

GROUND LEASE TERMINATION AGREEMENT

This Ground Lease Termination Agreement (this “Agreement”) is made and entered into by and between the COLLIN COUNTY COMMUNITY COLLEGE DISTRICT (“College”), and the CCCCDF STUDENT HOUSING FOUNDATION (“Student Housing Foundation”). The College and the Student Housing Foundation at times are referred to herein as a “party” or collectively as the “parties.”

RECITALS

WHEREAS, the College owns that certain real property consisting of 5.535± acres of land in the City of Plano, Collin County, Texas, as more particularly described in Exhibit A to the Ground Lease (hereinafter defined), and generally located at 5800 Jupiter Road, Plano, Texas 75074 (“Land”); and

WHEREAS, the College and the Collin County Community College District Foundation, Inc. entered into that certain Ground Lease Agreement dated November 1, 1998 (“Ground Lease”), a true and correct copy of which is attached hereto as Exhibit 1 and incorporated herein, whereby the College, as lessor, granted a leasehold estate to the Collin County Community College District Foundation, Inc., as lessee, in and to the Premises on the Land;¹ and

WHEREAS, the Collin County Community College District Foundation, Inc. constructed the Facilities known as Century Court Student Housing pursuant to the Ground Lease; and

WHEREAS, pursuant to that certain Bill of Sale and Assignment dated September 17, 2002, the Collin County Community College District Foundation, Inc. assigned all of its “rights, titles and interests” in and to the Ground Lease to the Student Housing Foundation; and

WHEREAS, the Student Housing Foundation also assumed the Collin County Community College District Foundation, Inc.’s rights, duties and responsibilities under that certain Loan Agreement dated November 1, 1998 (“Loan Agreement”), which served as the financing mechanism for the construction of the Facilities; and

WHEREAS, the College consented to both the assignment and the assumption in that certain Consent to Assignment and Assumption and Release from Lease dated September 16, 2002; and

WHEREAS, the Student Housing Foundation has operated, managed and maintained the Facilities for the “support, maintenance or benefit” of the College and to serve purposes “related to the performance of the public and school purposes, duties and functions” of the College under the Ground Lease since 2002; and

¹ All capitalized terms not otherwise defined in this Agreement have the meanings ascribed to them in the Ground Lease.

WHEREAS, the Term of the Ground Lease expires on the earlier of August 31, 2044 or when all mortgage debt against the Student Housing Foundation's leasehold estate has been paid; and

WHEREAS, the parties have investigated and determined that it is in their mutual best interest to agree to terminate the Ground Lease as of the Closing (hereinafter defined) through the payment of all mortgage debt held against the Student Housing Foundation's leasehold estate under the terms and conditions of this Agreement; and

WHEREAS, the College's Board of Trustees has determined that the public interest is served by the early termination of the Ground Lease and the College's payment of the College Escrowed Funds (hereinafter defined) as described in this Agreement; and

WHEREAS, the College's Board of Trustees also has determined that the College's participation in this Agreement serves the public purpose of permitting the College to integrate the operations of the Facilities into the infrastructure of the College so as to provide affordable housing to the College's students at its Plano Campus

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

ARTICLE 1. DUE DILIGENCE

The obligation of the College to consummate the transactions contemplated in this Agreement is subject to the satisfaction of each of the following conditions prior to the Closing Date (hereinafter defined):

1.1 Mutual Cooperation. The parties agree that they will reasonably cooperate with one another so that the College may (a) perform all due diligence deemed necessary by the College in its sole discretion with respect to the College assuming the operation and management of the Facilities, including investigation and review of all financial, legal, insurance/risk management, human resources and long-range planning concerns; (b) review the current policies and plans for the operation, management, maintenance, repair and improvement of the Facilities; and (c) develop and put into effect comprehensive short- and long-range plans for the operation, management, maintenance, repair and improvement of the Facilities provided that the Ground Lease is terminated as contemplated herein. For example and without limitation, the Student Housing Foundation shall provide to the College and its agents, representatives and employees the following materials within three (3) days of the date of a request from the College: (i) copies of all financial statements relating to the operation and management of the Facilities, including comprehensive cash flow analyses, for the current fiscal year and the preceding three fiscal years; (ii) books and records relating to the assets, liabilities and operations of the Facilities as well as a written list and accounting of any outstanding, pending or contemplated insurance claims, legal proceedings, known legal claims or demands or known casualty affecting the Premises; (iii) copies of all current Tenant lease agreements and other sublease and service agreements; (iv) copies of all environmental reports, governmental permits or approvals, current survey and site plans,

existing title policy, inspection and engineering reports concerning the Premises; and (v) such other materials reasonably requested by the College (collectively, “Due Diligence Materials”).

12 Inspection of the Premises. The Student Housing Foundation shall permit the College and its agents, representatives and employees to enter onto the Premises and perform comprehensive inspections of all portions of the Premises in accordance with Section 5.04 of the Ground Lease. Such persons shall use “best efforts” not to disturb Tenants during any such inspections.

13 Feasibility Period. The College shall have () days from the Effective Date of this Agreement within which to review the Due Diligence Materials and inspect the Premises (the “Feasibility Period”). In the event the College notifies the Student Housing Foundation in writing on or before 5:00 p.m. on the last day of the Feasibility Period that the College elects not to consummate the transactions contemplated in this Agreement, such determination to be made in the College’s sole and absolute discretion, then this Agreement shall automatically terminate. In the event the College does not so notify the Student Housing Foundation in writing prior to the expiration of the Feasibility Period of the College’s election to terminate this Agreement, this Agreement shall continue in full force and effect.

14 Representations. As a material inducement to the College to execute and perform its obligations under this Agreement, the Student Housing Foundation hereby represents and warrants to the College as of the Effective Date of this Agreement and through the date of the Closing as follows: (a) there are no actions, suits, or proceedings (including condemnation) pending or threatened against the Premises, at law or in equity, or before any federal, state, municipal or other government agency or instrumentality, domestic or foreign, nor is the Student Housing Foundation aware of any facts which to its knowledge might result in any such action, suit, or proceeding; (b) the Student Housing Foundation is not in violation of any term or provision of any charter, bylaw, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation, and the execution and delivery of and performance and compliance with this Agreement will not result in the violation of or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien, encumbrance or charge upon any of the Premises pursuant to any such term or provision; (c) the Premises are subject to no lease, mortgage, pledge, lien, charge, security interest, encumbrance or restriction whatsoever, except as disclosed to the College; and (d) the Premises, to the best of Student Housing Foundation’s actual knowledge, without investigation, is free from and/or has not been used for (i) the storage, holding, existence, manufacture, release, treatment, abatement, removal, disposition, handling, transportation, or disposal of any Hazardous Materials, from, under, into or on the Premises or (ii) the existence of any “Endangered Species” on the Premises. For the purposes of this section, “Hazardous Materials” shall mean (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and the regulations promulgated thereunder; (iii) any petroleum-based products; (iv) any substance which by any governmental requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal; and (iv) any other substances which are now classified

or considered to be hazardous or toxic under governmental requirements. For the purposes of this section, “Endangered Species” shall mean any species which is described pursuant to the U.S. Endangered Species Act of 1973, as being in danger of extinction throughout all or a significant portion of its range. All representations in this section shall survive the Closing for a period of two (2) years from Closing; and Student Housing Foundation shall defend, indemnify and hold the College harmless from any breach of such representations.

ARTICLE 2. CERTIFICATION OF OUTSTANDING DEBT; ESCROW

2.1 Certification of Outstanding Debt and Investment Balances. On or before the Effective Date of this Agreement, the Student Housing Foundation shall provide to the College a certified statement of: (a) the source and amount of all outstanding mortgage debt encumbering the Premises, including the outstanding student housing revenue bonds subject to the Loan Agreement (collectively, the “Outstanding Debt”); and (b) the investment balances held in accounts owned by the Student Housing Foundation at BNY Mellon (collectively, the “Investment Balances”). The Student Housing Foundation hereby represents and certifies that the amortization schedule for the Outstanding Debt, attached hereto as Exhibit 2 and incorporated herein for all purposes, and the account statements showing the most recent Investment Balances, attached hereto as Exhibit 3 and incorporated herein for all purposes, are true, accurate and complete, as of the Effective Date of this Agreement. The Student Housing Foundation shall provide to the College copies of account statements showing the then-current Investment Balances as of the fifth day (5th) before the Closing Date. Between the Effective Date of this Agreement and the Closing, the Student Housing Foundation shall not make any transfers, distributions, payments or other disbursements from the accounts holding the Investment Balances without the prior, written consent of the College. In the event the Student Housing Foundation fails to comply with the obligations in this subsection, the College may immediately terminate this Agreement, in which case this Agreement shall be of no further force or effect and the College shall be relieved from all liabilities or obligations hereunder.

2.2 College Escrowed Funds. Within five (5) days after the expiration of the Feasibility Period, the College, as consideration for the early termination of the Ground Lease, shall deliver to [REDACTED] (“Escrow Agent”) a sum equal to the amount of the Outstanding Debt, minus the result of the amount of the then-current Investment Balances plus [REDACTED] (\$_), to be held in escrow by the Escrow Agent and applied by Escrow Agent toward payoff of the Outstanding Debt at Closing in accordance with this Agreement (the “College Escrowed Funds”). The College’s obligations under this Section 2.2 are contingent upon all bond issuer(s)/mortgagee(s) agreeing to accept payment of the Outstanding Debt in return for the bond issuer(s)/mortgagee(s) releasing any and all rights under the Ground Lease, including any rights set forth in Section 6.02 of the Ground Lease. In the event the College fails to timely deliver the College Escrowed Funds to the Escrow Agent, the Student Housing Foundation may immediately terminate this Agreement, in which case this Agreement shall be of no further force or effect and the Student Housing Foundation shall be relieved from all liabilities or obligations hereunder. In the event that the Student Housing Foundation terminates this Agreement pursuant to this subsection, then the Escrow Agent shall immediately return the SHF Escrowed Funds (hereinafter defined), if any, together with interest accrued thereon to the Student Housing Foundation.

2.3 SHF Escrowed Funds. On the date required by the College, the Student Housing Foundation shall deliver to the Escrow Agent a sum equal to the then-current amount of the Investment Balances plus _____ (\$), to be held in escrow by the Escrow Agent and applied by Escrow Agent toward payoff of the Outstanding Debt at Closing in accordance with this Agreement (collectively, the “SHF Escrowed Funds” and together with the College Escrowed Funds, the “Combined Escrow Funds”). In the event the Student Housing Foundation fails to timely deliver the SHF Escrowed Funds to the Escrow Agent, the College may immediately terminate this Agreement, in which case this Agreement shall be of no further force or effect and the College shall be relieved from all liabilities or obligations hereunder. In the event that the College terminates this Agreement pursuant to this subsection, then the Escrow Agent shall immediately return the College Escrowed Funds, if any, together with interest accrued thereon to the College. The Student Housing Foundation shall call the bonds on the date directed by the College.

2.4 Appointment of Escrow Agent. The parties hereby appoint and designate Escrow Agent as their respective agent to hold, administer and deliver the Combined Escrow Funds in accordance with the terms of this Agreement. The parties shall direct Escrow Agent to hold the Combined Escrow Funds subject to and in strict accordance with the terms of this Agreement.

2.5 Investment of Escrowed Funds. The parties shall direct Escrow Agent to invest the Combined Escrow Funds in an insured money market account. All interest, dividends or other income that is earned or accrues on the Combined Escrow Funds (collectively, “Interest”) shall be added to and made a part of the Combined Escrow Funds on a pro rata basis. Escrow Agent shall maintain, and shall make available to each party upon request a certified disbursement statement setting forth (a) the amount of the respective Combined Escrow Funds; (b) Interest earned on the Combined Escrow Funds; and (c) all disbursements of the Combined Escrow Funds pursuant to this Agreement.

2.6 Escrow Period. The escrow period shall commence on the date that a party deposits any portion of the Combined Escrow Funds and shall continue in full force and effect until the Combined Escrow Funds have been fully disbursed under this Agreement.

ARTICLE 3. CLOSING

3.1 Closing Date. The closing of the termination of the Ground Lease under this Agreement (the “Closing”) shall be at the offices of _____ at _____ .m. on January 31, 2019 (the “Closing Date”).

3.2 Student Housing Foundation Obligations at Closing. At the Closing, the Student Housing Foundation shall:

- (a) Direct and authorize BNY Mellon to transfer the then-current amount of the Investment Balances to the Escrow Agent to be held as SHF Escrowed Funds;

- (b) Direct and authorize American National Bank to transfer _____ (\$) to the Escrow Agent to be held as SHF Escrowed Funds;
- (c) Direct and authorize the Escrow Agent to apply the SHF Escrowed Funds toward the payoff of the Outstanding Debt;
- (d) Deliver to the College written confirmation from all bond issuer(s)/mortgagee(s) that the Outstanding Debt has been fully paid and that all such bond issuer(s)/mortgagee(s) have released any and all rights under the Ground Lease;
- (e) Deliver to the College possession of the Premises, including delivery of all keys, keycard, passwords, passcodes and other access devices necessary to access and use any portion of the Premises or any of the personal property or equipment located thereon;
- (f) Surrender to the College all personal property owned or claimed by the Student Housing Foundation located on the Premises as of the Effective Date of this Agreement; and
- (g) Take all actions necessary to transfer or assign to the College all Tenant lease agreements and other sublease and service agreements involving or relating to the Premises.

3.3 College Obligations at Closing. At the Closing, the College shall direct and authorize the Escrow Agent to apply the College Escrowed Funds toward the payoff of the Outstanding Debt.

3.4 Attorney's Fees and Other Costs. Each party shall pay any attorney's fees incurred by such party. All other costs and expenses of closing the termination of the Ground Lease shall be borne and paid by the Student Housing Foundation.

ARTICLE 4. TERMINATION OF THE GROUND LEASE

4.1 Termination and Outstanding Obligations. Provided that each party fully complies with its respective obligations under this Agreement, the parties recognize and agree that the Ground Lease shall terminate as of the Closing Date pursuant to the terms of the Ground Lease. In such an event, the parties for themselves and their respective successors and assigns acknowledge and agree that all outstanding obligations of any party under the Ground Lease are hereby released and shall be of no further force or effect, except for those obligations that expressly survive termination of the Ground Lease, which shall remain in effect and enforceable.

4.2 Mutual General Release. Effective as of the date of termination of the Ground Lease, the parties and their respective successors, assigns, heirs, affiliates, agents, servants, directors, officers, employees and representatives fully and forever release and discharge each other and their respective successors, assigns, heirs, affiliates, agents, servants, directors, officers, employees and representatives (collectively, "Releasees" in their capacities as released parties hereunder), and all

other persons acting for, under or in concert with Releasees, past or present, of or from any and all claims, demands, actions, causes of actions, suits, lawsuits, debts, liens, contracts, agreements, promises, obligations, damages, liabilities, losses, costs or expenses, including attorneys' fees, past or present, ascertained or unascertained, whether or not known, suspected or claimed to exist or which can hereinafter ever arise out of or result from or in connection with any act, omission, failure to act, breach or conduct suffered to be done or omitted to be done by Releasees, relating to any claims or issues arising from, in connection with, or surrounding the Ground Lease.

4.3 Reservation of the Right to Enforce this Agreement. It is understood and agreed by the parties that the agreements and releases described in Sections 4.1 and 4.2 above do not waive nor include in any way the parties' rights and ability to enforce against each other the terms, covenants, representations or conditions contained in this Agreement.

4.4 Assignment of Claims. Effective as of the date of termination of the Ground Lease, the Student Housing Foundation hereby assigns to the College all of the Student Housing Foundation's rights, title and interest in and to any and all claims, demands, actions, causes of actions, suits, lawsuits, debts, liens, contracts, agreements, promises, obligations, damages, liabilities, losses, costs or expenses, including attorneys' fees, past or present, ascertained or unascertained, whether or not known, suspected or claimed to exist or which can hereinafter ever arise out of or result from or in connection with any act, omission, failure to act, breach or conduct suffered to be done or omitted to be done in connection with, or surrounding the Ground Lease or the Premises.

4.5 Recordation of Termination Memorandum; Notice of Termination. Once the parties have received confirmation that all of the Outstanding Debt has been paid in full and the Ground Lease has been terminated, the parties jointly execute and deliver to one another the Memorandum of Ground Lease Termination, the agreed form of which is attached hereto as Exhibit 4. The College shall promptly file the fully executed Memorandum in the Collin County Real Property Records. The parties also shall provide prompt notice of the termination of the Ground Lease to all Tenants and other sublessees of the Facilities at the time and in the manner required by the College.

4.6 Conduct After Termination. Provided that each party fully complies with its respective obligations under this Agreement, the College shall use best efforts to achieve the following:

- (a) For each of the full-time employees of the Student Housing Foundation as of the Closing Date (but in no event more than five (5) employees), the College will directly pay to such individuals an amount equal to the usual and customary compensation rate that would have been earned by such individuals during a standard work period for a period not to exceed ninety (90) days after the date of termination of the Ground Lease as transition payments. Such payments shall not include benefits of any character, and such payments shall be paid on the regular payroll dates of the College. Such individuals shall not be considered employees or agents of the College for any purpose whatsoever;
- (b) The College will make employment opportunities available to such employees, subject to the College's usual and customary employment policies and practices;

- (c) The College will form an advisory committee comprised of the Executive Director and Board members of the Student Housing Foundation to advise the College's Board of Trustees regarding the operations and management of the Facilities;
- (d) The College will continue using positive cash flow received from the operation of the Facilities to fund scholarships for students attending the College, and will operate the Facilities as an auxiliary service of the College subject to the normal governance oversight of the College's Board of Trustees which includes but is not limited to establishing policies for operation of the student housing units and establishing financial controls and annual budgets.

ARTICLE 5. DEFAULT AND REMEDIES

Either party shall be in default in the event of any breach by such party of any covenant or term of this Agreement and such breach has not been cured within ten (10) days from and after the date written notice of such breach is given by the non-breaching party to the breaching party ("Event of Default"). Upon the occurrence and during the continuance of an Event of Default, the non-breaching party shall have all remedies available to it at law or in equity, including, without limitation, termination, injunction and specific performance. All remedies under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any Event of Default shall not be deemed to be a waiver of such remedy or any subsequent Event of Default.

ARTICLE 6. ASSIGNMENT

Neither party may assign or otherwise transfer this Agreement or any right or interest in this Agreement.

ARTICLE 7. MISCELLANEOUS

7.1 Notices and Addresses. All notices required under this Agreement must be given by certified mail or registered mail, addressed to the proper party, at the following addresses:

College: Collin County Community College District
3452 Spur 399
McKinney, TX 75069
Attn: CFO

SHF: CCCCDF Student Housing Foundation
5800 Jupiter Rd.
Plano, TX 75074
Attn: President

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this section.

7.2 Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

7.3 Governing Law/Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

7.4 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

7.5 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties to the Agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement.

7.6 Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement and duly executed by the parties to this Agreement.

7.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

7.8 Attorney's Fees and Costs. If, as a result of a breach of this Agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this Agreement, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce this Agreement.

7.9 Time of Essence. Time is of the essence of this Agreement.

7.10 Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, the College has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

7.11 No Commissions. Each party represents and warrants to the other party that no real estate broker, agent, attorney, person, firm or entity is entitled to any commission in connection with this transaction.

7.12 No Third Parties Benefitted. The terms and provisions of this Agreement are for the sole benefit of the Student Housing Foundation and the College, and no third party is intended to benefit herefrom.

7.13 Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding Agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined).

7.14 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

7.15 Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has had an opportunity to consult with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.

7.16 Incorporation of Recitals. The representations, covenants and recitations set forth in the forth in the foregoing recitals of this Agreement are incorporated into the body of this Agreement.

7.17 Consideration. This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

7.18 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

COLLIN COUNTY COMMUNITY COLLEGE
DISTRICT

By: _____
H. NEIL MATKIN, Ed.D., District President
Date: _____

ATTEST:

Name: _____
Title: _____
Date: _____

CCCCDF STUDENT HOUSING FOUNDATION

By: BRENDA MCDONALD, President
Date: _____

ATTEST:

Name: _____
Title: _____
Date: _____

**Exhibit 1
Ground Lease**

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**Exhibit 2
Amortization Schedule**

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**Exhibit 3
Account Statements**

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Exhibit 4
Memorandum of Ground Lease Termination

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