

and incorporated herein by reference, shall be improved and maintained as open space throughout the life of the Project. Prior to the issuance of a final Certificate of Occupancy for Phase 2 of the Project, PPF shall execute an open space easement in favor of the City, in a form acceptable to the City Attorney and Director of Community Development.

(j) Public Art and Holly Street Terminus Monument. PPF shall satisfy the City's public art requirement as set forth in Section 17.61.100 of the PMC.

(i) Above and beyond the City's regulations and/or policies relative to public art: 1) PPF shall provide and maintain in good condition and repair, artwork in an area on the Project Site that is clearly visible to the general public from City Hall and shall further the policies of the 2014 Public Art Master Plan and designed in the spirit of the Bennett Plan providing a visual terminus for Holly Street, with a visual connection to City Hall along the Holly Street axial; 2) the cost of the construction and installation of the artwork, exclusive of art consultant fees, design or other fees (the total of which shall not exceed \$80,000), shall be \$500,000 (exclusive of the amount required for public art as specified in Section 17.61.100 of the PMC); 3) satisfaction of this section may include multiple artworks, with at least one art piece providing a visual terminus for Holly Street; and 4) prior to the issuance of the first Certificate of Occupancy for Phase 1, the artwork for the Holly Street terminus shall either be approved with permits issued by the City or PPF shall deposit the \$500,000 payment required by this paragraph (j)(i) into an escrow account in favor of the City to ensure completion of the required artwork. All artwork produced in conjunction with the project shall be located on site and all in-lieu public art fees paid in connection with the Project, shall result in artwork located on the project site. Should multiple artworks be developed for the project, the timing of installation of other artworks shall be determined by the Director of Planning and Community Development, based on the proposed location of the other artworks and the project construction schedule.

(ii) Maintenance. PPF shall own the gateway monument and/or public art installed to comply with the requirements of this section 10(e) and shall maintain the gateway monument in good condition and repair in compliance standard maintenance conditions imposed by the Arts and Culture Commission upon approval of the artwork. Upon damage, the applicant shall timely repair or replace the gateway monument, as appropriate, to the reasonable satisfaction of the City's Director of Planning and Community Development.

(k) Preservation of Public Art On-site. The sculptures designed by George Rickey that are in place on the Project site, and as shown in the photographs in Exhibit D, attached hereto and incorporated herein by reference, shall be retained on site. If required to be relocated from current locations, any new locations shall be approved by the City of Pasadena's Arts and Culture Commission.

(l) Local Hire Initiative; Mentoring/Apprenticeships. PPF agrees to

implement a local hire initiative that will give priority hiring consideration to local workers and businesses, with the goal of directing 20% of building construction related jobs and contracting opportunities to Pasadena residents and Pasadena-based businesses.

PPF will also explore opportunities for mentoring and apprenticeships for participants so that the project will serve as a training ground and springboard for future employment and contracting opportunities. The company will do extensive outreach to promote and advertise the local hire program, including participating in job fairs in Pasadena, placing notices in local and online media, and posting information on a dedicated website to encourage potential participants to apply directly and track their applications. In addition, PPF agrees to make a good-faith effort to engage Local Businesses to obtain at least 15% of the building materials required to construct the buildings, provided that these materials are readily available and comparably priced to the same materials available elsewhere.

11. Default. Failure by City or PPF to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law, including injunctive relief, except that in no event shall monetary damages be available against the City or PPF for any alleged default or breach of this Agreement.

12. Termination and Expiration

Upon the expiration of the term or termination of this Agreement, the vested rights provided by this Agreement shall terminate and be of no further force or effect. However, such expiration or termination shall not affect any Future Approvals or Building Permits that have been issued for any Future Development of the PPF Property consistent with this Agreement.

13. Transfers of Interests in Property or Agreement. In the event of a proposed transfer of all or a portion of the PPF Property by PPF to a transferee, PPF agrees to provide the City with thirty (30) days prior written notice of such proposed transfer and shall provide an assignment and assumption agreement from the transferee agreeing to assume the obligations of PPF under this Agreement with respect to the PPF Property or the portion of the PPF Property being transferred. The assignment and assumption agreement shall be in a form reasonably satisfactory to the City. However, PPF has no obligation to obtain the consent of the City to the transfer of the PPF Property. Notwithstanding the foregoing the terms, covenants and conditions of this Agreement shall be binding upon any transferee whether or not such an assignment and assumption agreement is signed by the transferee upon acquiring all or a portion of the PPF Property; and no such transfer shall relieve PPF (transferor) of any obligations under this Agreement except as provided below. In the event PPF transfers, sells or assigns only a portion

of its interest, PPF and assignee shall be jointly and severally liable for all burdens, obligations or liabilities under this Agreement. In the event PPF transfers, sells or assigns all of its interest, the assignee shall be responsible for all of PPF's burdens obligations, or liabilities and PPF shall thereafter be relieved of all such burdens, obligations or liabilities if items (a) through (c) below are provided to the City. At least thirty (30) days prior to any assignment, PPF shall submit to City: (a) the name of the proposed transferee; (b) evidence reasonable satisfactory to the City that the assignee is financially able to fulfill the obligations of this Agreement, which shall be met if the assignee (together with its affiliates) has a verifiable net worth of \$5,000,000 (Five Million Dollars) or more; and (c) written acceptance by the assignee of all of the obligations of PPF under this Agreement. Such writing shall be in form reasonably satisfactory to the City.

15. Binding Effect. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation or otherwise) and assigns, administrators, representatives, and all other persons acquiring the PPF Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

16. Indemnification.

PPF agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of PPF or its contractors, subcontractors, agents, employees or other persons acting on its behalf in connection with the construction of the Project and/or in any manner related to or arising from this Agreement (including, but not limited to CEQA and/or other claims related to this Agreement and the City's approval thereof. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 15, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to fully cooperate with PPF in the defense of any matter in which PPF is defending and/or holding the City harmless. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by PPF to defend PPF and the City in any such action.

The City shall promptly notify PPF of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, PPF's consent shall be required if the resolution of the challenge shall require a payment by PPF or limit PPF's rights under this Agreement, which consent shall not be unreasonably withheld.

17. Relationship of the Parties. The Parties acknowledge and agree that PPF is not acting as an agent, joint venturer or partner of the City, but each is, in fact, an independent contractual party.

18. Recordation. As provided in Government Code Section 65868.5, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. PPF shall reimburse the City for all costs of such recording, if any.

19. No Third Party Beneficiaries. The only signatories to this Agreement are the City and PPF. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

20. Advice; Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsperson, but in accordance with its fair meaning.

21. Certificate of Compliance. At any time during the term of this Agreement, any Mortgagee or other party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other party within ten (10) Business Days of receipt of the written request therefor.

22. Consideration. The City and PPF acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to PPF pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

23. Periodic Reviews. The City shall conduct annual reviews of this Development Agreement pursuant to the process required by PMC Chapter 17.66 (Development Agreements) to determine, among other things, whether PPF is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1. The Director of Planning and Community Development shall be designated as the review authority for the annual review. PPF shall pay the applicable processing fees for the period reviews

24. Future Litigation Expenses; Payment of Prevailing Party. If the City or PPF brings an action or proceeding by reason of default, breach, tortious act, or act or omission, arising out of this Agreement, all parties shall bear their own costs and expenses of suit including, but not limited to, attorneys' fees and expert witness fees.

25. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words “include,” “including” or other words of like import are intended as words of illustration and not limitation and shall be construed to mean “including, without limitation.”

26. Amendment. This Agreement may be amended from time to time, in whole or in part, only as provided by PMC Section 17.66.080.

27. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act and PMC Chapter 17.66.

28. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

29. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

30. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of “Permitted Delay,” which Permitted Delay shall mean and include delay caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) that prevents the Party from fulfilling the obligations for which it seeks excuse including without limitation all of the following to the extent that they prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, flood, earthquake or other casualties; failure, delay or inability of the other Party to act; terrorism, and litigation brought by a third party attacking the validity of this Agreement or the Notice of Exemption.

31. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a “Communication”) to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent

by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To PPF: _____

With copy to: _____

To City: City Manager
City of Pasadena
100 N. Garfield Ave., Room S-228
Pasadena, California 91109

With Copy to: City Attorney
City of Pasadena
100 N. Garfield Ave., Room N-201
Pasadena, California 91109

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 30 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

32. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

33. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

34. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

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

36. Compliance With Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

37. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the _____ day of _____, 2015.

CITY OF PASADENA,
A Municipal Corporation

Mayor of the City of
Pasadena, California

ATTEST:

_____(SEAL)
Mark Jomsky
City Clerk

PPF OFF 100 West Walnut, L.P.
a _____ limited partnership

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Michele Beal Bagneris
City Attorney

Michael J. Beck
City Manager

EXHIBIT A
LEGAL DESCRIPTION

Legal Description

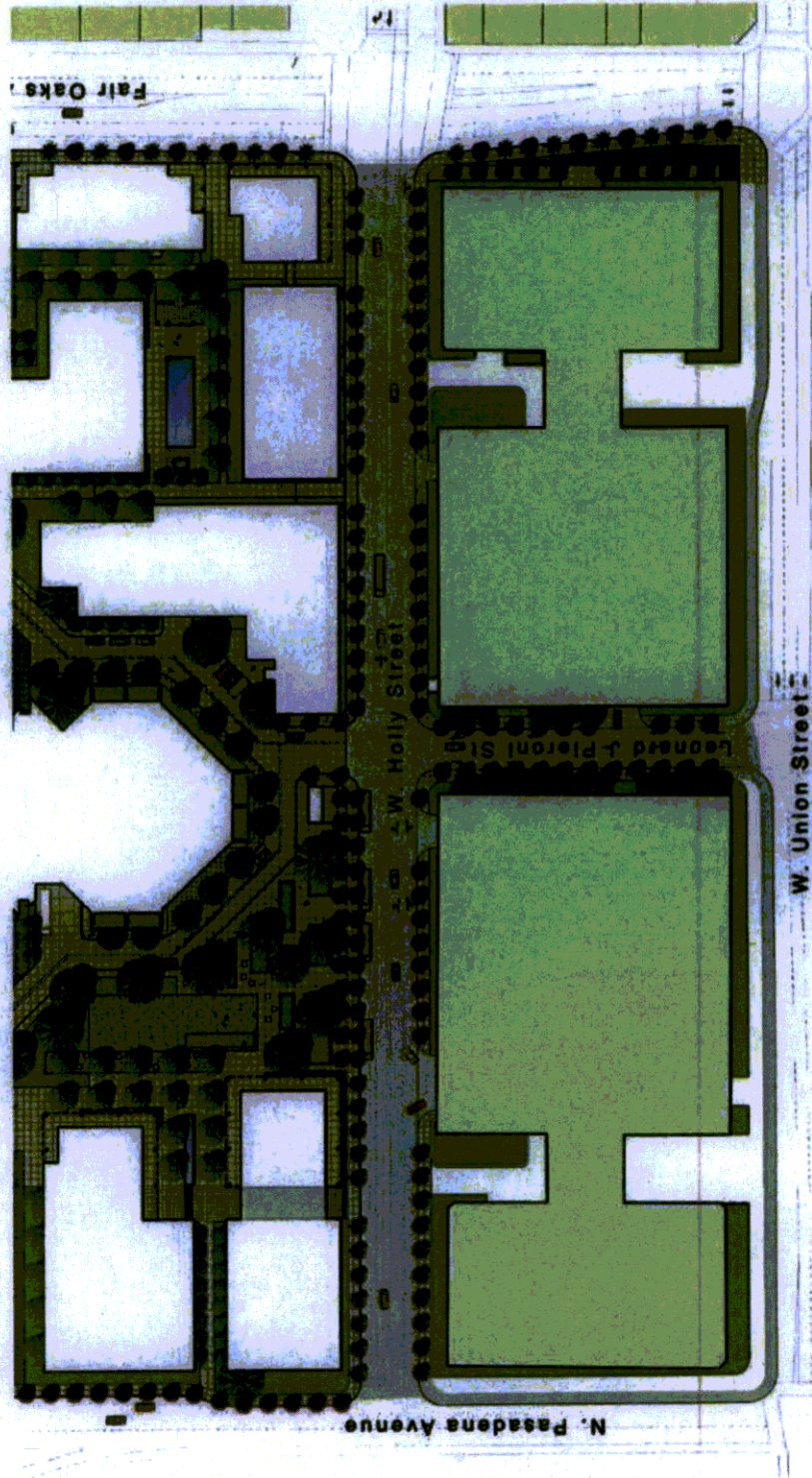
Parcel 1 of Parcel Map No. 4591, in the City of Pasadena, County of Los Angeles, State of California, filed in Book 153, Pages 15 and 16 of Parcel Maps, in the Office of the County Recorded of Said County.

Parcel 1 of Map No. 7255, in the City of Pasadena, County of Los Angeles, California, Filed in Book 79 Pages 20 and 21 of Parcel Maps, in the Office of the County Recorded of Said County.

EXHIBIT B

HOLLY STREET IMPROVEMENT EXHIBIT

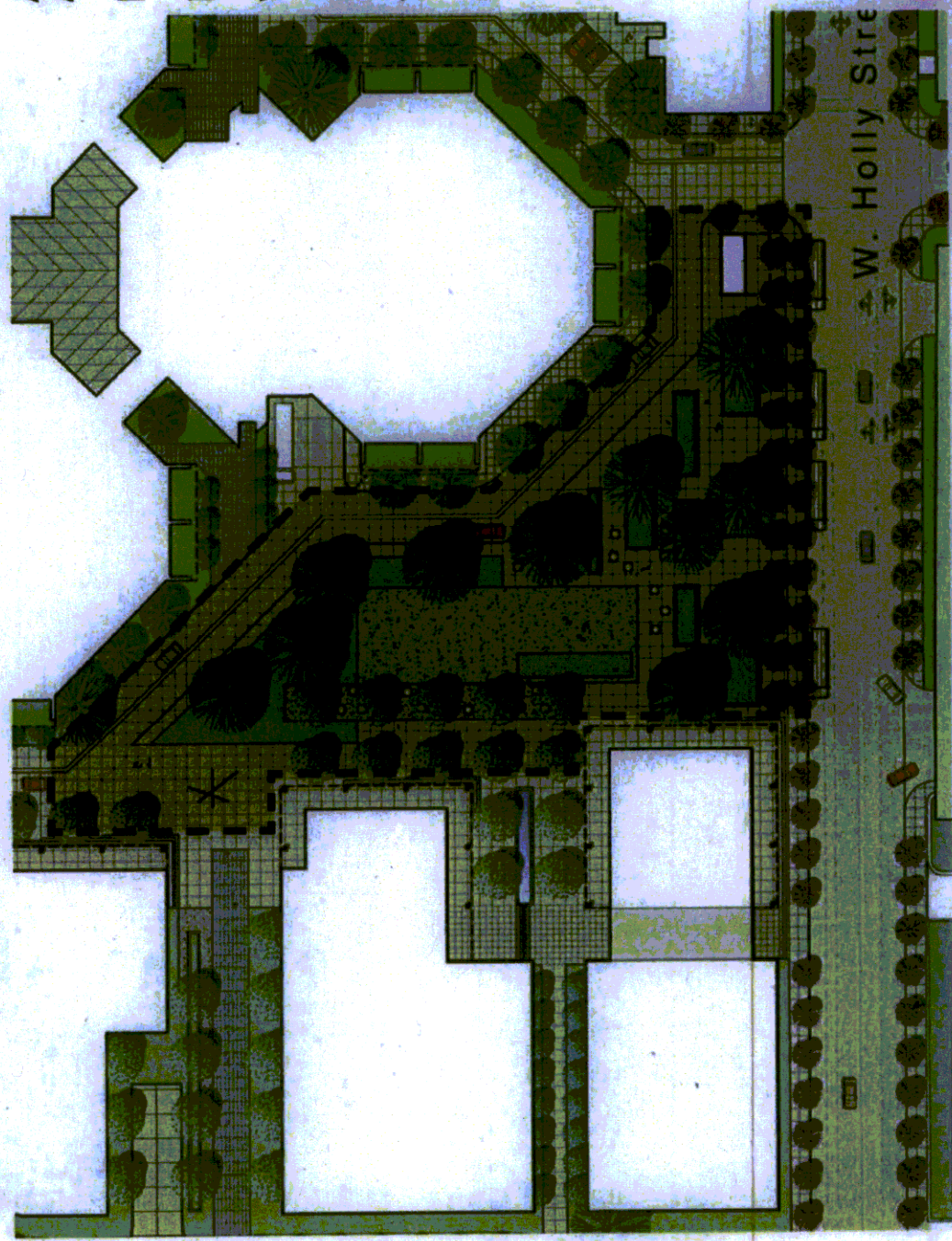
THE BENNETT PLAN - PROPOSED HOLLY ST EXTENSION



* SUBJECT TO CHANGE BASED ON CITY AND DEPARTMENT COMMENTS

EXHIBIT C
HOLLY PLAZA

HOLLY PLAZA



APPROXIMATELY 1
ACRE

PUBLIC SEATING

FLEXIBLE USE SPACE

WATER FEATURE

PUBLIC ART

TRANSIT HUB

BIKE AMENITIES

* CONCEPTUAL PLAN. SUBJECT TO CHANGE. FINAL CONFIGURATION OF HOLLY PLAZA TO BE DETERMINED.
* SUBJECT TO CHANGE BASED ON CITY AND DEPARTMENT COMMENTS

EXHIBIT D

PHOTOS OF GEORGE RICKEY SCULPTURES







Two Birds (Sculpture)
Richard Serra, 1977
Sculpture by Richard Serra, 1977

**Two Open Rectangles
Eccentric Variation VII -
Triangular Section, 1977**

GEORGE RICKEY, 1907-2002

EXHIBIT B
LEGAL DESCRIPTION

Legal Description

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