

## ESCROW AND TRUST AGREEMENT

THIS ESCROW AND TRUST AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 2021, by and between the Canutillo Independent School District, a governmental agency, body politic and corporate and political subdivision of the State of Texas in El Paso County, Texas (the "District"), and BOKF, NA, Dallas, Texas, a banking association organized and existing under the laws of the United States of America, or its successors or assigns hereunder, as escrow agent (the "Escrow Agent").

### W I T N E S S E T H :

WHEREAS, the District has heretofore issued, sold, and delivered, and there is currently outstanding obligations of the following issue or series (hereinafter called the "Defeased Bonds"), to wit: "Canutillo Independent School District Unlimited Tax Refunding Bonds, Series 2012," dated November 15, 2012, being a portion of such current interest bonds scheduled to mature on August 15 in each of the years 20\_\_ through 20\_\_, and aggregating in the principal amount of \$\_\_\_\_\_; and

WHEREAS, in accordance with the provisions of Texas Government Code, Chapter 1207, as amended (the "Act"), the District is authorized to deposit funds with the place of payment for the Defeased Bonds, or other authorized depository, and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disposition of such deposit, upon such terms and conditions as the parties may agree, provided such deposits may be invested only (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the District are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the District, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent (hereinafter called "Governmental Securities") that mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment of the Defeased Bonds; and

WHEREAS, the Defeased Bonds are scheduled to mature, or be redeemed, and interest thereon is payable on the dates and in the manner set forth in Exhibit A attached hereto and incorporated herein by reference as a part of this Agreement for all purposes; and

WHEREAS, concurrently herewith, the District will cause funds to be deposited with the Escrow Agent under this Agreement, which deposit of funds will be sufficient to pay and redeem in full the Defeased Bonds on August 15, 2022 (the "Payment Date"); and

WHEREAS, the Escrow Agent is a national banking association organized and existing under the laws of the United States of America, possessing trust powers and is fully qualified and empowered to enter into this Agreement; and

WHEREAS, the Escrow Agent is not a depository bank of the District; and

WHEREAS, pursuant to a resolution adopted by the Board of Trustees on August 24, 2021, as amended by an amendatory resolution adopted by the Board of Trustees on December 14, 2021 (together, the "Resolution"), the District duly approved and authorized the execution of this Agreement; and

WHEREAS, the District, the Escrow Agent, and the Prior Paying Agent (as defined herein), as the case may be, shall take all action necessary to call, pay, redeem and retire such Defeased Bonds in accordance with the provisions thereof, including, without limitation, all actions required by the order and pricing certificate authorizing the Defeased Bonds, the Act, the Resolution and this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the payment to the Escrow Agent of the amounts provided in Section 11 hereof, and to secure the payment of the principal of and the interest on the Defeased Bonds, the District and the Escrow Agent hereby agree as follows:

SECTION 1: Receipt. Receipt of true and correct copies of the order and pricing certificate authorizing the issuance of the Defeased Bonds, the Resolution, and the Verification Report prepared by Causey Demgen & Moore P.C. and relating to the Defeased Bonds are hereby acknowledged by the Escrow Agent. Reference herein to or citation herein of any provision of such documents shall be deemed an incorporation of such provision as a part hereof in the same manner and with the same effect as if it were fully set forth herein.

SECTION 2: Escrow Fund Creation/Funding. There is hereby created by the District and the Escrow Agent a special segregated and irrevocable trust fund designated "CANUTILLO INDEPENDENT SCHOOL DISTRICT SERIES 2012 UNLIMITED TAX REFUNDING BOND DEFEASANCE 2021 ESCROW FUND" (hereinafter called the "Escrow Fund") for the benefit of the holders of the Defeased Bonds, and the District agrees and covenants to cause to be deposited with the Escrow Agent for the credit of the Escrow Fund the sum of \$\_\_\_\_\_.

The Escrow Agent agrees to establish such Escrow Fund and further agrees to receive such moneys, apply the same as set forth herein, and to hold the cash and investments, if any, deposited and credited to the Escrow Fund for application and disbursement for the purposes and in the manner provided in this Agreement.

SECTION 3: Escrow Fund Sufficiency Warranty. The District represents that the cash and investments, if any, together with the interest to be earned thereon, deposited to the credit of the Escrow Fund will be sufficient to pay the principal of and premium and interest on the Defeased Bonds as the same shall become due and payable, and such Defeased Bonds, and the interest thereon, are to mature or be redeemed and shall be paid at the times and in the amounts set forth and identified in **Exhibit A** attached hereto.

SECTION 4: Pledge of Escrow. The Escrow Agent agrees that all cash and/or investments, together with any income or interest earned thereon, held in the Escrow Fund shall constitute dedicated interest and sinking funds for the payment of the principal of and interest on the Defeased Bonds which will mature and become due on and after the date of this Agreement, and such funds deposited and to be received from maturing principal and interest on investments, if any, in the Escrow Fund shall be applied solely in accordance with the provisions of this Agreement.

SECTION 5: Escrow Insufficiency. If, for any reason, at any time, the funds on hand in the Escrow Fund shall be insufficient to make the payments set forth in Exhibit A attached hereto, as the same becomes due and payable, notice of any such insufficiency shall be immediately given by the Escrow Agent to the District by the fastest means possible, but neither the Escrow Agent nor the District shall in no manner be responsible for any insufficiency of funds in the Escrow Fund.

SECTION 6: Firm Banking Arrangements-Collateralization. The Escrow Agent represents that the deposit covered by this Agreement shall constitute firm banking arrangements to insure payment of the Defeased Bonds and such deposit is collateralized to insure against any loss or diminution by virtue of any action of the Escrow Agent or as a result of its lack of financial integrity and such deposit, if not invested pursuant to Section 9 hereof, will be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation until the principal and interest on the Defeased Bonds have been presented for payment and paid to the owner thereof.

SECTION 7: Withdrawal of Funds. On or before each principal and/or interest payment date or redemption date, as the case may be, for the Defeased Bonds shown in Exhibit A attached hereto, the Escrow Agent, without further direction from anyone, including the District, shall cause to be withdrawn from the Escrow Fund the amount required to pay the accrued interest on the Defeased Bonds due and payable on such payment date and the principal of the Defeased Bonds due and payable on such payment date or redemption date, as the case may be, and the amount withdrawn from the Escrow Fund shall be immediately transmitted and deposited with the paying agent for the Defeased Bonds to be paid with such amount. The paying agent for the Defeased Bonds is The Bank of New York Mellon Trust Company N.A. (the "Prior Paying Agent").

SECTION 8: Absence of Claim/Lien on Escrow Fund. The Escrow Agent shall have no lien whatsoever upon any of the moneys or investments, if any, in the Escrow Fund for payment of services rendered hereunder or for any costs or expenses incurred hereunder and reimbursable from the District.

SECTION 9: Investment of Moneys on Deposit in Escrow Fund. Pending the disbursement of moneys held in the Escrow Fund, amounts deposited to the credit of the Escrow Fund may be invested at the direction of the District in Governmental Securities which mature on or before the Payment Date and are not subject to prior redemption, provided that, prior to such investment, the District delivers to the Escrow Agent an opinion by an independent certified public accountant that the Governmental Securities shall mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on the Defeased Bonds at the times and in the amounts set forth in **Exhibit A** attached hereto. All earnings realized from the investment of such funds will be remitted to the District immediately following the receipt thereof by the Escrow Agent. No investment of funds deposited to the credit of the Escrow Fund shall be made on or after the Payment Date of the Defeased Bonds. Except as authorized and permitted in this Section, neither the District nor the Escrow Agent shall invest any moneys deposited in the Escrow Fund.

SECTION 10: Absence of Escrow Agent's Liability Re: Investments. The Escrow Agent shall not be liable or responsible for any loss resulting from any investment made in the Governmental Securities as provided in Section 9 hereof.

SECTION 11: Escrow Agent's Compensation-Paying Agent/Registrar Charges. The District agrees to pay the Escrow Agent for the performance of services hereunder and as reimbursement for anticipated expenses to be incurred hereunder the amount of \$\_\_\_\_\_ and the Escrow Agent hereby agrees such amount is full and complete payment for the administration of this Agreement; provided, however, notwithstanding anything herein to the contrary, the aggregate value of this Agreement shall be less than the dollar limitation set forth in Section 2071.002(a)(2) or Section 2274.002(a)(2) of the Texas Government Code, as amended.

The District also agrees to deposit with the Escrow Agent on the date of the delivery of the Bonds, the sum of \$\_\_\_\_\_, which represents the amount due the Prior Paying Agent, as paying agent for the Defeased Bonds, and in full satisfaction of amounts due to the Prior Paying Agent to effect the redemption of the Defeased Bonds. The Escrow Agent agrees to transmit such amounts to the Prior Paying Agent in accordance with the District's instructions.

In the event that the Escrow Agent is requested by the District to perform any extraordinary services beyond those required by this Agreement, the District hereby agrees to pay reasonable fees to the Escrow Agent for such extraordinary services and to reimburse the Escrow Agent for all reasonable expenses incurred by the Escrow Agent in performing such extraordinary services. The Escrow Agent shall not be required to risk or expend its own funds before taking any action under this Agreement.

SECTION 12: Escrow Agent's Duties/Responsibilities/Liability. The Escrow Agent shall not be responsible for any recital herein, except with respect to its organization, its powers and authority and to the safety and security of the deposit of funds to be made by the District hereunder. As to the existence or nonexistence of any fact relating to the District or as to the sufficiency or validity of any instrument, paper or proceedings relating to the District, the Escrow Agent shall be entitled to rely upon a certificate signed on behalf of the District by the Secretary of the Board of Trustees as sufficient evidence of the facts therein contained. The Escrow Agent may accept a certificate of the Secretary of the Board of Trustees under the District's seal, to the effect that a resolution or other instrument in the form therein set forth has been adopted by the Board of Trustees of the District, as conclusive evidence that such resolution or other instrument has been duly adopted and is in full force and effect.

The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Escrow Agent.

In the absence of bad faith on the part of the Escrow Agent, the Escrow Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Escrow Agent, conforming to the requirements of this Agreement; but notwithstanding any provision of this Agreement to the contrary, in the case of any such certificate or opinion or any evidence which by any provision hereof is specifically required to be furnished to the Escrow Agent, the Escrow Agent shall be under a duty to examine the same to determine whether it conforms to the requirements of this Agreement.

The Escrow Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Escrow Agent unless it shall be proved that the Escrow Agent was negligent in ascertaining or acting upon the pertinent facts. The Escrow Agent shall not be responsible or liable to any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness, or validity of the deposits made pursuant to this Agreement, or for the form or execution thereof, or for the identity or authority of any person making or executing such deposits.

The term "Responsible Officers" of the Escrow Agent, as used in this Agreement, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and any Second Vice President, the Secretary and any Assistant Secretary, the Treasurer and any Assistant Treasurer, and every other officer and assistant officer of the Escrow Agent customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his or her knowledge of and familiarity with a particular subject; and the term "Responsible Officer" of the Escrow Agent, as used in this Agreement, shall mean and include any of such officers or persons.

SECTION 13: Interpleader. This Agreement is between the District and the Escrow Agent only and in connection therewith the Escrow Agent is authorized by the District to rely upon the representations of the District with respect to this Agreement and the deposits made pursuant hereto and as to this District's right and power to execute and deliver this Agreement, and the Escrow Agent shall not be liable in any manner as a result of such reliance. The duty of the Escrow Agent hereunder shall only be to the District and the holders of the Defeased Bonds. In the event conflicting demands or notices are made upon the Escrow Agent growing out of or relating to this Agreement or the Escrow Agent in good faith is in doubt as to what action should be taken hereunder, the Escrow Agent shall have the right at its election to:

(a) Withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and

(b) File a suit in interpleader and obtain an order from a court of appropriate jurisdiction in the State of Texas requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves.

In the event the Escrow Agent becomes involved in litigation in connection with this Section, the District, to the extent permitted by law, agrees to indemnify and save the Escrow Agent harmless from all loss, cost, damages, expenses and attorney fees suffered or incurred by the Escrow Agent, without negligence or bad faith on the Escrow Agent's part, as a result thereof. The obligations of the Escrow Agent under this Agreement shall be performable at the principal corporate office of the Escrow Agent in the City of Dallas, Texas.

The Escrow Agent may advise with legal counsel in the event of any dispute or question regarding the construction of any of the provisions hereof or its duties hereunder, and in the absence of negligence or bad faith on the part of the Escrow Agent, no liability shall be incurred by the Escrow Agent for any action taken pursuant to this Section and the Escrow Agent shall be fully protected in acting in accordance with the opinion and instructions of legal counsel that is knowledgeable and has expertise in the field of law addressed in any such legal opinion or with respect to the instructions given.

SECTION 14: Time of the Essence. Time shall be of the essence in the performance of obligations from time to time imposed upon the Escrow Agent by this Agreement.

SECTION 15: Accounting – Annual Report. Promptly after August 31 of each year, commencing with the year 2022, so long as the Escrow Fund is maintained under this Agreement, the Escrow Agent shall forward by letter to the District, to the attention of the Chief Business Officer, or other designated official of the District, a statement in detail of the Governmental Securities, if any, and monies held, and the current income and maturities thereof, and the withdrawals of money from the Escrow Fund for the preceding 12 month period ending August 31<sup>st</sup> of each year.

SECTION 16: Notices. Any notice, order, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed as follows:

CANUTILLO INDEPENDENT SCHOOL DISTRICT  
7965 Artcraft Road  
El Paso, Texas 79932  
Attention: Chief Business Officer

BOKF, NA  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225  
Attention: Corporate Trust

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the dates and fact of delivery.

Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.

SECTION 17: Performance Dates. Whenever under the terms of this Agreement the performance dates of any provision hereof, including the dates of maturity of interest on or principal of the Defeased Bonds, shall be a Sunday or a legal holiday or a day on which the Escrow Agent is authorized by law to close, then the performance thereof, including the payment of principal of and interest on the Defeased Bonds, need not be made on such dates but may performed or paid, as the case may be, on the next succeeding business day of the Escrow Agent with the same force and effect as if made on the dates of performance or payment and with respect to a payment, no interest shall accrue for the period after such dates.

SECTION 18: Warranty of Parties Re; Power to Execute and Delivery Escrow Agreement. The District covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every such Defeased Bond as executed, authenticated and delivered and in all proceedings pertaining thereto as such Defeased Bonds shall have been modified as provided in this Agreement. The District covenants that it is duly authorized under the Constitution and laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of such Defeased Bonds as provided herein and the execution and delivery of this Agreement have been duly and effectively taken and that such Defeased Bonds and coupons, if any, in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the District according to the import thereof as provided in this Agreement.

SECTION 19: Executed Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 20: Iran, Sudan and Foreign Terrorists Organizations. The Escrow Agent represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Escrow Agent and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Escrow Agent understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Escrow Agent within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

SECTION 21: Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. In the event any covenant or agreement contained in this Agreement is declared to be severable from the other provisions of this Agreement, written notice of such event shall immediately be given to each national rating service (Moody's Investors Service, Standard & Poor's Corporation or Fitch Investors Service) which has rated the Defeased Bonds on the basis of this Agreement.

SECTION 22: Termination. This Agreement shall terminate when the Defeased Bonds, including interest due thereon, have been paid and discharged in accordance with the provisions of this Agreement. If any Defeased Bonds are not presented for payment when due and payable, the nonpayment thereof shall not prevent the termination of this Agreement. Funds for the payment of any nonpresented Defeased Bonds and accrued interest thereon shall upon termination of this Agreement be held by the Escrow Agent for such purpose in accordance with Section 7 hereof. Any moneys or Governmental Securities held in the Escrow Fund at termination and not needed for the payment of the principal of or interest on any of the Defeased Bonds shall be paid or transferred to the District.

SECTION 23: Assignment. Neither the District nor the Escrow Agent shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest. Any such assignment or attempted assignment shall be in direct conflict with this Agreement and be without effect.

SECTION 24: Successors/Assigns.

(a) Should the Escrow Agent not be able to legally serve or perform the duties and obligations under this Agreement, or should the Escrow Agent be declared to be insolvent or closed for any reason by federal or state regulatory authorities or a court of competent jurisdiction, the District, upon being notified or discovering the Escrow Agent's inability or disqualification to serve hereunder, shall forthwith appoint a successor to replace the Escrow Agent, and upon being notified of such appointment, the Escrow Agent shall (i) transfer all funds and securities held hereunder, together with all books, records and accounts relating to the Escrow Fund and the Defeased Bonds, to such successor and (ii) assign all rights, duties and obligations under this Agreement to such successor. If the District should fail to appoint such a successor within ninety (90) days from the date the District discovers, or is notified of, the event or circumstance causing the Escrow Agent's inability or disqualification to serve hereunder, the Escrow Agent, or a bondholder of the Defeased Bonds, may apply, at the expense of the District, to a court of competent jurisdiction to appoint a successor or assigns of the Escrow Agent and such court, upon determining the Escrow Agent is unable to continue to serve, shall appoint a successor to serve under this Agreement and the amount of compensation, if any, to be paid to such successor for the remainder of the term of this Agreement for services to be rendered for administering the Escrow Fund.

(b) Furthermore, the Escrow Agent may resign and be discharged from performing its duties and responsibilities under this Agreement upon notifying the District in writing of its intention to resign and requesting the District to appoint a successor. No such resignation shall take effect until a successor has been appointed by the District and such successor has accepted such appointment and agreed to perform all duties and obligations hereunder for a total compensation equal to the unearned proportional amount paid the Escrow Agent under Section 11 hereof for the administration of this Agreement.

Any successor to the Escrow Agent shall be a bank, trust company or other financial institution that is duly qualified under applicable law (the Act, or other appropriate statute) to serve as escrow agent hereunder and authorized and empowered to perform the duties and obligations contemplated by this Agreement and organized and doing business under the laws of the United States or the State of Texas, having its principal office and place of business in the State of Texas, having a combined capital and surplus of at least \$5,000,000 and be subject to the supervision or examination by Federal or State authority.

Any successor or assigns to the Escrow Agent shall execute, acknowledge and deliver to the District and the Escrow Agent, or its successor or assigns, an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor, subject to the terms of this Agreement, all the rights, powers and trusts created and established and to be performed under this Agreement. Upon the request of any such successor Escrow Agent, the District shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties. The term "Escrow Agent" as used herein shall be the Escrow Agent and its legal assigns and successor hereunder.

SECTION 25: Escrow Agreement – Amendment/Modification. This Agreement shall be binding upon the District and the Escrow Agent and their respective successors and legal representatives and shall inure solely to the benefit of the holders of the Defeased Bonds, the District, the Escrow Agent and their respective successors and legal representatives. Furthermore, no alteration, amendment or modification of any provision of this Agreement (1)



shall alter the firm financial arrangements made for the payment of the Defeased Bonds or (2) shall be effective unless (i) prior written consent of such alteration, amendment or modification shall have been obtained from the holders of all Defeased Bonds outstanding at the time of such alteration, amendment or modification and (ii) such alteration, amendment or modification is in writing and signed by the parties hereto; provided, however, the District and the Escrow Agent may, without the consent of the holders of the Defeased Bonds, amend or modify the terms and provisions of this Agreement to cure in a manner not adverse to the holders of the Defeased Bonds any ambiguity, formal defect or omission in this Agreement. If the parties hereto agree to any amendment or modification to this Agreement, prior written notice of such amendment or proposed modification, together with the legal documents amending or modifying this Agreement, shall be furnished to each national rating service (Standard & Poor's Corporation, Moody's Investors Service or Fitch Investors Service) which has rated the Defeased Bonds on the basis of this Agreement, prior to such amendment or modification being executed.

SECTION 26: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 27: Governing Law. This Agreement shall be governed by the laws of the State of Texas.

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IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

CANUTILLO INDEPENDENT SCHOOL  
DISTRICT

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Chief Business Officer

BOKF, NA,  
as Escrow Agent

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Title: \_\_\_\_\_

EXHIBIT A