

## **SCHEDULE D**

### **SUBDIVISION AND DEVELOPMENT CONTROL BYLAW NO. 2649, 2018**

#### **SERVICING AGREEMENT**

## **GENERAL**

**The appended Servicing Agreement template is typical of the agreement that will be executed between the District and the Developer for the work. The template will be amended from time to time as conditions warrant and will have specific amendments for each individual agreement prepared.**

**THIS AGREEMENT** made this day of , 20xx

**BETWEEN: District of Squamish**, a District incorporated under the Local Government Act of British Columbia, and having its Municipal offices at PO Box 310, 37955 Second Avenue, Squamish BC V8B 0A3.

(hereinafter called the “District”)

**AND:**

(hereinafter called the “Developer”)

**WHEREAS:**

- A. The Developer is the registered Owner of lands within the District of Squamish in the Province of British Columbia, more particularly known and described as follows:

PID:

(hereinafter called the “Lands”)

- B. The Developer desires to subdivide the Lands or develop the Land;
- C. The Developer has requested approval of the building permit or development prior to the construction and installation of the Works and Services in their entirety and is agreeable to entering into this Agreement pursuant to the Local Government Act and the Developer will deposit the Security Deposit specified by this Agreement; and
- D. the Developer has voluntarily agreed to construct and install the Works and Services which are necessary to serve the proposed Development.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereto covenant, agree, represent and promise as follows:

**APPENDICES:** 1. The following Appendices are attached to and form part of this Agreement:

- a) Appendix "A" – A list of the Works and Services and the Developer's Consulting Engineer's estimate of their respective construction costs;
- b) Appendix "B" – Construction drawings to be used for the construction of the Works and Services;
- c) Appendix "C" - A copy of the subdivision plan of the Lands or of the Building Permit application;
- d) Appendix "D" – List of Section 219 Covenants.

**DEVELOPER TO DO WORK:**

1. The Developer acknowledges, covenants and agrees with the District:

- a) to construct, install and provide all the Works and Services listed and shown on Appendices A and B hereto, as approved by the District, in accordance with the standards contained in the District's Subdivision and Development Control Bylaw No. 2649, 2018 (hereinafter called the "Bylaw").
- b) that the Developer shall from time to time and at all times so long as it exercises any rights of ownership in the Lands upon the request of the District, and to the satisfaction of the District make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-way, covenants, easements and assurances in favour of the District as are required for the more effectual carrying out of this Agreement.
- c) that Appendices A and B identify and illustrate both 'On-Site Works and Services' and/or 'Off-Site Works and Services'.
- d) that the Developer relies exclusively on its own Professional Engineer, who shall be registered with Engineers and Geoscientists BC (the "Consulting Engineer"), contractors and staff, and that the District does not, by its approvals, inspections or acceptance of the Works and Services warrant or represent that the Works and Services are without fault or defect, and that all approvals and inspection of the Works and Services given or made by the

District are for the sole benefit of the District and shall in no way relieve or excuse the Developer from construction and installing the Works and Services in strict compliance with the provisions of this Agreement and the Subdivision Development Control Bylaw No. 2649, 2018.

#### **TRANSFER OF INTEREST IN WORKS AND SERVICES:**

2. The Developer covenants and agrees with the District to assign, transfer and convey to the District all of its rights, title and interest in the Works and Services on any and all of the Lands, upon or in which the Works and Services are situated, upon the completion of the Works and Services, (as witnessed by the issuance of a Certificate of Substantial Performance).

#### **PERMISSION TO DO WORK:**

3. The District covenants and agrees to permit the Developer to construct the Works and Services, on the terms and conditions herein, and in the manner required by and at the places specified in the Plans and Specifications in Appendix B; provided that nothing in this Agreement shall be construed as to make available the use of or access to the Works and Services for any purpose, and without limiting the foregoing, for the purpose of serving the Lands or any other real property whatsoever either Owner or controlled by the Developer or its associates or otherwise, but rather the District reserves the right in its sole and absolute discretion to make available, operate, alter, use, extend, diminish, discontinue, tear up, sell, rent or otherwise dispose of the Works and Services as its Council from time to time deems fit.

#### **CHANGES TO THE LAW:**

4. The Developer covenants and agrees to comply with any changes in subdivision requirements or standards enacted by Bylaw prior to the actual commencement upon the lands of the Works and Services Contemplated by this Agreement.

5. The Developer covenants and agrees not to commence work until the District Engineer provides the Developer with written permission to proceed with construction in the form provided in Schedule E of this Bylaw.

**COMPLETION OF WORK:**

6. The Developer shall complete the construction of the Works and Services, specified in Appendices "A" and "B" to the satisfaction of the District, within **one (1) year** from the date of this Agreement.

**STOPPING WORK:** (As inserted by Bylaw No. 2702)

7. The District reserves the right to stop work if the Developer or those working for the Developer are not meeting the terms of this Agreement, not adhering to applicable bylaws, or not operating in a manner that is satisfactory to the District, or, if in the opinion of the District, are endangering the health or safety of workers, the public, or the environment.

**DEVELOPER TO GRANT RIGHTS OF WAY:**

8. The Developer shall grant to the District all necessary road dedications, statutory rights-of-way and easements over the said Lands (in conformity with the District's standard form documents) to accommodate the said Works and Services and, where the said Works and Services are located upon or under privately owned lands other than the Lands, to obtain at the Developer's expense, all necessary road dedications, statutory rights-of-way and easements over such lands, in favour of the District where applicable, to accommodate the Works and Services, and to register the dedications, rights of way and easements in the Land Title Office.

**DESIGN:**

9. a) The Developer covenants and agrees that all Works and Services required herein shall be designed by a Consulting Engineer, and retained by the Developer. Plans and Specifications for the Works and Services shall be prepared by or under the direct supervision of the Consulting Engineer and all plans shall bear his or her professional seal and signature.  
  
b) The Developer covenants and agrees to ensure that the Developer's Consulting Engineer maintains professional liability and errors and omissions insurance to a minimum value of two million dollars (\$2,000,000) per

occurrence, which insurance shall provide coverage in respect of any claims arising out of the Consulting Engineer's services in connection with this Agreement regardless of when the claim is made. The professional liability insurance shall be provided for a duration of two years beyond the date of substantial completion of the Works and Services. Written proof of coverage will be provided to the District upon request of the General Manager of Community Planning and Infrastructure (the "General Manager").

#### **SCHEDULE:**

10. a) The Developer covenants and agrees to provide an updated work schedule, at a minimum on a weekly basis, to the District.
- b) The Developer covenants and agrees to provide at least 1 week notice and 48 hours notice to the District for the following works: trenching, tie-ins, paving, decommissioning of utilities, and backfilling.
- c) The Developer covenants and agrees to provide a disinfection plan to the District at least 2 weeks in advance of scheduled disinfection work.

#### **Field Reviews:**

11. a) The Developer covenants and agrees to retain the Consulting Engineer during the construction period for the purpose of on-site field reviews to ensure compliance with the approved design and to provide certification of the construction documentation and Record Drawings of the Works and Services.
- b) Further, the Developer's Consulting Engineer and/or their appointed site inspector(s) shall visit the Place of the Work at intervals appropriate to the progress of construction to remain familiar with the progress and quality of the Works and Services and to determine if the Works and Services are proceeding in general conformance with the plans and specifications. The level of on-site field review to be provided by the Developer's Consulting Engineer shall be a minimum of 60% of the time the Developer's Contractors are carrying out on-site or off-site Works and Services and shall include, and not be limited to, field reviews of tie-ins, pressure tests, compaction of backfill, and laying of permanent asphalt.
- c) The District, the Developer's Consulting Engineer, their authorized representatives and /or their appointed site inspector(s), shall, at all reasonable times during the performance of the Works and Services, have access to the Works and Services, including any parts of the Works and Services that are in progress at locations other than where the Works and Services are being

District of Squamish  
Subdivision and Development Control Bylaw No. 2649, 2018  
installed.

d) The District Engineer and the Developer's Consulting Engineer and their representatives have the authority to reject Works and Services that, in their opinion, does not conform to the requirements of the Contract Documents (drawings and specifications).

#### **ENGINEERING DRAWINGS:**

12. a) The Developer covenants and agrees that the intent of this Agreement is that the Developer shall construct fully completed Works and Services, and grant all necessary dedications, rights of way and easements as shown in the following plans and specifications prepared by the Developer's Consulting Engineer:

Under Drawings Numbers:

<u>Drawing Number</u>	<u>Drawing Name</u>	<u>Revision #</u>
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And as received for the purposes of this Agreement by the District on the xx day of, 20xx:

#### **DESIGN CHANGES:**

13. a) The Approving Officer, the General Manager or District's Engineer may alter the plans because of conditions on site so that the Works and Services function and operate in a manner satisfactory to the Approving Officer or District's Engineer. Should the Works and Services, as provided herein, prove to be in any way defective or should they not operate to the satisfaction of the Approving Officer, the General Manager or District's Engineer, then the Developer shall, at his own expense modify and reconstruct the Works and Services so that the works shall be fully operative and function to the satisfaction of the Approving Officer or District's Engineer.

b) The Developer covenants and agrees that the Developer's Consulting Engineer shall obtain the prior written approval of the General Manager for any changes to the design and specifications of the Works and Services set out in the Construction Drawings.



c) All changes to the design drawings shall be submitted to the General Manager for review and approval in advance of completing revised Works and Services in the field. Drawings shall be revised and denoted with revision numbers and 'clouded' areas surrounding specific changes or revisions.

d) In carrying out the Works and Services, the Developer covenants and agrees not to damage any of the District's works, services or property, or remove, alter, or destroy any survey pins, posts or monuments, and in default shall replace, repair and restore any damage of whatsoever nature to the satisfaction of the General Manager.

### **SUBSTANTIAL PERFORMANCE:**

14. A Certificate of Substantial Performance shall be provided by the District's Engineer on the completion of the construction listing all the deficiencies. This certificate of Substantial Performance shall not be construed as acceptance of the Works and Services. Substantial Performance is defined in section 17, below.

### **CONSTRUCTION DOCUMENTATION AND RECORD DRAWING SUBMISSIONS:**

15. The Developer covenants and agrees to submit to the District final Record Drawings, service connection cards and construction documentation, test results and digital asset management information, as accepted by the District's Engineer as identified in Schedule A, Section 2.7 of the Bylaw prior to issuing a Certificate of Substantial Performance.

### **MAINTENANCE PERIOD AND RESPONSIBILITY:**

16. The Developer covenants and agrees to maintain every part of the Works and Services in good order and in complete repair for a period of one (1) year from the date shown on the Certificate of Substantial Performance (the "Maintenance Period").

Should the Developer fail to maintain the Works and Services, then the District's Engineer, at its option, after giving the Developer seven (7) days written notice (emergencies excepted), may do so, and the whole costs, charges and expenses so incurred by the District will be payable by the

Developer, as provided for herein. The decision of the District's Engineer will be final with respect to the necessity for repairs, or the adequacy of any work done.

Once any Works and Services covered by this Agreement are connected to the District's infrastructure, only District crews or Contractors under the direct supervision of the District may undertake work on such District infrastructure. As such, District crews or contractors retained by the District may correct any defects, imperfections, settlements and/or re-chlorination and flushing which is deemed by the District's Engineer to be necessary during the one (1) year period from the date shown on the Certificate of Substantial Performance and the whole of such costs, charges and expenses so incurred by the District in undertaking such work including but not limited to contractor costs will be payable by the Developer as provided for herein.

#### **CERTIFICATES OF SUBSTANTIAL PERFORMANCE AND FINAL ACCEPTANCE:**

17. a) The District Engineer shall provide a Certificate of Substantial Performance to the Developer upon the Substantial Performance of the Works and Services. Substantial Performance shall only be approved when proper inspection of the Works and Services has been carried out, an updated schedule for asset management and costing consisting of quantities and actual unit prices of all underground and surface works infrastructure to be owned by the District is provided, and when all remaining work as certified to the satisfaction of the District by the Developer's Consulting Engineer upon the submission of a Certificate of Inspection, is capable of completion or correction at a cost of not more than:

- i. 3% of the first \$500,000 of the Total Construction Cost;
- ii. 2% of the next \$500,000 of the Total Construction Cost;
- iii. 1% of the balance of the Total Construction Cost.

b) The date of the Certificate of Substantial Performance is the date of commencement of the Maintenance Period under Section 15 of this Agreement.

c) (Deleted pursuant to Bylaw No. 2702)

d) The District Engineer shall issue a Certificate of Final Acceptance upon the expiry of the Maintenance Period provided that all outstanding deficiencies identified by the District Engineer with respect to the Off-Site Works and Services and On-Site Works and Services have been remedied and Record Drawings,

service record cards, construction documentation and test results have been provided.

e) On issuance of the Certificate of Final Acceptance and upon the expiration of the Maintenance Period, the Developer may apply to the District for discharge of this covenant, at their cost, by submitting the appropriate Form. The District will execute the discharge and return the Form to the Developer for deposit with the Registrar.

(As amended by Bylaw No. 2702)

**DEVELOPER INDEMNIFIES DISTRICT:**

18. The Developer covenants and agrees to save harmless and effectually indemnify the District, its elected officials, officers and employees, contractors, agents, successors and assigns from and against:

- a) All actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the construction, installation, maintenance or repair of the Works and Services provided by the Developer;
- b) All expenses and costs which may be incurred by reason of the construction, installation, maintenance or repair of the Works and Services resulting in damage to any property owned in whole or in part by the District for which the District by duty or custom is obliged, directly or indirectly, in any way or to any degrees, to construct, install, maintain or repair;
- c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Workers Compensation, Unemployment Insurance Federal or Provincial tax, check-off or encroachments owing to mistakes in survey;
- d) All expense and costs which may be incurred by the District as a result of faulty workmanship and defective material in any of the Works and Services installed by the Developer.

- e) The above clauses shall not be construed as to extinguish any rights which the District would have were it not for the inclusion of Clause 16 in this Agreement.

**INSURANCE BY DEVELOPER:**

- 19. The Developer will at its sole expense throughout the term of this Agreement until the District has accepted the Works and Services under Clause 15(c) carry Comprehensive Liability Insurance acceptable to the District in the amount of at least Five Million Dollars (5,000,000.00) with insurance companies licensed to carry on business in the Province of British Columbia in partial discharge of its obligation under Clause 16 (a), (b), (c) and (d).

## **INSURANCE COVERAGE:**

20. The Developer covenants and agrees to provide the following insurance coverage, and to provide the District with a copy of the insurance policy prior to the commencement of any construction of the Works and Services:

- a) To protect the Developer and the District against all claims arising out of:
  - i. Death or injury to persons; and
  - ii. Damage to or loss of, any property of third persons, including without limiting the foregoing; the following classes of property; Real property, chattels, land, works, buildings, structures, wires, boilers, and pressure vessels, conduits, pipes, mains, shafts, sewers, tunnels, and apparatus in connection therewith, even when the damage or loss of use is caused by vibration, moving, shoring, underpinning, raising, rebuilding or demolition of any building, structure or support, or by excavation, tunneling or other work below the surface of the ground or water; and
  - iii. damage to or loss of all building, structures, stores, equipment and materials included in or required to the carrying out of the Works and Services.
- b) Every policy of insurance required will:
  - i. Name "The District of Squamish" and its Contracted Employees as an additional insured; and
  - ii. State that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured; and
  - iii. State that the policy cannot be cancelled, lapsed or materially changed without at least thirty (30) days written notice to the District, delivered to the District of Squamish Clerk.

## **SECURITY DEPOSIT:**

21. As security for the due completion of the construction and installation of the Works and Services and the performance of all the covenants and promises contained in this Agreement, the Developer shall concurrently with the execution of this Agreement deposited 120% of estimated cost of the Works and Services, in the amount of \$ xxx.xx as determined by the cost estimate of the Developer's Consulting Engineer and as attached as Appendix A, in the form of cash or an irrevocable and automatically renewing Letter of Credit acceptable to the District (herein called the "Security Deposit").

## **FORFEIT OF SECURITY:**

22. In the event that the Developer fails to construct and install the Works and Services prescribed herein within the time specified in Clause 6, the Security Deposit will be forfeited to the District.

Should the District agree to an extension of the time required to complete the Works and Services, the District reserves the right to have the value of the Works and Services re-estimated, and the Security Deposit adjusted.

The Developer shall be deemed to be in default of this Agreement if the Developer files a voluntary petition of bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, liquidation, dissolution or similar under any enactment respecting bankruptcy, insolvency or other relief for debtors.

## **USE OF SECURITY DEPOSIT AND MAINTENANCE HOLDBACK:**

23. If the Developer is in default of any of its obligations in respect to the construction and installation or maintenance of the Works and Services or any portion thereof, the District may draw down on the Security Deposit or the Maintenance Holdback, as the case may be, to secure completion or maintenance of all or a portion of the Works and Services in compliance with the terms of this Agreement and any payment obligations of the Developer in respect of the Works and Services that remain unpaid including the discharge of any builders' liens, and such monies shall be applied to remedy the default and complete all or any portion of the Works and Services and to satisfy the Developer's warranties in respect of same in place and stead of the Developer and ensure compliance with the terms of this Agreement. In addition, the District may cash, retain and use the Security Deposit to remedy any emergency condition which, in the sole opinion of the District Engineer, is associated with, arises from or is a result of the Works and Services and requires expedient action. Despite the foregoing, the District may cash, retain or use the Security Deposit or the Maintenance Holdback, as the case may be, to pay, settle or compromise any claim against the District for which the Developer indemnified the District pursuant to Clause 16. If the proceeds from the Security Deposit or the Maintenance Holdback, as the case may be, are not sufficient to pay all costs and expenses incurred by the District in completing or maintaining all or a portion of the Works and Services including the District's normal overhead charges and satisfying the warranties thereof,

curing other default by the Developer, or satisfying any amounts owing to the District pursuant to Clause 16, the Developer shall forthwith pay to the District the difference upon receipt from the District of invoices for the same together with all interest thereon at the commercial prime rate of interest plus two percent from the date of receipt by the Developer of the invoices for the same and continuing until payment in full. The amount required to be paid by the Developer is a debt owing to the District, and may be collected in the same manner as property taxes in arrears.

#### **RELEASE OF SECURITY DEPOSIT, MAINTENANCE HOLDBACK:**

24. If the District's Engineer is of the opinion that the Works and Services or any portion thereof have been adequately completed and the Developer's covenants performed in compliance with this Agreement, and if there is no litigation pending by any third party against the District as a result of, or arising from, the construction and installation of the Works and Services, the District's Engineer shall be authorized to return all, or any portion of the Security Deposit to the Developer at such times and in such amounts as he may deem proper but in no case shall be more frequently than once per quarter, provided that he will retain an amount equal to 10% of any released funds for a total of 10% of the total Security Deposit at the completion of the construction and installation of the Works and Services to secure the performance of the maintenance required for the Developer for the Maintenance Period (hereinafter called the "Maintenance Holdback") and 200% the value of noted deficiencies (hereinafter called the "Deficiency Holdback")."  
(As amended by Bylaw No. 2702)

#### **RELEASE OF MAINTENANCE HOLDBACK:**

25. Upon expiration of the Maintenance Period outlined in section 16 and provided that the District's Engineer is satisfied that the Developer has complied with the covenants contained in this agreement and if there is no litigation pending by any third party against the District as a result of, or arising from, the construction of the Works and Services, the District's Engineer be authorized to return the Maintenance Holdback and Deficiency Holdback to the Developer and thereafter the Developer's responsibility for the Works and Services shall cease.  
(As amended by Bylaw No. 2702)

The Developer covenants and agrees to pay to the District an Inspection and Administration non-refundable fee in the amount indicated in the Fees and Charges Bylaw.

**NO OTHER REPRESENTATIONS:**

26. It is understood and agreed that the District has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this agreement.

**NO WAIVER:**

27. The Developer covenants and agrees that nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, of all which may be fully and effectively exercised in relation to the said Lands as if the Agreement had not been executed and delivered by the Developer.

**SOLE COST:**

28. Every obligation of the Developer under this Agreement shall be performed by the Developer at its sole cost.

**TIME OF ESSENCE:**

29. Time shall be of the essence of this Agreement.

**SEVERABILITY:**

30. If any section or portion of this Agreement is declared or held invalid for any reason, such invalidation shall not affect the validity of the remainder of that section or of this Agreement and this Agreement shall continue to be in force and effect and be construed as if it had been executed without the invalid portion.



**SUCCESSION:**

31. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

**FORCE MAJEURE:**

32. All obligations of the parties shall be suspended so long as the performance of such obligations is prevented or hindered in whole or in part, by reason of labour dispute, fire, act of God, unusual delay by common carriers, earthquake, act of the elements, riot or civil commotion.

**DISTRICT'S OPINION:**

33. Any opinion which the District is entitled by virtue of this Agreement to form may be formed on behalf of the General Manager, in which event the opinion of the General Manager shall be deemed to be the opinion of the District for the purposes of this Agreement.

**REFERENCE TO THE LANDS:**

34. Any reference to the Lands shall be deemed to be a reference to each and every parcel comprising the Lands and any reference to the Developer shall be deemed to be a reference to the Developer or Developers of each of the parcels comprising the Lands, all unless the context or the parties otherwise require.

**NOTICE:**

35. Any notice or other communication required or contemplated to be given or made by any provision of this Agreement shall be given or made in writing and mailed by prepaid registered mail in any Canada Post Office in the Province of British Columbia (and if so shall be deemed to be delivered on

the fourth business day following such mailing, except that in the event of interruption of mail service notice shall be deemed delivered only when actually received by the party to whom it is addressed), so long as the notice is addressed as follows:

To the Developer at:

To the District at: District of Squamish  
PO Box 310, 37955 Second Avenue  
Squamish BC V8B 0A3  
Attn: General Manager of Corporate Services

or to such other address of which a party hereto from time to time notifies in writing the other party hereto.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement.

**WHENEVER** the words “will” and “shall” are used in this Agreement it will be construed as imperative (mandatory).

**WHENEVER** the singular or the masculine is used in the Agreement it will be construed as meaning the plural or feminine or body corporate or politic where the context or the parties hereto so require.

**THIS CONTRACT** shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first above written.

**Please refer to Form C for signatories.**

**Signatory page if the servicing agreement with FORM C, D, E, is NOT being registered on title:**

SIGNED, SEALED AND DELIVERED

\_\_\_\_\_  
DATE (MMM/DD/YYYY)

\_\_\_\_\_  
DEVELOPER / PROPERTY OWNER

\_\_\_\_\_  
LAWYER OR NOTARY

SIGNED, SEALED AND DELIVERED

The Corporate Seal of the District of Squamish was hereunto affixed  
In the presence of:

\_\_\_\_\_  
GM OF DEVELOPMENT SERVICES  
AND PUBLIC WORKS

\_\_\_\_\_  
DATE (MMM/DD/YYYY)

## **Appendix “A” – Cost Estimate**

## **Appendix “B” – Site Servicing Design Drawings**

<b><u>Drawing Number</u></b>	<b><u>Drawing Name</u></b>	<b><u>Revision #</u></b>
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## **Appendix “C” – Subdivision Plan**

**Appendix “D” – Section 219 Covenants to be registered on title**

- Off-site storm drainage, including storm sewers, manholes, catch basins and lawn basins, piping and trenches, swales, outlets and erosion protection measures, and raised traffic island, road sightings and signage with asphalt paving included in the approved Construction Drawings;
- Environment area / Riparian zone setbacks.

**END OF DOCUMENT**

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