

IN THE SUPERIOR COURT FORSYTH COUNTY

STATE OF GEORGIA

MARY BURCH,

Petitioner,

vs.

DAVID BURCH,

Respondent.

CIVIL ACTION FILE NO.

22CV-1557-1

**FINAL SETTLEMENT AGREEMENT**

*FINAL SETTLEMENT AGREEMENT* (hereinafter “Agreement”), made and entered into by and between MARY BURCH (“Wife”) and DAVID BURCH (“Husband”);

W I T N E S S E T H:

WHEREAS, the parties to this Agreement were married on or about November 24, 1999;

WHEREAS, there are two (2) minor children born as issue to this marriage, to wit: Coleman Burch born in 2006 and Mary Addison Burch born in 2008; (collectively referred to herein as the “minor children” or “children”);

WHEREAS, Wife filed the *Complaint for Divorce* on September 27, 2022;

WHEREAS, the parties are desirous of settling between themselves all matters of custody, child support, alimony, equitable division of property, attorney’s fees, and all other claims each may have against the other arising from their marital relationship;

WHEREAS, the parties desire that this Agreement be incorporated into the *Final Judgment and Decree of Divorce* (the “Final Decree”) which shall be entered in the foregoing action; and

WHEREAS, each party is acting freely and voluntarily, under no compulsion or duress, and in consideration of the present income, earning capacity, and financial circumstances of each

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of the parties;

NOW THEREFORE, in consideration of the promises and the mutual promises herein contained, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties do agree as follows:

1.

**CUSTODY**

All issues relating to custody and parenting time shall be as set forth in the Final Parenting Plan signed by the parties and filed contemporaneously with this Settlement Agreement.

2.

**NON-INTERFERENCE**

The parties shall continue to live separate and apart, each being free to choose his or her place of residence and employment, and each shall be free from interference, molestation, threats, authority and control, direct or indirect, by the other as fully as if sole and unmarried to each other.

3.

**CHILD SUPPORT**

(A) Findings of Fact: In determining child support, the total gross monthly income of Wife is Ten Thousand Dollars (\$10,000.00) and the total gross monthly income of Husband is Seventeen Thousand Five Hundred Dollars (\$17,500.00). The number of children for whom support is being provided under this Agreement is two (2). The parties agree to set child support as calculated by the Child Support Worksheet attached hereto as Exhibit "A". The parties have been independently advised by his or her counsel as to the holding in Hardman v. Hardman, 295 Ga. 732 (2014), and have agreed to share certain expenses related to the minor children as provided herein below.

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(B) Child Support Obligation Duration: Except as otherwise provided for herein, the various child support obligations provided for in this provision for the support of the each of the parties' minor children, shall continue to be paid through the end of the month when each minor child attains the age of eighteen (18), graduates high school, dies, marries, enters the Armed Forces, becomes emancipated, or becomes self-supporting, whichever event first occurs. However, if said child reaches the age of eighteen (18) prior to graduation from high school, and is enrolled in and attending high school on a full-time basis, the various child support obligations for said child shall continue through and including the month during which said child graduates from high school, but not past age twenty (20).

(C) Expense Reimbursement Protocol: Except as otherwise provided for herein, in the event a party pays more than his or her portion of any expense set forth in this provision, then said paying party shall provide to the non-paying party a copy of the invoice/bill/statement evidencing same for reimbursement. The non-paying party shall then have twenty (20) days to reimburse the paying party. Each party shall keep and maintain accurate records and receipts related to such expense payments and reimbursements.

(D) Direct Child Support Payments: On July 1, 2023, Husband shall pay to Wife the sum of One Thousand Eight Hundred Dollars (\$1,800.00) per month via electronic bank transfer (e.g., Zelle, Venmo, etc.) for the support of two (2) minor children, as provided for herein. Said payment shall be made in two (2) installments of \$900.00 due on the 1<sup>st</sup> day and 15<sup>th</sup> day of each directly to Mother.

(E) Health Insurance Coverage: As additional child support, Husband shall maintain and pay the premiums for the current (or comparable) comprehensive health insurance coverage for each minor child until of age 26. Husband shall provide a current copy of any insurance card(s)

to Wife within fifteen (15) days of his receipt of same.

(F) Uncovered/Uninsured Medically-Related Expenses: As additional child support, Husband shall be responsible for and pay seventy percent (70%), and Wife shall be responsible for and pay thirty percent (30%), of all uncovered or uninsured medically-related expenses, as such expenses are defined under O.C.G.A. § 19-6-15(a)(23),<sup>1</sup> for each minor child for so long as there is a child support obligation for said minor child/ren in accordance with Paragraph 4(B). The parties shall use their best efforts to only use in-network healthcare providers. In the event a party utilizes an out-of-network healthcare provider, then said party shall be solely responsible for all of said costs. In the event any such expense must be paid before insurance benefits are collected, such expense shall be paid by the parties in proportion of their obligation for same, in which event any amount reimbursed by an insurance company shall be used to reimburse each party for their respective proportion. Any reimbursed funds from any insurance policy shall be distributed in accordance with this provision within ten (10) days of receipt of same. Within ten (10) days of Husband's receipt of any Explanation of Benefits (EOB) or similar statement from any insurance policy, Husband shall provide a complete copy of same to Wife.

(G) Extracurricular Activity Expenses: Father shall pay seventy percent (70%) and Mother shall pay thirty (30%) of any and all extracurricular activity expenses of the children while in high school.

(H) Private School: Father shall pay seventy percent (70%) and Mother shall pay thirty percent (30%) of any and all private school tuition expenses for the minor child daughter while

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<sup>1</sup> For purposes of clarification, O.C.G.A. § 19-6-15(a)(23) currently states as follows: "Uninsured health care expenses' means a child's uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance.

she is in high school, including but not limited to tuition, meals, books, uniforms, activity expenses and after school care.

(I) Other Expenses: Except as otherwise provided for herein, each party shall be responsible for all other expenses for the minor children incurred during his or her parenting time.

(J) Failure to Make Payments: Whenever, in violation of the terms of this Agreement, there shall have been a failure by Husband to make the direct child support payments due hereunder so that the amount unpaid is equal to or greater than the amount payable for one (1) month, the payments required to be made by Husband may be collected by the process of continuing garnishment for support as provided by O.C.G.A. § 19-6-30.

(K) No Income Deduction Order: The parties agree that Husband's child support obligation as contained in this paragraph shall not be paid at this time via an income deduction order pursuant to O.C.G.A. § 19-6-32(a)(1).

4.

**ALIMONY**

Each party waives and forever relinquishes any claims and rights each has or may have to alimony, maintenance and support of any nature from the other or his or her estate, whether in the form of periodic payments, lump sum payments or awards of property from his or her separate estate or otherwise. Each party waives any and all rights of any kind to modify alimony in accordance with *Varn v. Varn*.

5.

**HEALTH INSURANCE/UNCOVERED MEDICAL EXPENSES FOR PARTIES**

(A) Husband shall be solely responsible for and pay one hundred percent (100%) of his own health insurance, and all uninsured medically-related expenses not covered by insurance, and

indemnify and hold Wife harmless therefrom.

(B) Wife shall be solely responsible for and pay one hundred percent (100%) of any and all of her uninsured medically-related expenses not covered by insurance, and indemnify and hold Husband harmless therefrom.

6.

**EQUITABLE DIVISION – MARITAL RESIDENCE**

(A) Property: The parties are the record titleholders to the real property located at 1520 Loblolly Lane, Cumming, Forsyth County, Georgia (the “Marital Residence”). The Marital Residence is encumbered by a first mortgage held by Mr. Cooper Mortgage (#9594), titled in the Husband’s name, in the approximate amount of One Hundred Fifty-Seven Thousand Five Hundred Sixty-Three Dollars and Three Cents (\$157,563.03) (the “Mortgage”). Husband and Wife represent that the Marital Residence Debt are the only current lien or encumbrances on the Marital Residence to his or her knowledge. Neither party shall increase the indebtedness encumbering the Marital Residence or create any new encumbrances on the Marital Residence.

(B) Use and Possession. Wife shall retain sole and exclusive use and possession of the Marital Residence. Husband shall vacate the residence by August 19, 2023.

(C) Sale of the Marital Residence:

i. Wife shall place the residence on the market for sale by May 1, 2025 and use her best efforts to sell the house for then present market value. Wife shall select the listing agent.

ii. Husband shall pay fifty percent (50%) of any and all mandatory repairs associated with the marital residence in order to make the house inhabitable for Wife and the minor children.

iii. Neither party shall increase the indebtedness on the marital residence. In the event that any lien is placed against the house due to a liability of either party, then said liable party shall

have the closing attorney pay the lien from said party's share of the net sale proceeds.

iv. The parties shall each receive 50% of the net sales proceeds from the sale of the residence. Father shall pay 50% of Wife's then existing student loan balance from his share of the net sale proceeds. The closing attorney shall deliver Father's 50% share of the student loan balance to Wife at the time of disbursement. Father shall take the amount of \$75,000 from his remaining net sales proceeds and create a trust for the parties' son. Father shall prepare said trust and fund said trust within thirty (30) days of receipt of his net sales proceeds. Mother shall also have access to said trust funds.

(D) Expenses. Except as otherwise provided for herein, Husband shall pay fifty percent (50%) of the mortgage loan, utility, taxes, insurance, repairs and maintenances associated with the marital residence for the months of June, July and August 2023. Except as otherwise provided for herein, commencing on September 1, 2023, Wife shall thereafter be solely responsible for and pay all expenses associated with the Marital Residence, such as the Marital Residence Debts, property taxes, homeowners' insurance, HOA fees/dues, and utilities associated with the Marital residence until the time of closing.

(E) Tax Deductions. Wife shall be entitled to claim one hundred percent (100%) of any and all tax deductions associated with the Marital Residence incurred in the tax year 2023 and each tax year thereafter.

(G) Husband's Creditors: Except for the Marital Residence Debt, in the event any creditor of Husband obtains any other lien or encumbrance against the Marital Residence or there exists any other lien or encumbrance against the Marital Residence that Husband is responsible for under the terms of this Agreement (i.e., outstanding joint income tax liens), then Husband shall cause said lien or encumbrance to be immediately removed, and shall indemnify and hold Wife

harmless from same.

(H) Escrow Accounts/Security Deposits. As an equitable division of property, Wife shall receive one hundred percent (100%) of all security deposits or funds held in any escrow account for the payment of any expenses associated with the Marital Residence, free and clear of any claim from Husband.

(I) Furniture/Furnishings: As an equitable division of property, the parties acknowledge that Husband vacated the Marital Residence. Wife shall retain any and all furniture, furnishings, appliances, electronics and personal property inherited by her. The parties shall equitably divide any and all other furniture, furnishings, appliances, electronics, and personal property and items located at the Marital Residence and shall reduce the same to writing by July 19, 2023. If the parties are unable to do so, then the parties shall submit the matter to binding arbitration before Angie McKinney with the parties each paying 50% of Ms. McKinney's arbitration fees, subject to reapportionment by Ms. McKinney.

7.

**EQUITABLE DIVISION – FINANCIAL ACCOUNTS**

The parties acknowledge there exists no joint banking or other financial account of any kind.

Except as otherwise provided for herein, the parties shall retain any bank, stock, or financial account in his or her individual name with the other party waiving and releasing any and all interest therein to the accounts of the other party.

Except as otherwise provided for herein below, each party shall retain his or her own retirement account of any kind with the other party releasing any and all interest therein to the accounts of the other party.



Husband shall pay to Wife 50% of this retirement savings plan in the approximate amount of \$1,003,391.44 as of the valuation date of June 19, 2023, subject to gains and losses, and 50% of his pension with a cash value balance of \$498,725. Husband shall not withdraw, borrow against, pledge, hypothecate or otherwise take any action which reduces the value of the retirement account or pension. Said transfers shall be made by Qualified Domestic Relations Orders prepared and submitted by Matthew Lundy Esq. Each party shall pay 50% of Mr. Lundy's fees. Except as otherwise set forth hereinabove relating to division of the retirement account and pension, each party shall retain his and own individual bank accounts and retirement accounts.

**8.**

**EQUITABLE DIVISION – VEHICLES**

(A) As an equitable division of property, Wife shall have exclusive use and possession of the 2009 Honda Pilot free and clear of any rights or claims of Husband. Husband hereby transfers, assigns, conveys, and quitclaims to Wife any right or interest he may have in said vehicle. Furthermore, the parties acknowledge and agree that Husband shall take all steps necessary to transfer ownership of said vehicle to Wife before the entry of the Final Decree. Wife shall be solely responsible for and shall timely pay all expenses for said vehicle, including, but not limited to, all debt, taxes, tags, repairs, maintenance, or insurance. Wife shall indemnify and hold Husband harmless from all expenses, debts, claims, or liability of any nature whatsoever with respect to said vehicle.

(B) Husband acknowledges that he does not own the Subaru Outback automobile since it is his company car. Subject thereto, Husband shall have exclusive use and possession of the Subaru Outback free and clear of any rights or claims of Wife. Wife hereby transfers, assigns, conveys, and quitclaims to Husband any right or interest she may have in said vehicle. Husband

shall be solely responsible for and shall timely pay all expenses for said vehicle, including, but not limited to, all debt, taxes, tags, repairs, maintenance, or insurance. Husband shall indemnify and hold Wife harmless from all expenses, debts, claims, or liability of any nature whatsoever with respect to said vehicle.

9.

**EQUITABLE DIVISION – PERSONAL PROPERTY**

Wife shall retain any and all furniture, furnishings, appliances, electronics and personal property inherited by her. The parties shall equitably divide any and all other furniture, furnishings, appliances, electronics, and personal property and items located at the Marital Residence and shall reduce the same to writing by July 19, 2023. If the parties are unable to do so, then the parties shall submit the matter to binding arbitration before Angie McKinney with the parties each paying 50% of Ms. McKinney’s arbitration fees, subject to reapportionment by Ms. McKinney.

10.

**EQUITABLE DIVISION - PAYMENT OF DEBTS AND OBLIGATIONS**

(A) Except as otherwise provided for herein, the parties represent that there are no other debts in the joint names of Husband and Wife.

(B) Except as otherwise provided in this Agreement, Husband shall pay and hold Wife harmless for any expenses, debts, costs, claims, liens, attachments, causes of action, settlements, taxes and liability of any nature whatsoever, contingent or otherwise, which Husband has incurred individually or jointly with any third person or persons. Husband promises to defend Wife against any attempts by any of his creditors to collect the same from Wife and further promises to indemnify Wife fully from any liability and expenses, including attorneys’ fees and legal expenses,

which may result from his obligations. In the event that any creditor of Husband obtains or attempts to apply a lien against any real or personal property in which Wife has an interest, Husband shall promptly undertake to satisfy that obligation giving rise to the lien.

(C) Except as otherwise provided in this Agreement, Wife shall pay and hold Husband harmless for any expenses, debts, costs, claims, liens, attachments, causes of action, settlements, taxes and liability of any nature whatsoever, contingent or otherwise, which Wife has incurred individually or jointly with any third person or persons. Wife promises to defend Husband against any attempts by any of her creditors to collect the same from Husband and further promises to indemnify Husband fully from any liability and expenses, including attorneys' fees and legal expenses, which may result from her obligations. In the event that any creditor of Wife obtains or attempts to apply a lien against any real or personal property in which Husband has an interest, Wife shall promptly undertake to satisfy that obligation giving rise to the lien.

**11.**

**SUBSEQUENT DEBTS**

Except as otherwise set out in this Agreement, Husband and Wife shall not at any time hereafter contract any debts, obligations or other liabilities whatsoever for which the other or his or her property or estate shall become or may become liable or answerable. Except as otherwise provided herein, each party shall deliver to the other promptly any debit or credit cards in his or her possession for any financial accounts maintained in the name of the other. Except as otherwise provided herein, all accounts on which both parties are liable shall be closed as soon as possible.

**12.**

**EQUITABLE DIVISION - INCOME TAX**

The parties shall file separate income tax returns for 2023. In the event of any audit for

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any previous year in which the parties filed joint income tax returns together, Husband shall pay 70% and Wife shall pay 30% of any such liability. In the event of any refund for any such audit, then Husband shall receive 70% and Wife shall receive 30%.

13.

**CHILDREN'S TAX BENEFITS**

Wife shall claim the minor children as a dependent for each tax year moving forward.

14.

**LIFE INSURANCE**

Husband shall maintain a life insurance policy in the amount of his outstanding amount of child support obligation naming the minor children and Wife as beneficiaries for as long as he is paying child support to Wife. Husband shall provide Wife with monthly proof of the payment of the premiums and existence of the policy.

15.

**PERFORMANCE**

Both parties hereto shall execute without delay all documents, perform all acts, and do all things necessary to transfer any of the assets, or to effectuate any of the provisions and conditions set forth herein.

16.

**INCORPORATION INTO FINAL DECREE**

This Agreement shall be fully binding on the parties and their heirs, legatees, executors, administrators, and assigns. The parties further agree that this Agreement may be submitted in the divorce proceeding filed in the Superior Court of Forsyth County, and that this Agreement, if approved by said Court, shall be entered as part of a final decree in said action, and shall constitute

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the sole agreement and decree relating to all matters to which this Agreement refers.

17.

**RELEASE**

Except for those rights and claims for which this Agreement provides, each party hereby waives and releases any and all marital rights and claims, including but not limited to alimony, division of property, dower, year's support and any rights of inheritance pursuant to the laws of intestacy, which rights and claims each party may now have against the other or the estate of the other by reason of the marriage of the parties. Both parties waive any legal right he or she may have to be appointed executor or administrator of the estate of the other except as the deceased party may have designated in his or her Will. All property received or retained by either party under this Agreement, whether or not such property is specifically mentioned herein, shall be and remain the separate property of the party receiving or retaining that property and that property shall be free from any claim by the other or his or her estate.

18.

**WAIVER OF BENEFICIARY RIGHTS**

Except as provided in this Agreement, each party hereby waives and releases any and all rights and claims he or she may have as a beneficiary of any financial account funds of the other party. In the event that the account owner spouse dies prior to removing the non-account owner spouse as a beneficiary to the account owner spouse's financial account(s), then the non-account owner spouse will be required to turn over all of the benefits or assets that he or she receives from the account owner spouse's financial account(s) to the account owner spouse's estate, *instanter*.

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19.

**REVOCAION OF POWERS OF ATTORNEY**

In the event either party has signed any powers of attorney during the marriage of the parties appointing the other party as his or her attorney in fact, including but not limited to, any general powers of attorney, any limited powers of attorney or any health care powers of attorney, the parties agree that, upon execution of this Agreement, any such powers are hereby revoked and voided as a result of the signing of this Agreement.

20.

**FREE AND VOLUNTARY**

The parties acknowledge that they are entering into this Agreement freely and voluntarily and under no compulsion or duress; that each is mentally competent; that they have read each page of the Agreement carefully before signing same; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein; that they have sought and obtained legal advice independently of each other; that they have been duly apprised of their respective legal rights; that all the provisions hereof, as well as all questions pertaining hereto, have been fully and satisfactorily explained to them; that they have given due consideration to such provisions and questions; and that they clearly understand and assent to all of the provisions hereof.

21.

**SEVERANCE**

In the event any paragraph or paragraphs of this Agreement shall be declared invalid or void by any court, such declaration shall not invalidate the entire Agreement and all other paragraphs of the Agreement shall remain in full force and effect.

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22.

**INDEPENDENT SURVIVAL**

The parties each hereby agree that this Agreement shall be submitted in the divorce proceeding filed in the Superior Court of Forsyth County as the partial final agreement of the parties with reference to the subject matter contained herein and for incorporation into any final decree rendered in said Civil Action. Whether or not this Agreement is made a part of any such final decree, the terms and provisions hereof are and shall be a binding contract and agreement between the parties as to all matters contained herein. The Divorce Decree shall be in conformity with the provisions here and shall in no respect impair or modify the same. Notwithstanding such incorporation, this Agreement shall not be merged into the Decree, but shall survive the same and shall be binding and conclusive on the parties unless modified by subsequent written agreement of the parties or subsequent court order.

23.

**NO WAIVER IF BREACH**

This Agreement may only be changed by the parties by mutual agreement, in writing, for any change to be valid and binding. Each party agrees that there shall be no oral modifications of this Agreement. Any change shall be approved by a Georgia court of competent jurisdiction prior to any change becoming binding on either party. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

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24.

**GEORGIA LAW**

This Agreement, and the application and interpretation, shall be governed exclusively by the laws of the State of Georgia.

25.

**ENTIRE AGREEMENT**

Except as otherwise provided for herein, this Agreement constitutes the entire agreement between the parties and supersedes any and all Agreements previously made by them as to the matters referenced herein.

26.

**FULL SETTLEMENT**

Except as otherwise provided for herein, the provisions of this Agreement are intended and accepted by Husband and Wife as a full and final settlement of any and all past, present or future rights or claims either may have from or to the other arising out of or in any way incidental to their marriage to each other, including alimony and equitable division of property. Except as otherwise stated herein, each party does hereby waive and relinquish any further right, title or interest that either has to the property or income of the other party.

27.

**DISCOVERY AND DISCLOSURE**

Before executing this Settlement Agreement, the parties were independently advised of his or her rights, under the Georgia Civil Practice Act, to conduct formal discovery, investigation, and analysis of assets, liabilities and income of the other party. Except as otherwise provided for herein, each party has accepted the provisions of this Settlement Agreement on the basis of information

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and discovery acquired both formally and informally. Both parties acknowledge that further discovery could have been undertaken related to the marital estate. Except as otherwise provided for herein, the parties have waived their respective rights to conduct further discovery and have settled this case using the information now available.

28.

**BINDING AGREEMENT**

The terms and provisions of this Agreement are binding upon the heirs, successors, assigns, and other representatives of the parties hereto.

29.

**RES JUDICATA**

Except as otherwise set forth in this Agreement, this Agreement shall be *res judicata* as to any and all claims compulsory, permissive, or otherwise, including but not limited to all contract or tort actions which exist between the parties at the time this Agreement was signed and which might lawfully have been raised.

30.

**EFFECTIVE DATE**

This Agreement shall become fully effective and binding on the date last written below, which shall henceforth be known as the “date of execution of this Agreement.”

31.

**REPRESENTATION**

The parties acknowledge that Wife is represented by Randy S. Sabatini and that Stearns-Montgomery & Proctor represents the interests of only Wife and did not in any manner advise or represent the interests of Husband.

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The parties acknowledge that Husband is represented by himself, *Pro Se*.

32.

**ATTORNEY’S FEES**

Husband shall pay to Wife the amount of \$2,500 for her attorney’s fees and shall pay said amount to Wife within ninety (90) days of the Final Judgment and Decree.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals, as follows:

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MARY BURCH, Petitioner

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DAVID BURCH, Respondent

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2023.

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2023.

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Notary Public

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Notary Public

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