

LUXOR TOWNHOUSE HOMEOWNERS ASSOCIATION**DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND ASSOCIATIONS OF OWNERS
(AS AMENDED FEBRUARY 2009)**

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned, hereby declare that they are the owners in fee simple of 13 lots of real property (previously owned by Bill Isley) situated in Pocatello, Bannock County, State of Idaho, legally described as follows:

- Lots 2-10, Block 1 and Lots 1-6, Block 2, LUXOR SUBDIVISION, Bannock County, Idaho, as the same appears in the official plat thereof, filed in the Office of the County Recorder, Bannock County, Idaho.

The said real estate described above has been subdivided into lots and is to be known as the Luxor Townhouse Homeowners Association. The real property has been duly platted and recorded, and all lots therein platted shall be subject to the restrictions, covenants, and conditions hereinafter expressed, and the restrictions, covenants, and conditions are to run with the land and it shall be binding upon all parties, their heirs, personal representatives, successors, and assigns owning lots in Luxor Townhouses for a period of 30 years (unless amended) from the date this declaration is recorded, after which time the declaration shall be automatically extended for successive periods of ten years; provided, however, that any time after initial 30-year period a majority of the owners of the lots by executing and recording an instrument may modify, amend or revoke the declaration.

The said real estate is also subject to the restrictions, covenants, and conditions contained in the Olympus Heights Homeowners Association Declaration of Covenants, conditions and restrictions and Association of owners. Furthermore, all of the restrictions, covenants, and conditions as contained in the Olympus Heights Homeowners Association are to run with the land and shall be binding upon all parties, their heirs, personal representatives, successors and assigns owning lots in the Luxor Townhouses.

Where any restrictions, covenants, or conditions herein vary from the requirements of the subdivision known as the Olympus Heights Homeowners

Association or other ordinances of the City of Pocatello, Idaho, and the requirements of the city ordinances relating to subdivisions and/or Olympus Heights Homeowners Association are more restrictive, then the more restrictive requirement shall be deemed to be a part hereof as if set forth herein. This limitation shall apply in particular to locations, public easements, and ways where the same are particularly required by such ordinance but not set forth herein.

I

GENERAL PURPOSES

This declaration is executed to establish and maintain as part of a general plan for the Luxor Townhouses a residential area of this highest possible quality and value; to enhance and protect its values, desirability and attractiveness; and to provide a pleasant environment to persons acquiring title to such property.

II

LAND CLASSIFICATIONS AND DEFINITIONS

1. "Declarant" shall mean members of the Luxor Townhouse Homeowners Association who have adopted and amended the original covenants, conditions and restrictions executed by Bill Isley, who is the former owners of three lots, consents with full knowledge of all risks and liabilities to the declaration of these Covenants, Restrictions, and Conditions.
2. Lots. As used herein, Lots 2-16 shall be shown on the recorded plat for Luxor Townhouses, together with all buildings and improvements placed thereon by the original declarant.
3. Property. As used herein property shall mean any and all of the real property of Luxor Townhouses, including lots, private streets and any private or public easements or ways, and including any and all improvements on any of the foregoing.

4. Owner. Means any person who is the record Owner of fee simple title to a lot as reflected in the records of the Recorder's Office of Bannock County, Idaho. A purchaser of a lot under a contract of purchase shall be deemed an Owner if such contract is of record in the records of the Recorder's Office of Bannock County, Idaho. Such purchaser shall remain the owner of such lot until the contract of purchase is rescinded and the agreement of the rescission is recorded in the Bannock County Recorder's Office or until the contract is terminated by the Court in which it is recorded in the county recorder's office. "Owner" does not refer to any mortgagee, as defined herein, unless such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. If ownership of a lot is held by one or more persons or entities, the multiple owners of that lot shall be deemed a single Owner for purposes of voting in meetings of the Association.
5. "Management Committee" shall mean the governing body elected pursuant to the provision hereof, having responsibilities and authority herein delegated, including but not limited to the exclusive management and control of disbursements from the maintenance fund.
6. "Maintenance Fund" shall be the fund to which owners contribute and from which expenditures are made to:
 - A. Maintain, improve, repair or replace any concrete walkways and driveways as necessary (not to include private decks, patios or foundations);
 - B. Repair, maintain and replace the sewer and water service lines, electrical power lines, and television cable and sprinkler systems;
 - C. Maintain walkways and driveway areas to keep them free from snow and ice (not to include private decks and patios);
 - D. Maintain and improve common areas relative to the yards and gardens for purposes of keeping those areas in beautiful condition, provide drainage and ease of care, lawns mowed and property maintained;
 - E. The maintenance funds will not be used to improve or to make repairs to the outside of buildings including but not limited to roofs, siding, gutters, and fencing except as authorized by the majority of Owners at a meeting in accordance with the provisions herein;

- F. For such other purposes the management committee shall be authorized only by a majority of the Owners at a meeting held in accordance with the provisions hereof.

III

PARTY WALLS

1. Declarants have constructed a maximum of 13 townhouses upon the property, with a maximum of 3 units per structure with common walls being placed upon the boundary lines of all inside lots in Luxor Townhouses.
2. The common wall between two owners shall be a party wall and the owners shall have the joint use of the common wall.
3. Either Owner of a common wall may add depth or thickness to his side of the wall so long as nails, screws, bolts or other objects shall not penetrate the side of the common wall of the other Owner and so long as such construction shall not weaken the common wall or interfere with any utility lines which may be contained within the common wall.
4. If it becomes necessary to repair or rebuild the whole or any part of the common wall, the repairing or rebuilding expense of the wall shall be borne equally by the respective owners. Any repair or rebuilding of the wall shall be on the same location and of the same size of the original wall or portion thereof and of the same or similar material of the same quality as that used in the original wall or portion thereof and shall conform to all present building codes. Each owner shall be responsible, at his/her own cost, to apply such finish to his/her side of the common wall as he/she desires after the common wall has been repaired or rebuilt.
5. Should any one owner be found responsible for the damages resulting in the need for repairing or rebuilding the common wall, that owner shall bear the expense of such. Any repair or rebuilding of the wall shall be on the same location and of the same size of the original wall or portion thereof and of the same or similar material of the same quality as that used in the original wall or portion thereof and shall conform to all present building codes.

IV

REGULATION OF USE OF PROPERTY

1. No part of any lot shall be used for other than residential housing. Each lot shall be used as a residence for a single family only. One or up to two single persons can constitute a single family.
2. The parking facilities on each lot shall provide for two (2) spaces and shall be used only for the storage of conventional motor vehicles not to exceed one (1) ton.
3. No vehicle (including, but not limited to a vehicle greater than one ton, boat, RV, trailer or junk vehicle) shall be parked or placed upon any portion of any lot or the access easement delineated in the Luxor Townhouses plat, for a period not to exceed 72 hours.
4. The exterior of any residence shall not be altered or changed in any manner, without the express written consent of the Management Committee.
5. Nothing shall be done or kept by an owner which will increase the rate of insurance of any other owners. No owners shall permit anything to be done or kept upon his/her lot which will result in the cancellation of insurance of any other owner, or which would be in violation of the law.
6. No owner shall cause or permit anything to be hung or displayed on the outside of windows or placed on the outside of walls or doors of the building upon his/her lot, and no awning, canopy or shutter shall be affixed to or placed upon the exterior walls or doors, roof, or any part thereof exposed on or at any window, without the prior written consent of the Management Committee.
7. No animals of any kind shall be raised, bred, or kept in or upon any lot, except a dog, cat, or other household pet approved by the Management Committee may be kept, provided that they are not kept, bred, or maintained for any commercial purpose and provided further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the property upon three (3) days written notice from the Management Committee. In no event shall any dog be permitted outside upon any of the property unless on a leash or within an enclosed patio or other special fenced area approved by the Management Committee.

8. The owners shall place all garbage and other refuse for the City to pick up on the allotted day for city garbage collections.
9. Signs to identify the Owner and street numbers shall not exceed six inches in height. No sign of any kind shall be displayed to the public view on any lot, except when advertising a lot to be for sale or rent, using an industry standard realty sign.
10. The Luxor Townhouse Homeowners Association encourages owners to settle disputes and differences between themselves. If a resolution cannot be reached, the parties may request that the dispute be heard by the Management Committee and/or by the entire membership. The parties may then ask the committee or membership to render a non-binding recommendation for resolution of the dispute.
11. If the Owner or owners of any lot, or lots shall violate any of the provisions herein set out, it shall be lawful for any other Owner to bring an action in the District Court against the Owner or owners violating any of such provisions, to restrain such violations, to recover damages for such violation, or both.
12. Invalidation of any of these covenants, conditions or restrictions, or any portion thereof, by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

V

LUXOR TOWNHOUSE HOMEOWNERS ASSOCIATION

1. Association Membership, Voting Rights and Meetings:
 - A. Association Membership. Every Owner shall be a member of the Luxor Townhouse Homeowners Association. Membership shall be appurtenant to and may not be separated from the ownership of any lot.
 - B. Voting. At any meeting of the Association, each Owner shall be entitled to cast a vote for each lot he/she owns. An Owner may attend and vote at such meeting in person or by proxy, in writing, signed by the Owners, and filed with the Management Committee. Where a lot is owned by more than one person, any or all of such Owners may attend meetings of the Association, but only one person can be authorized to cast the vote on behalf of the lot. In the

event more than one (1) vote is cast with respect to a particular lot, none of the votes shall be counted and all votes shall be deemed void.

C. Annual Meeting. There shall be an annual meeting of the Owners on Thursday of the first week in February of each year, or at such other reasonable time, at a place in Pocatello, Idaho, as may be designated by written notice of the Management Committee delivered to the Owners not less than ten (10) days prior to the date fixed for the meeting. At the annual meeting, the Management Committee shall have prepared a statement of account and shall present the account, which shall include the common expenses, an itemization of receipts and disbursements for the calendar year to date, the allocation thereto to each Owner, and the establishment of common expenses for the current calendar year. A copy of the statement of account shall be made available to all owners, upon request, whether in attendance at the annual meeting or not.

- 1) Special Meetings. Any member of the Management Committee, or any two (2) owners, may call a special meeting by giving at least fifteen (15) days prior notice in writing signed by a member of the Management Committee or any two (2) of the Owners, of the time, place, and purpose of such meeting.
- 2) Quorum. The Owners present at the annual meeting of the Association shall constitute a quorum for all purposes, except modification, amendment or revocation of this Declaration. The presence at any special meeting of a majority of the Owners or authorized agents shall constitute a quorum. In the event that a quorum is not present at the special meeting, the Owner or authorized agents present may adjourn the meeting to a later date without further notice thereof to other Owners and at the adjourned meeting the presence of Owners or authorized agents holding 66% of the total votes of the Association shall constitute a quorum for the transaction of all business except for modification, amendment or revocation of this Declaration.

2. Membership, Election, Proceedings, Duties, Rules and Regulations of the Management Committee.
- A. Membership. The Management Committee shall be comprised of three (3) Owners. The individuals appointed/elected and approved by the membership shall have staggered terms; one term shall expire upon the date of the first annual meeting of the Association; one term shall expire on the date of the second annual meeting of the Association, and one term shall expire on the date of the third annual meeting of the Association; notwithstanding the foregoing terms, each member shall serve until his successor shall have been elected.
- B. Election. At each annual meeting, the Owners shall elect one Owner to fill the term of the member of the Management Committee then expiring. Voting shall be regulated as described in paragraph III (2) above. The candidate receiving the highest number of votes shall be deemed elected.
- 1) Term. Elected members of the Management Committee shall serve for a term of three (3) years each, or until a successor has been qualified and elected, and shall serve until their death, resignation, or removal; provided that if any member ceases to be an Owner, his/her membership on the Management Committee shall end at the earliest convenient time to replace the individual. Should a member of the Management Committee need replacement on the committee, he or she shall immediately be replaced after a special meeting of the Management Committee is convened. The Committee will appoint a temporary member to the position. Election of a replacement for the remainder of the term will be by election at the annual meeting.
- 2) Resignation and Removal. Any member of the Management Committee may resign at any time by giving written notice to the chairman, and any members may be removed from membership on the Management Committee by vote of the majority owners, or authorized agents.
- C. Proceedings. Two (2) members of the Management Committee shall constitute a quorum and their decision, if unanimous, shall be the act of the

Management Committee. The Management Committee shall elect a chairman and a secretary. The chairman shall preside over the Management Committee meetings, the annual and special meetings of the Association and the secretary shall act in such capacity at all such meetings. Meetings of the Management Committee may be called, held and conducted in accordance with such regulations as the Management Committee may adopt. The Management Committee may also act without a meeting by unanimous written consent of its members.

- D. Duties. The Management Committee, for the benefit of the Owners, shall perform its duties set forth in the covenants, conditions, and restrictions established by this Declaration, and shall further be authorized to and responsible to:
- 1) maintain, improve, and replace any concrete walkways and driveways as necessary;
 - 2) provide for snow removal from walks and driveways as needed, not to include decks and patios;
 - 3) shall have the authority to employ independent contractors and other employees to carry out the authorized work;
 - 4) shall keep accurate records of all receipts and expenditures which shall at all reasonable times be open to inspection by other Owners;
 - 5) shall provide sewer maintenance for private sewer going to the street and water service line;
 - 6) maintain and improve the sprinkler systems and landscaping;
 - 7) perform such other duties and expend maintenance funds for such other purposes as authorized and directed by a majority of the Owners at a meeting held in accordance with the provisions hereof;
 - 8) acquire liability insurance for the Association, and errors and omissions for the Management Committee.
- E. Administrative Rules and Regulations. The management body shall have the power to adopt and establish by resolution, such building, management and operational rules as it may deem necessary for the maintenance, operation,

management and control of the association. All such regulations shall be adopted only after due notice of the proposed regulation or regulations are given to the owners and the owners are given an opportunity to present arguments for or against such regulations. Such regulations shall not be inconsistent with the provisions of this Declaration, but may otherwise deal with any matters affecting the common areas and units if such matters are of general concern to all owners and do not unnecessarily affect any particular owner's right with respect to his/her unit. When a copy of duly adopted regulation of a duly adopted amendment, alteration, or repeal of a regulation is mailed in writing to the address of each townhouse unit, it shall become effective.

3. Membership Assessments, Maintenance Fund and Accounting.

A. Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptable form of deed or contract of Purchase and recordation of said Deed or Contract of Purchase whether or not it shall be so expressed in any such deed or contract, is deeded to covenanted and obligated to pay to the Association annual, monthly or other periodic assessments thereafter levied against each lot, from time to time. The lot assessment, together with such interest thereon and cost of collection thereof, shall be the personal obligation of the Owner of such Lot at the time an assessment is levied. The assessment shall not be a personal obligation of successors in title unless expressly assumed by them. An owner owing delinquent assessments must pay delinquent assessments in full before transfer of ownership. Liens shall be recorded against property for unpaid assessments.

1) Amount of Assessments. There shall be regular assessments to be established by the Management Committee when it deems such assessments are necessary, and such assessments shall continue from year to year until otherwise changed by the Management Committee, or by a majority vote of the owners who are in attendance at a meeting duly called for such purpose. Special assessments shall be set by the vote of the majority of the Owners in attendance at a meeting duly called for

such purposes. The Luxor Townhouse Homeowners Association is a sub-association of Olympus Heights Homeowners Association and is subject to the annual assessment of Olympus Heights for maintenance of the jogging trail and common areas.

- 2) Levy and Collection of Assessments. The Management Committee shall give each Owner written notice of the assessment levied against his/her Lot at least thirty (30) days prior to the due date of such assessment, and the Management Committee shall have the duty to collect all monies so assessed.
 - 3) Default in Payment of Assessment. Any assessment which is not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of eighteen percent (18%) per annum until paid, and the Owner shall also be obligated to pay all collection expenses, including Court costs and reasonable attorney's fees incurred by the Management committee in any proceeding brought to collect such unpaid assessments.
 - 4) Statement of Unpaid Assessments. Upon ten (10) days notice to the Management Committee and the payment of fifteen dollars, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments due and owing from such Owner.
- B. Maintenance Fund. All assessments levied by the Association shall be deposited in an account designated the "Maintenance Fund," which shall be under the exclusive control of the Management Committee with all withdrawals therefrom to require one signature of the Treasurer with a current \$20,000 surety bond, with the premium to be paid by the Association out of the maintenance fund. The monies in the Maintenance Fund shall only be used for the purposes expressly provided in Paragraph II (see number 6 on page 3).
- 1) Accounting. The books and accounts of the Townhouse project shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

- 2) Annual Budget. The management body shall prepare an annual budget which shall indicate anticipated management operating, maintenance, or repair and other common expenses for the Association's next fiscal year and which shall be sufficient to pay all estimated expense and outlays of the management body for the next calendar year growing out of or in connection with the maintenance, improvement and operation of the association and may include, among other things, the cost of management, special assessments, public liability insurance, common lighting, landscaping and care of grounds, repairs, renovations, painting of improvements located in the common areas, and painting of exteriors of committee-approved improvements located on units, snow removal, yard care, wages, water charges for lawn and yard, legal and accounting fees, management fees, expenses and liabilities incurred by the managing body, under or by reason of this declaration, the payment of any deficit remaining from a previous period and a creation of any reasonable contingency or other reserve or surplus fund, as well as all cost and expenses relating to the association. An adequate reserve fund for replacement of common facilities or for the maintenance and repair of common elements must be established and included in the annual budget. A financial statement including all charges will be distributed to the membership.
- 3) Report. At the close of each accounting year the books and records of the project shall be reviewed by a person or firm approved by the Association. Report of such review shall be prepared and submitted to the Owners at or before the annual meeting of the Association. Provided however, that a certified audit by a certified public accountant approved by the Association shall be made if the Owners so vote.
- 4) Inspection of books, financial reports, and all books of the Association or Board of Managers or managing agents shall be kept at the principal office of the Board of Managers and shall be subject to inspection at all reasonable times by any owners or mortgagee.

- 5) Assessments and Payments by Owners. All portions of the annual budget shall be assessed to the owners on an equal basis annually. The owners shall pay the assessments when due without any deduction on account of any set off or claim which the Owner may claim to have against the Association.

VI

MISCELLANEOUS

1. Easement. The Association shall have an easement on all property for the purposes of maintaining the outside of the premises, reading of meters, providing utility services to each unit, and servicing such as is necessary for the continuation of the Homeowners Association.
2. Fencing. There shall be no fenced back yards on any of the lots known as Luxor Townhouses. The backyards of the townhouses adjoin the walking area adjacent to the Olympus Heights Homeowners Association properties and any fenced back yard would substantially impair and affect the value of said properties.
3. Right to Re-enter. The management body or its designated agent shall have the right to enter any unit in case of emergency originating in or threatening such unit or any part of the project, whether or not the Owner or occupant thereof is present at the time. The management body or its designated agent shall also have the right to enter any unit at reasonable times for the purposes or making necessary repairs upon the common areas of the association and for the purpose of performing installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided however, that such installations alterations and/or repairs are necessary to prevent damage or threaten damage to other units; and provided, further, that the Owner affected by such entry shall first be notified if available, and if time permits. The management body or its designated agents have a right of entry on any unit to effect exterior maintenance on the exterior of such units pursuant to the obligations of said management body to perform the same pursuant to the terms of this declaration.

4. No Abandonment. No Owner may exempt himself/herself from liability for his/her contribution toward the common expenses by waiver of the use for enjoyment of any of the common areas or by abandonment of his unit. The Owner shall not by act or omission seek to abandon the townhouse status of the association.
5. Insurance Coverage. The management body shall secure and maintain the following insurance coverage.
 - A. A policy or policies insuring the management body and each Owner and all the owners collectively against any liability arising from the ownership, use or maintenance of any portion of the lots, including use of the units or common areas by anyone. Limits of liability under such insurance shall be in no event less than \$100,000/\$300,000 for bodily injury; and shall not be less than \$20,000 for property damage for each occurrence. Such limits and coverage shall be reviewed at least annually by the Association and changed if found to be inadequate or excessive. Said policy or policies shall deny subrogation rights against owners.
 - B. Workmen's Compensation to the extent necessary to comply with any applicable laws.
 - C. The management body shall have exclusive authority to adjust casualty losses under insurance policies maintained by it. However, any claims as to any personal liability of any Owner arising out of the ownership, use, operation or management of the common areas may be compromised or settled as to his/her portion of any such claim by an Owner without prejudice to the remaining balance thereof and without the same constituting evidence or admission for or against any such claimant. All insurance herein authorized will be written in the name of the Luxor Townhouse Homeowners Association. All premiums for insurance as procured by the management body shall be a common expense.
 - D. Homeowners shall individually provide insurance for the purpose of coverage on the exterior and interior of their individual unit to specifically cover their own individual unit and their possessions. Insurance carriers should be aware that Luxor Townhouses are attached units.

6. Obligation to Comply Herewith. All owners shall comply with all provisions of this declaration, the bylaws, and the administrative rules and regulations pertaining to the project, and shall require such compliance from their children, tenants, guests, employees and any other person whom they invite upon the property. All agreements, decisions, and determinations lawfully made by the management body shall be deemed to be binding on all owners and shall inure to their benefit. Each Owner, any group of owners, or the management body shall have standing authority, unless otherwise provided, to enforce by and legal means, including suit for specific performance, injunctive relief or damages, the provisions of these declarations and any duly adopted decisions or resolutions of the Association or management body.
7. Severability. In the event that a phrase, sentence, clause, paragraph or article contained herein should be invalid, or should operate to render this agreement invalid, this Declaration shall be construed as if such invalid phrase, sentence, clause, paragraph or article had not been inserted.
8. Gender and Number. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
9. Waivers. No provision contained in this declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.
10. Topical Headings. The topical headings of the articles and paragraphs contained in this declaration are for convenience only and do not define, limit or construe the contents of the articles or paragraphs of this Declaration.
11. Effective Date. This declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have hereby signed his/her name as owner of the property described on page 1, Pocatello, Idaho, Bannock County, Idaho.

1303 Delphic Way
Pocatello, Idaho

Sydney Wood

Barb Wood
Barb Wood

1315 Delphic Way
Pocatello, Idaho

Chuck Lockhart

Lynne Lockhart
Lynne Lockhart

1330 Delphic Way
Pocatello, Idaho

Natalie Barfuss
Natalie Barfuss

1341 Delphic Way
Pocatello, Idaho

Blaine Peterson
Blaine Peterson

Dorothy Peterson

1344 Delphic Way
Pocatello, Idaho

May Hronek

1345 Delphic Way
Pocatello, Idaho

Clay Baker

1350 Delphic Way
Pocatello, Idaho

Bob Bopp
Bob Bopp

Esther Bopp
Ester Bopp

1357 Delphic Way
Pocatello, Idaho

David Eike
David Eike

Patsy Eike

1365 Delphic Way
Pocatello, Idaho

Mike McCarthy

Pat McCarthy
Pat McCarthy

IN WITNESS WHEREOF, the undersigned have hereby signed his/her name as owner of the property described on page 1, Pocatello, Idaho, Bannock County, Idaho.

1366 Delphic Way
Pocatello, Idaho

James Mahar
James Mahar

Carol Mahar
R. Clayton FOR
LARRAINE Clayton

1375 Delphic Way
Pocatello, Idaho

Ron Clayton
Ron Clayton

Larraine Clayton

1388 Delphic Way
Pocatello, Idaho

Joseph Martinez
Joseph Martinez

Vicki Martinez
Vicki Martinez

1395 Delphic Way
Pocatello, Idaho

Gary Alzola
Gary Alzola

Chris Alzola
Chris Alzola

OFFICIAL RECORD BOOK # 917
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
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Luxor Townhomes

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