak Plantation all in conformity with applicable laws; to prescribe by reasonable rules and regulations the terms and conditions of the use of common areas, all for the benefit and use of the owners of the lots in Red Oak Plantation and according to the discretion of the Trustees.

4.4 To prevent, as Trustees of an express trust, any infringements and to compel to performance of any restrictions set out in this Indenture or established by law, and also any rules and regulations issued by said Trustees conveying the use of said common areas or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory. However, in the event that any lot owner does not comply with the restrictions of this Indenture, a minimum of five (5) property owners in the Red Oak Plantation Subdivision may ask that the Trustees take action according to this Indenture and the Trustees, shall be compelled to act.

4.5 To dedicate to public use any private street constructed or to be constructed on the aforescribed tract of land, whenever such dedication would be accepted by public agency, in the event the recorded plat does not provide for public use and maintenance.

4.6 To clean up rubbish and debris and remove grass and weeds from, and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lots or property and the owners thereof may be charged with the reasonable expenses so incurred. The Trustees, their agents or employees shall not be deemed guilty or liable for any matter of trespass or any other act for any such injury, abatements, removal or planting.

4.7 (a) No building shall be altered on any lot until the construction plans and specifications, and a plan showing the location of the structure has been approved by the Architectural Control Committee as to quality or workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence shall be erected or placed on any lot nearer to any street than the minimum building setback line. In the event the Architectural Control Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to them, or in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and related covenants shall be deemed to have been fully complied with. To the contrary notwithstanding all decisions of the Architectural Control Committee shall be binding and final.

(b) The initial Architectural Control Committee shall be the Trustees, who by their signatures to this instrument have consented to act in such capacity. In the event of any vacancy on the Committee caused by resignation or otherwise, such vacancy shall be filled by a vote of the majority of the Trustees of the Subdivision.

(c) No building shall be located on any lot nearer to the front lot lines or nearer to the side street line than the minimum building setback lines shown on the recorded plat. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

(d) The trustees shall have the power to grant such setback variances as they deem necessary.

(e) Notwithstanding any other provisions of this Indenture to the contrary, Party of the First Part shall have the right to construct or alter any building, fence or other structure in Red Oak Plantation without any approval or review of the plans therefor by the Architectural control committee.

4.8 To require up to a maximum of \$500.00 as a deposit in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis court or other structure on any of said lots in order to provide that upon the completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all damages to subdivision improvements shall be repaired. Said deposit shall be returned to the lot owner when construction is completed and it is ascertained by the Trustees that all work has been done properly and there is no damage to subdivision improvements. The cost of repair to any damaged improvements will be deducted from said deposit. However, in the event that the damage by the lot owner and/or his agents exceed this deposit, the lot owner will forfeit this deposit and will pay the Trustees the additional cost. The lot owner will pay the Trustees the additional cost within 15 days after receiving a bill for such costs. If additional costs are not paid within the above-mentioned time period, such additional costs shall be an assessment on owner's lot or lots under the terms and provisions of Article V of this Indenture.

4.9 If the Trustees deem necessary they shall purchase and maintain in force, liability insurance, protecting Trustees and lot owners from any and all claims, for personal injuries and property damage arising for use of common areas and facilities.

4.10 In exercising the rights, power and privileges granted to them in discharging the duties imposed upon them by the provisions of this Indenture, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary or

advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

4.11 In the event it shall become necessary for any public agency to acquire all or any part of the property herein conveyed to the Trustees, for any public purpose, the Trustees, during the period of trust as well as the time fixed for the appointment or election of Trustees, are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Trustees need be made parties, and in any event the proceeds received shall be held by the Trustees for the benefit of those entitled to the use of the roads or easements.

4.12 Notwithstanding any other condition herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any other municipality of which the subdivision may become a part and for such purposes shall not be limited to the maximum assessment provided for herein. Specifically and not by way of limitation, the Trustees shall make provisions for the maintenance and operation of all easements, streets and roads, cul-de-sacs, entrance lights, street lights, shrubbery, entrance markers and any and all other non-public items used by the owners of lots in Red Oak Plantation.

V.

ASSESSMENTS

The Trustees and their successors in office are hereby authorized, empowered and granted the right to make assessments upon and against lots in Red Oak Plantation for the purposes herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of the instrument:

5.1 (a) The Trustees and their successors in office are authorized to make uniform annual assessments in an amount not to exceed One Hundred Fifty (\$150.00) Dollars per lot in each calendar year upon and against each lot in Red Oak Plantation upon which a residence has been constructed and occupied and sold or

leased either by the Party of the First Part or by any other builder, for the purpose of carrying out any and all of the general duties and powers of the Trustees hereunder and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately, to maintain streets, if require common areas, utilities, parking spaces, street lights, cul-de-sacs, entrance gates and markers, and trees, and all other non-public items and to dispose of garbage and rubbish, to perform or execute any powers or duties provided for in the instrument, or otherwise properly to the health, safety and general welfare of the residents of Red Oak Plantation.

(b) If at any time the Trustees consider it necessary to make any expenditure requiring an assessment additional to the annual assessment, they shall submit a written outline of the contemplated project and the amount of the assessment required, to the owners of each lot in the Subdivision. This additional assessment must then be approved in writing by 65% of the recorded owners of lots in the Subdivision. The approval may be obtained by the Trustees by securing the signatures of not less than 65% of the owners of lots in the Subdivision at a meeting called for such purpose. Notice of such special assessment shall be given with such assessment becoming delinquent thirty (30) days after the date of such notice.

(c) In addition to the foregoing assessments, the Trustees are hereby authorized and directed to make and collect a separate special assessment for the maintenance and repair of storm water sewers and facilities located in and/or serving Red Oak Plantation, until such time that all said storm water sewers and facilities are dedicated to, and accepted by Metropolitan St. Louis Sewer District or its successors or assigns. The amount of such assessment shall be as determined by the Trustees.

5.2 All assessments shall bear interest at the rate of twelve (12%) percent per annum from the date of delinquency and such assessment, together with interest shall constitute a lien upon the property against which it is assessed until the amount,

together with interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the Recorder's Office of St. Louis County, Missouri. Such assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that such assessment shall not have priority over existing mortgages or deeds of trust. Should an owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall release said lien (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots affected, and the Trustees shall cause to be noted from time to time in the minutes of their proceedings, the payment made on account of assessments.

5.3 The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings & Loan Insurance Corporation. The treasurer shall be bonded for the proper performance of his duties in an amount fixed by the Trustees.

5.4 The Trustees are authorized and empowered to procure such insurance, including but not limited to public liability and property damage, as they may deem necessary and proper.

VI.

RESTRICTIONS

The party of the First Part being the owner of the following described real estate lying and being situated in St. Louis County, Missouri and being more particularly described in Exhibit "A" attached hereto and made a part hereof, by this Indenture does impose all lots and common areas in Red Oak Plantation the following restrictions and conditions, to-wit:

6.1 Term: These restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for the duration of Red Oak Plantation.

6.2 Land Use and Building Type: All lots in Red Oak Plantation shall be used for single-family residential dwellings.

6.3 Size: The living area of the main structure, exclusive of one-story open porches, basements and garages, shall be not less than 1,000 square feet for a one-story dwelling and 1,200 square feet for a multi-story dwelling. All dwellings shall have attached garages of not less than two (2) cars and not more than three (3) cars.

6.4 Placement of Improvements: Buildings shall be placed on lots only in the manner approved by the Trustees, subject to terms and provisions of the front and side building setback lines as required by St. Louis County zoning ordinances for the subdivision.

6.5 Antennas: No outside antennas of any kind will be permitted on or around any residence within the subdivision. Television antennas must be installed within residence attic areas in a concealed manner. No outside CB or Ham Radio antennas or Satellite "Dishes" shall be permitted within the subdivision.

6.6 Signs: No signs shall be erected or displayed in public view, on any lot except the one (1) sign, not larger than five (5) square feet advertising the property for sale, EXCEPT THAT, any signs may be erected by the Party of the First Part in the development of the Subdivision. Should the Party of the First Part not develop all the lots and should he convey lots to other builders, the Trustees may grant such other builders or developers to initial sale of the buildings constructed thereon. The sign permitted shall not exceed five (5) square feet in size.

6.7 Livestock and Poultry: No animals, livestock, poultry shall be raised, bred or kept on any lot, EXCEPT THAT, household pets, in limited numbers (as determined by the Trustees) may be kept provided they are not maintained for any commercial purposes.

6.8 Fences: No fences or screening shall be erected or maintained on any lots between the building setback lines and the street upon which that lot front. No chainlink fences or other wire type fences may be erected on any lot. Fences may be maintained on other portions of lots only with the written consent

of the Trustees as to locations, materials used and heights of fence. The decision of the Trustees shall be conclusive.

6.9 Abandoned Vehicles: No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the common areas or the lots of this subdivision. If said motor vehicles are so stored or remain on the aforesaid premises, Trustees shall take the necessary action to remove same.

6.10 Above Ground Structures: No above ground structures other than required street lights, may be erected within a cul-de-sac, without the written approval of St. Louis County Department of Highways and Traffic and the Trustees. No above ground pools may be installed on any lot within the subdivision.

6.11 Nuisances: No noxious or offensive activity shall be carried on any lot, nor shall anything be done thereon which may be or become a nuisance or annoyance. The Trustees shall after notification by at least three (3) lot owners, take immediate action for any noxious or offensive activity by any lot owner.

6.12 Commercial Vehicles, etc. No trucks or other commercial or industrial rolling stock or equipment may be stored or suffered to remain upon said tract of land covered hereunder. Any recreational vehicle, trailer, camper, boat, truck (including pick-up trucks and vans) and any like or similar vehicle must be kept behind the rear corner of any residence or must be garaged. If any such item is kept in the rear yard, it must be kept in good and operating condition. No motor vehicle which is nonusable, inoperative, in a neglected state of disrepair or unlicensed by the State of Missouri shall be permitted to be stored or suffered to remain upon said tract of land covered hereunder. Under no circumstances will any lot owner do work or repairs on any motor vehicle unless such repairs are done in an enclosed garage.

VII.

MISCELLANEOUS

7.1 Liability of Trustees: Trustees not to be Compensated: The Trustees shall not be personally responsible for any act in

which they are empowered to exercise their judgment and discretion; and shall only be held accountable for their willful misconduct. They shall not be required to expend any money for payment of taxes, maintenance of storm and sanitary sewers, parkways, street lighting or any other improvements, or any other non-public items in excess of the assessments collected by them. They retain a reasonable cash reserve from such assessments and expend only such sums for maintenance and improvements as they, in their sole discretion, deem necessary. Neither the Trustees nor successor Trustees shall be entitled to any compensation for services performed pursuant to this covenant.

7.2 Amendment: The PEU ordinance for this Subdivision and/or provisions herein may be amended, modified or changed from time to time by Flower Homes, Inc. so long as it owns a lot in the Subdivision by recording such amendment in the Office of the Recorder of Deeds of St. Louis County, Missouri, provided such amendment, modification or change is approved by the Director of Planning of St. Louis County. Thereafter, this indenture may be amended, modified or changed by the written consent of two-thirds (2/3) of all the owners of lots or parcels within Red Oak Plantation with any such amendment, modification or change being approved by the Director of Planning of St. Louis County and recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri. No such amendment or modification or change shall reduce or modify obligation or right granted to or imposed upon the Trustees or to eliminate the requirement that there be trustees unless some persons or entity is substituted for the Trustees with their responsibilities and duties in a manner approved by the Director of Planning of St. Louis County.

7.3 Invalidation: Invalidation of any one of the covenants of this Indenture shall in no way effect any other provisions thereof.

7.4 First Party's Right to Keep Displays: Notwithstanding any other provision of this Indenture to the contrary, Party of the First Part, for itself, its successors and assigns, reserves



DANIEL T. O'LEARY
 RECORDER OF DEEDS
 ST. LOUIS COUNTY MISSOURI
 41 SOUTH CENTRAL • CLAYTON, MO 63105

B.J. McMahon, Jr.
 Director of Revenue



RECORDER OF DEEDS DOCUMENT IDENTIFICATION & CERTIFICATION SHEET

DOCUMENT NO. (SHOWN ON THE 1st PAGE OF INSTRUMENT, AND ALSO AT THE FOOT OF THIS PAGE.

STATE OF MISSOURI)
) SS.
 COUNTY OF ST. LOUIS)

STATE OF MISSOURI)
 COUNTY OF ST. LOUIS) SS
 FILED FOR RECORD

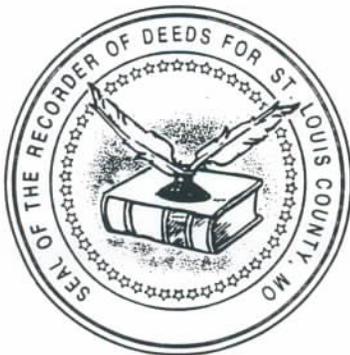
89 OCT -2 PH 4: 43

RECORDER OF DEEDS
 ST. LOUIS COUNTY, MO.

I, the undersigned Recorder of Deeds for said county and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office at the time and on the day, month and year, all as same appears hereon, and is truly recorded in the book and at the pages indicated on said instrument.

In witness whereof I have hereunto set my hand and official seal on the same day, month and year stamped and shown above.

Daniel T. O'Leary
 Recorder of Deeds
 St. Louis County, Missouri



By *Frank J. Kruebler*
 Deputy Recorder

BOOK 8620 PAGE 360

END OF DOCUMENT
Do Not Remove This Page

- ___ N. P.
- ___ N. P. C.
- ___ N. N. C.
- ___ N. N. I.

POSTAGE \$ _____

RECORDING FEES

DOCUMENT \$ 53.00

STATE USER \$ 4.00

RECORDER OF DEEDS
 ST. LOUIS COUNTY, MO.
 FILED FOR RECORD

000803 OCT -2 88

Notation

TOTAL \$ 57.00

Destination Code

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