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BOOK 880 PAGE 505

DECLARATION

GEORGE J. BUGLEWICZ REGISTER OF DEEDS DOUGLAS COUNTY, NEBR.

L C Development establishes the restrictions.

Co., a Nebraska Corporation hereby following easements, covenants and

PRELIMINARY STATEMENT

L C Development Co., a Nebraska Corporation ("Declarant") is the record owner of two parcels of real estate located in Omaha, Douglas County, Nebraska, both of which parcels are described on Exhibit "A" annexed and incorporated herein with one parcel being designated and referred to herein as the "R G Parcel" and the other designated and referred to herein as the "Shops Area Parcel". From time to time the R G Parcel and the Shops Area Parcel are referred to collectively as the "Entire Parcel" or the "respective Parcels" and individually as "each respective Parcel".

The Declarant intends to develop and utilize the Entire Parcel as an integrated and unified shopping center. Annexed to this Declaration as Exhibit "B" and incorporated herein by this reference is a Site Plan depicting the R G Parcel and the Shops Area Parcel.

The Declarant desires to establish certain covenants and restrictions and provide reciprocal easements for pedestrian and vehicular ingress, egress, parking, passage and traffic and for utilities in, over, upon, across and through the Entire Parcel, as though the Entire Parcel were developed and utilized as a single integrated shopping center.

TERMS AND CONDITIONS

In consideration of the foregoing Preliminary Statement which is repeated and incorporated herein by this reference as though fully set out herein, and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the Declarant hereby establishes the following easements, covenants, and restrictions.

ARTICLE I. Definitions

1.01. Occupant. The term "Occupant" shall mean and include the Declarant, its grantees, personal representatives, heirs, successors, assigns (including mortgagees or beneficiaries under Deeds of Trust), and any person or entity who shall be from time to time entitled to the use and occupancy of any part or all of the Entire Parcel or any space located within the Entire Parcel under any deed, land contract, lease, sublease, license or concession agreement, or other instrument or arrangement

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under which such rights are acquired.

- 1.02. Common Areas. The term "Common Areas" shall mean and include all parts of the Entire Parcel which are from time to time devoted primarily for parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas and other similar areas or exterior areas not used as a "Building Area".
- 1.03. Building Area. The term "Building Area" means and includes any area of the Entire Parcel upon which a building, buildings, or other structures are constructed.
- 1.04. <u>Permittees</u>. The term "Permittees" shall mean and refer to all Occupants and all customers, employees, licensees and other business invitees of Occupants.

ARTICLE II. <u>Easements in Common Areas</u>

- 2.01. The Occupants and Permittees are hereby granted:
 - (a) a non-exclusive easement over and upon the Entire Parcel which are from time to time Common Areas, for the purposes of pedestrian and vehicular ingress, egress, passage and traffic upon, over, across and through such Common Areas for parking, service and for the doing of such other things as are authorized or required to be done on such respective portions of the Common Areas; provided, however, the record owner of each respective Parcel shall provide at all times, within its respective Parcel, parking for its occupants and their employees; and
 - (b) a non-exclusive easement over and upon those portions of the Entire Parcel, which are from time to time roadways and pathways, for the purpose of furnishing access and the right of access between public streets adjacent to the Common Areas and the respective Parcels, limited, however, for use in connection with the use of portions of the Entire Parcel.
- 2.02. At all times free access between each respective Parcel shall not be impeded and will be maintained. No hedge, fence, wall or similar barrier will be constructed between each respective Parcel, except for curbing to assist with traffic control, and except as may be necessary to prevent a public dedication of the Common Areas; in no event, however, shall such curbing unreasonably interfere with the ingress and egress provided for in Section 2.01 immediately above.

ARTICLE III. Utility Easement

- 3.01. Declarant hereby establishes and grants for the common use and benefit of the record owners of the respective Parcels and their grantees, successors, and assigns with respect to each respective Parcel, nonexclusive easements to install, connect to, operate, maintain, remove, repair and replace utility systems, lines, pipes, mains and other facilities for such as water, gas, drainage, electricity and telephone services and for storm and sanitary sewers (all such utilities hereinafter referred to collectively as "Utility Facilities") across, under, upon and over the portions of the respective Parcels upon which a building or structure is not situated. In the case of the Shops Area Parcel only, that portion thereof designated on Exhibit B annexed as "Future Building" shall be considered a "Building Area".
- 3.02. When the Utility Facilities have been installed, the record owner of either of the respective Parcels shall have the right, upon thirty (30) days' prior written notice to the record owner of the other Parcel, at any time or from time to time, to move and relocate the Utility Facilities to such place as shall be designated by the party giving such notice provided, however, that such relocation shall be made at the sole cost and expense of such party and that such relocation shall not interfere with, or increase the cost of utility services to, or unreasonably interfere with the conduct or operation of the business conducted upon the Parcel upon which Utility Facilities are to be relocated.
- 3.03. Upon the reasonable request of the record owner of either of the respective Parcels, the record owner of the other Parcel agrees with any utility company, or any governmental body having jurisdiction thereof, to prepare, execute and/or deliver to the other party or such utility company or governmental body such further instruments, plats or the like necessary to more precisely locate and/or describe the easements for the Utility Facilities granted hereunder, provided that all costs related thereto shall be borne by the record owner who makes such request.

ARTICLE IV. Nature of Easements and Rights Granted

4.01. Each and all of the easements and rights granted or created herein are appurtenances to the respective Parcels comprising the Entire Parcel and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to either or both of such Parcels. For the purpose of such easements and rights, the Parcels which are benefited shall constitute the dominant estate, and the

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particular areas of the Entire Parcel which respectively are burdened by such easements and rights shall constitute the servient estate.

- 4.02. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement:
 - (a) are made for the direct, mutual and reciprocal benefit of the Occupants and Permittees of the respective Parcels;
 - (b) create mutual equitable servitudes upon each of the respective Parcels in favor of the other Parcel;
 - (c) constitute covenants running with the land; and
 - (d) shall bind and benefit every person or entity having any fee, leasehold or other interest in any portion of the Entire Parcel at any time or from time to time to the extent that such portion is affected, bound, or benefitted by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.
- 4.03. The acceptance of any transfer or conveyance of title of all or any part of the Entire Parcel shall be deemed to:
 - (a) require the prospective grantee to agree not to use, occupy or allow any Occupant of such portion so acquired to use or occupy such portion in any manner which would constitute a violation or breach of any of the easements, restrictions, and covenants contained herein; and
 - (b) require the prospective grantee to assume and agree to perform each and all of the obligations, if any, of the conveying party under this Declaration with respect to any such portion which will be conveyed to such grantee.

Upon recordation of the conveyance of such portion or all of the Entire Parcel, as the case may be, with the Register of Deeds of Douglas County, Nebraska, the conveying party shall be released from any future obligation under this Agreement with respect to the portion so conveyed but shall not be relieved from past obligations. When a grantee is a mortgagee or beneficiary under a deed of trust, no personal liability or responsibility shall be deemed to be assumed by such mortgagee or beneficiary until and unless such

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mortgagee or beneficiary actually takes possession of the Entire Parcel or portion thereof, as the case may be, in connection with a mortgage foreclosure action or exercise of the power of sale under a deed of trust.

ARTICLE V. Maintenance of Common Areas

- 5.01. The Common Areas from time to time located on the respective Parcels shall be properly and promptly maintained by the record owner of the Parcel upon which the Common Areas are situated. Such maintenance shall include, but shall not be limited to:
 - (a) maintenance, repair and replacement of the surface and subsurface of the parking areas to maintain it level, smooth and evenly covered with the type of materials originally constructed thereon or such substitutes as will in all respects be equal to such materials in quality, appearance and durability;
 - (b) maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, watering, mowing and trimming thereof;
 - (c) removal from the Common Areas of papers, debris, ice, snow, refuse and other hazards to persons using such Areas, and thoroughly sweeping paved areas as required;
 - (d) maintenance of such appropriate parking area entrance, exit and directional signs, markers and lights as will be reasonably required from time to time;
 - (e) such painting and repainting as may be required to maintain the parking areas and equipment installed thereon in good condition and repair; and
 - (f) maintenance of all lighting facilities.

ARTICLE VI. <u>Duration and Termination</u>

- 6.01. The easements, covenants, restrictions and other provisions of this Declaration shall be perpetual in duration.
- 6.02. This Declaration or any easement, covenant, restriction or undertaking contained herein may be terminated, extended or amended as to each of the respective Parcels only by the recording of the appropriate document in the Office of the Register of Deeds of Douglas County,

Nebraska, which document must be executed by all of the record owners of the Entire Parcel as of the date of such document.

ARTICLE VII. Miscellaneous

- 7.01. This Declaration shall inure to the benefit of, and shall be binding upon, the Declarant and its respective heirs, personal representatives, successors and assigns.
- 7.02. No waiver of any breach of any of the easements, covenants and/or agreements herein contained shall be construed as, or constitute a waiver of, any other breach or waiver, acquiescence in, or consent to any further or succeeding breach of the same or any other covenant and/or agreement.
- 7.03. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.
- 7.04. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.
- 7.05. The term "record owner" or "owner" shall mean the persons or entity in whose name record fee simple title to the respective Parcels (whether or not marketable) is registered in the records of the Register of Deeds of Douglas County, Nebraska on the date in question.
- 7.06. The Record Owner of either of the respective Parcels ("Non-Defaulting Owner") may but shall not be obligated to cure a default under this Declaration by the Record Owner of the other Parcel ("Defaulting Owner") provided the Non-Defaulting Owner shall have mailed to the Defaulting Owner fifteen (15) days written notice of such default during which notice period the Defaulting Owner shall have the right to cure such default (in the case of a default which cannot, with due diligence, be cured within a period of fifteen (15) days, such Defaulting Owner shall have additional time to cure such default provided the Defaulting Owner proceeds promptly and with due diligence to cure such default after receipt of such notice). In the event the Non-Defaulting Owner cures any such default, the Defaulting Owner within thirty (30) days after written demand by the Non-Defaulting Owner shall reimburse the Non-Defaulting Owner for all costs and expenses reasonably incurred by such Non-Defaulting Owner, with interest at a rate equal to the prime rate of Harris Bank of Chicago, Illinois accorded its most creditworthy customers from the date of disbursement by the Non-Defaulting Owner to the date of reimbursement.

In the event the Defaulting Owner fails to reimburse timely the Non-Defaulting Owner as required herein, the Parcel owned by the Defaulting Owner shall be subjected to a lien in the amount due from the Defaulting Owner. Such lien shall be subordinate to any mortgages or deeds of trust of record on the date such lien becomes effective. Such lien shall become effective upon the recordation of a written certification by the Non-Defaulting Owner of (i) the amount due and owing pursuant to this subsection and (ii) the description of Defaulting Owner's failure to comply with the terms of this Declaration. Such written certification shall be recorded in the office of the Register of Deeds of Douglas County, Nebraska.

7.07. The record owners off the respective Parcels and their respective successors, heirs, personal representatives and assigns, upon the written request of the other, shall execute an estoppel certificate stating that this Declaration is in full force and effect and there are no defaults existing thereunder or events which could become defaults with the giving of notice or passage of time, or both, or specifying such defaults or events, if any.

7.08. Wherever any notice is required or permitted hereunder, such notice shall be in writing and may be personally delivered or mailed by United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested, addressed to the party to whom such notice is directed at the address to which real estate tax statements covering the Parcel owned by the party to whom such notice are mailed. Such notice shall be deemed delivered, if by mail, on the date of delivery evidenced by the return receipt.

The Party giving such notice shall deliver or mail (in the same manner as provided above) a copy of any written notice required or permitted hereunder to any mortgagee or beneficiary under any deed of trust covering the Parcel which may be affected by such lien, provided the Party giving such notice shall have been notified in writing of the name and address of such mortgagee or beneficiary who shall be permitted to correct or remedy any such default within the same period of time allotted to the Defaulting Owner.

Concurrently with the delivery or mailing of any such notice affecting the R G Parcel, a copy of such notice shall be delivered or mailed (in the same manner as provided above) to Richman Gordman Stores, Inc., at its administrative office in Omaha, Nebraska which shall be permitted to correct or remedy any default involving the R G Parcel within the same period of time allotted to the record owner of the R G Parcel.

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Dated: Fibruary 27, 1989

L C Development Co., a Nebraska Corporation

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STATE OF NEBRASKA

COUNTY OF DOUGLAS

The foregoing Declaration was acknowledged before me this 27^{+6} day of July, 1989, by Jay R. Lerner, President of L C Development Co., a Nebraska Corporation on behalf of the corporation.

A GENERAL NOTARY-State of Nebraska PAMELA S. YORTY My Comm. Exp. 1151

SUBORDINATION

For valuable consideration, Richman Gordman Stores, Inc., a Nebraska Corporation does hereby assent to the foregoing Declaration and does hereby subordinate to the foregoing Declaration its interest in that certain Lease Agreement dated February 27, 1989, between L C Development Co., a Nebraska Corporation, as Landlord, and Richman Gordman Stores, Inc., a Nebraska Corporation, as Tenant, covering the R G Parcel as that term is defined in such Lease Agreement Agreement.

Dated: , 1989

Attest:

RICHMAN GORDMAN STORES, INC.,

a Nebraska Corporation

Title: Secretary

Title: President

STATE OF NEBRASKA)

)ss. COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this day of February, 1989, by Alson as Secretary of Richman Gordman Stores, Inc., a Nebraska Corporation on

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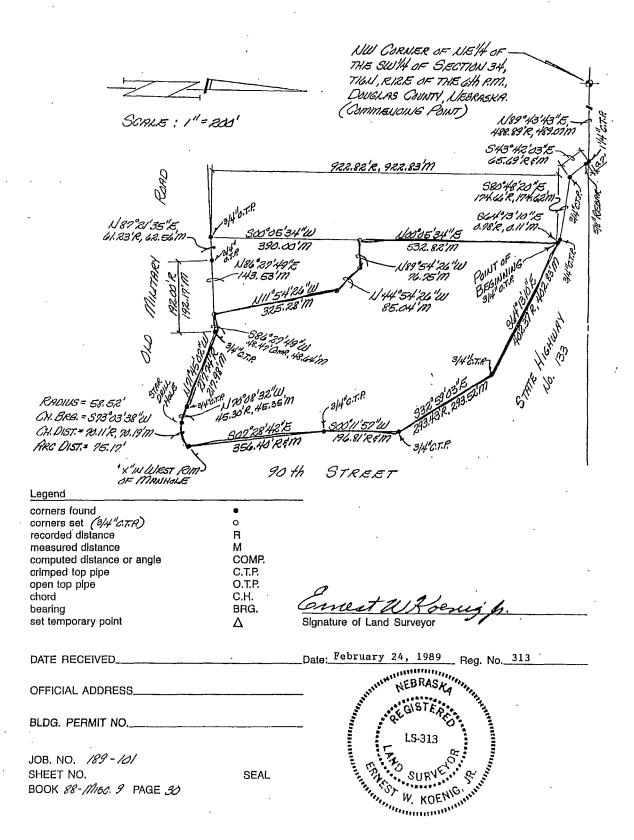
behalf of the corporation.

GENERAL MOTARY-State of Nebraska Shirley G. Baty My Comm. Exp. March 10, 1593

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this survey was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description: (See attached)



That part of the NE's of the SW's of Section 34,T16N,R12E of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the NW corner of said NEk; thence N89°43'43"E (assumed bearing) 488.89 feet on the North line of said NE% to a point on the Southerly right-of-way line of State Highway 133 (Blair High Road); thence Easterly on the Southerly right-of-way of State Highway 133 on the following described courses; thence S43°42'03"E 65.69 feet; thence S80°48'20"E 174.66 feet; thence S64°13'10"E 0.78 feet to the point of beginning; thence continuing S64°13'10"E 402.37 feet; thence S32°59'03"E 293.43 feet to a point on the West right-of-way line of 90th Street; thence S00°11'57"W 196.81 feet on the West right-of-way line of said 90th Street; thence S07°28'42"E 356.40 feet on the West right-of-way line of said 90th Street to the Northerly right-of-way line of Old Military Road; thence Westerly on the Northerly right-of-way line of Old Military Road on the following described courses; thence Southwesterly on a 58.52 foot radius curve to the right, chord bearing S73°03'38"W, chord distance 70.11 feet, an arc distance of 75.17 feet; thence N70°08'32"W 45.30 feet; thence N71°45'02"W 217.74 feet; thence S86°27'49"W 48.47 feet to the final point on the Northerly right-of-way line of Old Military Road; thence N11°54'26"W 325.28 feet; thence N44°54'26"W 85.04 feet; thence N89°54'26"W 76.65 feet to a point 707.09 feet East of the West line of said NEk; thence NOO°05'34"E 532.82 feet on a line 707.09 feet East of and parallel to the West line of said NE's to the point of beginning.

Containing 356,223 square feet more or less.

TD² File No. 189-101 February 24, 1989 Richman-Gordman

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I hereby certify that this survey was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description: (See attached)

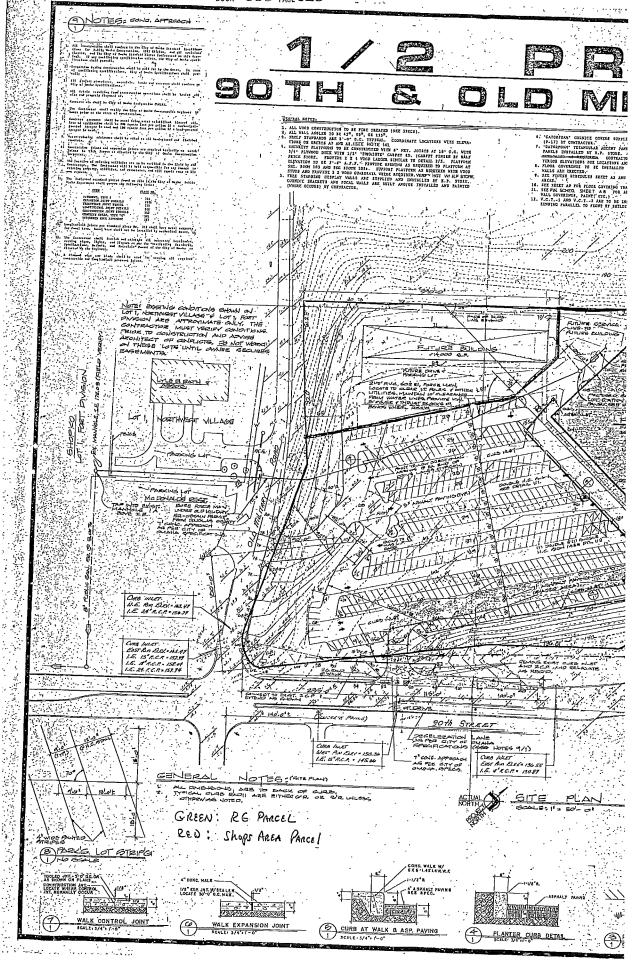
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N89°21'35"5	, 18 5000 5 34 1/2	Charle of Mining	Secretarion Secret
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	325.28'M	(85.04°M Vm 3/4"b:	V \
RADIUS = 58.52' CH. BRS. = 593'03'38"U CH. DIST. = 10.11'R, 70.19'M ARC DIST. = 15.17'	901°28'42'E 356.45 Rem	301/57/W 934/3R, 2935	
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JOB, NO. <i>189 - 181</i> SHEET NO. BOOK <i>88-11168, 9</i> PAGE <i>30</i>	SEAL	LS:313 SURVEY W. KOENIG	

Legal Description:

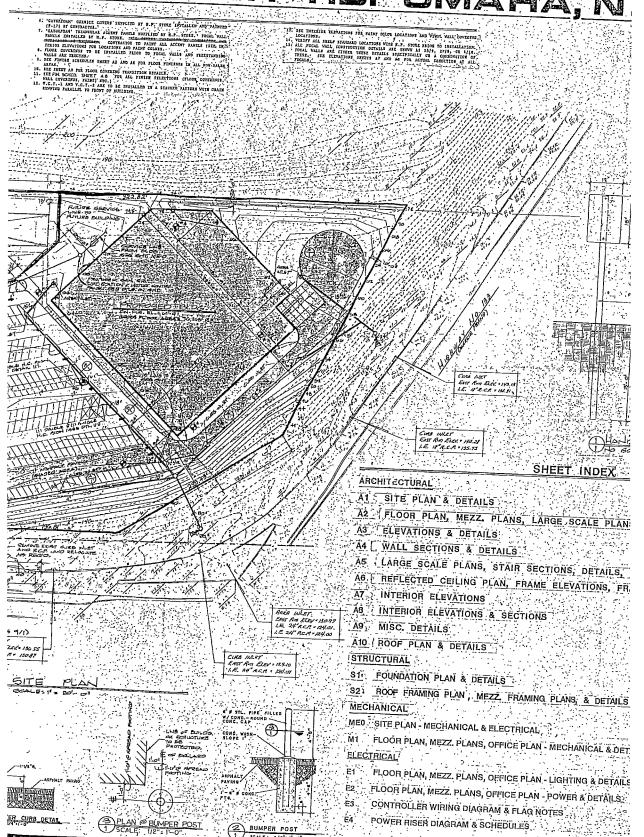
That part of the NE½ of the SW½ of Section 34,T16N,R12E of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the NW corner of said NE½; thence N89°43'43"E (assumed bearing) 488.89 feet on the North line of said NE½ to a point on the Southerly right-of-way line of State Highway 133 (Blair High Road); thence Easterly on the Southerly right-of-way of State Highway 133 on the following described courses; thence S43°42'03"E 65.69 feet; thence S80°48'20"E 174.66 feet; thence S64°13'10"E 0.78 feet to the final point on the Southerly right-of-way line of State Highway 133; thence S00°05'34"W 532.82 feet on a line 707.09 feet East of and parallel to the West line of said NE½ to the point of beginning; thence continuing S00°05'34"W 390.00 feet on a line 707.09 feet East of and parallel to the West line of said N.E.½ to the Northerly right-of-way line of Old Military Road; thence N87°21'35"E 61.23 feet on the Northerly right-of-way line of Old Military Road; thence N86°27'49"E 143.53 feet on the Northerly right-of-way line of Old Military Road; thence N81°54'26"W 325.28 feet; thence N44°54'26"W 85.04 feet; thence N89°54'26"W 76.75 feet to the point of beginning.

Containing 61,953 square feet more or less.

TD² File No. 189-101 February 24, 1989 Richman-Gordman



MILITAR OMAHA, N



BUMPER POST

DMAHA, NE.

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