
ABOVE SPACE FOR RECORDING INFORMATION ONLY

Prepared by:

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1901 6th Avenue North, Suite 1700
Birmingham, Alabama 35203

**DECLARATION OF RECIPROCAL ACCESS, MAINTENANCE,
AND COMMON USE EASEMENT AGREEMENT**

**THIS DECLARATION OF RECIPROCAL ACCESS, MAINTENANCE, AND
COMMON USE EASEMENT AGREEMENT** (the "Agreement") is made as of August 30,
2022, by **EBSCO INDUSTRIES, INC.**, a Delaware corporation ("Declarant").

RECITALS:

WHEREAS, Declarant is the fee simple owner of that real property more particularly
described on Exhibit "A", attached hereto and made a part hereof by this reference (the
"Development A"); and

WHEREAS, Declarant is also the fee simple owner of that real property more particularly
described on Exhibit "B", attached hereto and made a part hereof by this reference (the "Access
Easement Area"); and

WHEREAS, Declarant desires to declare for the benefit of Development A certain non-
exclusive, reciprocal access, maintenance, and common use easement rights over portions of the
Access Easement Area, all as more particularly set forth herein;

NOW, THEREFORE, for and in consideration of TEN DOLLARS (\$10.00), the benefits accruing to each of the Parcels (as defined herein) from the easement and other agreements created hereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Unless the context otherwise requires, capitalized terms used herein shall have the meanings set forth below:

Access Easement Area shall mean that real property described on Exhibit "B" which is attached hereto and incorporated herein by reference.

Authorized Users shall mean the agents, employees, representatives, guests, invitees and licensees of the operators of Development A and Declarant.

Owner shall mean the applicable owner of each of the Parcels, currently Declarant, and their respective successors and assigns, and any person acquiring ownership of a Parcel from any prior Owner of such Parcel.

Parcel or Parcels shall mean Development A and Access Easement Area, either individually or collectively, as the context requires.

2. **Access Easement.** Declarant does hereby grant, convey, and establish a non-exclusive, easement, right and privilege in favor of Development A over, across, under and through the Access Easement Area for the purpose of allowing vehicular and pedestrian access over and across the Access Easement Area for use by patrons of the respective Parcels along with access rights of each Parcel to repair, maintain and access the easements granted hereunder. Notwithstanding the access rights granted herein, in no event shall Development A have cross-parking rights on the Access Easement Area. The Access Easement Area shall be constructed by the Owner of Development A pursuant to plans and specifications approved by Declarant. The Owner of Development A does hereby indemnify and agree to be fully responsible for all costs for the construction of the Access Easement Area. Declarant reserves the right to alter the size of the Easement Area in the future, including dedicating it to the appropriate governmental authorities. Such alterations shall not impact the rights of Development A to use the Easement Area as contemplated herein.

3. **Maintenance.**

- a. The owner of Development A shall maintain all portions of Development A, including any Easement Areas, in good operating order and repair, at its sole cost and expense.

- b. The Access Easement Area shall be constructed by the Owner of Development A. During the period of time from construction of the Access Easement Area through the date

that Declarant or future owner expands the use of the Access Easement Area to allow access to other property within the Tattersall development, the Access Easement Area shall be maintained by the Owner of Development A. Thereafter, the Owner of Development A shall share in the maintenance costs for the Access Easement Area with the Declarant, or its successor, in a percentage, which shall be equal to 50% for the Owner of Development A and 50% for the Declarant or its successor at such time as the adjacent land connecting to the Access Easement Area and for which an easement for use is given begins using the Access Easement Area. The Owner of Development A shall provide the other Owner with copies of invoices for any maintenance work and shall receive reimbursement for the outstanding percentage within 30 days of submitting an invoice for such reimbursement. All parties acknowledge that Development A shall maintain the Access Easement Area and that cost sharing will not occur until development occurs on the adjacent land for which an easement is given to drive on the Access Easement Area. Further, all parties acknowledge and agree that Declarant shall be entitled to dedicate the roadway and improvements upon which the Access Easement Area is provided to the appropriate governmental authorities. All parties hereto agree to execute such dedication documents once requested.

4. **Conditions of Work.** In the event the owner of any Parcel performs work, including repairs and maintenance, on any Parcel pursuant to the terms of this Agreement (the "Work"):
 - a. The Work shall be performed in such a manner so as not to unreasonably interfere with the use or operation of any other Parcel, including, without limitation, any interruption to any access and any utility service to any improvements constructed on such other Parcel;
 - b. Upon the completion of any Work, the Owner of a Parcel performing the Work shall restore the other Parcels to the condition which existed immediately prior to such Work, except to the extent that such Parcels have been maintained or improved as a result of such Work;
 - c. The owner of a Parcel performing the Work shall obtain all necessary licenses and permits required for such Work and all Work shall be done and all improvements constructed in a good and workmanlike manner and shall be free and clear of all liens of contractors, subcontractors, laborers and materialmen and all other liens;
 - d. All Work shall be performed and all improvements constructed in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such Work; and
 - e. Each Parcel must pay for all work performed by it on any Parcel. Such Parcel owner does hereby indemnify and agree to hold the other Parcel owner harmless from any costs, liens, damages or claims caused on such Parcel due to work performed by such Parcel owner.

5. **Notice.**

Whenever, pursuant to this Agreement, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Agreement, each such notice or demand shall be in writing and shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address. The "Notice Address" for each party hereto shall be:

Declarant: **1 Mt Laurel Avenue, Suite 200,
Birmingham, AL 35242
Attention: Brooks Knapp**

In the event a Parcel is sold, the purchaser of a Parcel shall file an amendment to this Agreement to include their notice address.

6. **Miscellaneous.** The easements, benefits and obligations created hereunder shall create mutual benefits and servitudes running with the title to each Parcel. Each party hereto shall use and enjoy all easements created hereunder and benefiting said party in such a manner so as to not unreasonably interfere with the other party's use, enjoyment and development of its respective Parcel. This Agreement shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors, heirs, grantees and assigns, including without limitation, each subsequent owner of either Parcel. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect the terms and provisions hereof. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties hereto shall not be entitled to rely upon any statement, promise or representation not herein expressed, and this Agreement shall not be modified or altered in any respect except by a writing executed by the owners of the Parcels. Any Owner hereunder hereby agrees to provide an estoppel certificate to the other Owner in a reasonable time certifying to the terms of this Easement and listing any known defaults hereunder in such estoppel certificate. This Agreement shall be governed by and construed and interpreted under the laws of the State of Alabama. Time is of the essence of this Agreement.

7. **Default and Remedies.** In the event any owner (the "Defaulting Owner") fails to perform any of its maintenance or other obligations under this Agreement following the giving of thirty (30) days prior written notice (the "Default Notice") by the other owner (the "Non-Defaulting Owner"), then the Defaulting Owner shall be deemed in default hereunder in which event the Non-Defaulting Owner shall have the right to exercise all rights and remedies available to such Non-Defaulting Owner at law or in equity, including, without

limitation, the right to seek injunctive relief against, or specific performance of this Agreement by, the Defaulting Owner and the right to exercise the self-help remedies set forth below. Additionally, the Non-Defaulting Owner shall also have the right, but without being obligated to do so, to enter upon the Parcel of the Defaulting Owner and perform any of the maintenance obligations of the Defaulting Owner which are described in the Default Notice; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed must be given to the Defaulting Owner not less than ten (10) days prior to the commencement of such action. During such ten (10) day period, the Defaulting Owner will have the right to perform or commence performance of any action appropriate to remedy such default and, provided such action is diligently carried out to completion, the right of the Non-Defaulting Owner to perform the obligations of the Defaulting Owner will terminate. If a Non-Defaulting Owner elects to perform the action required to be performed by the Defaulting Owner, then, on completion of such action, an itemized statement of the reasonable costs thereof incurred by the Non-Defaulting Owner shall be submitted to the Defaulting Owner and the amount thereof shall be immediately due and payable by the Defaulting Owner. In the event such costs are not paid within thirty (30) days following submission of an itemized statement of the costs thereof incurred by the Non-Defaulting Owner, then the Defaulting Owner shall also pay to the Non-Defaulting Owner all attorneys' fees, court costs and other expenses paid or incurred by the Non-Defaulting Owner in collecting any amount due to such Non-Defaulting Owner from such Defaulting Owner. Furthermore, any such Defaulting Owner agrees to pay to the Non-Defaulting Owner all reasonable attorneys' fees, court costs and other expenses paid or incurred by the Non-Defaulting Owner in enforcing this Agreement.

8. **Indemnity and Insurance.**

- a. The Owner of Development A, for itself and its successors and assigns, does hereby agree to indemnify, defend and hold the Declarant, any mortgagees thereof and their respective successors and assigns, harmless from and against any and all claims, demands, damages, costs, liabilities and expenses, including reasonable attorneys' fees and expenses, which the then owner of the Access Easement Area, any mortgagees thereof or any of their respective successors and assigns may suffer, pay or incur as a result of any injury or damage to person (including death) or property occurring in, on or upon any portion of the Access Easement Area in connection with or as a result of the exercise of the easement rights granted under this Agreement.
- b. Each owner further agrees to maintain policies of commercial general liability insurance issued by reputable companies in amounts of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate which shall also name the Owner of the other Parcel and any mortgagees of such Parcel as additional insureds thereunder.

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IN WITNESS WHEREOF, the Declarant has executed this Agreement under seal the day and year written above.

DECLARANT:

EBSCO INDUSTRIES, INC.,
a Delaware corporation

By: Brooks Knapp
Name: Brooks Knapp
Its: Vice President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Brooks Knapp whose name as Vice President of EBSCO Industries, Inc., is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of such agreement, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 24 day of August, 2022.

[NOTARIAL SEAL]

Blair
Notary Public
My Commission Expires: 3-2-26

20220830000339160 08/30/2022 11:51:29 AM AGREEMENT 7/8

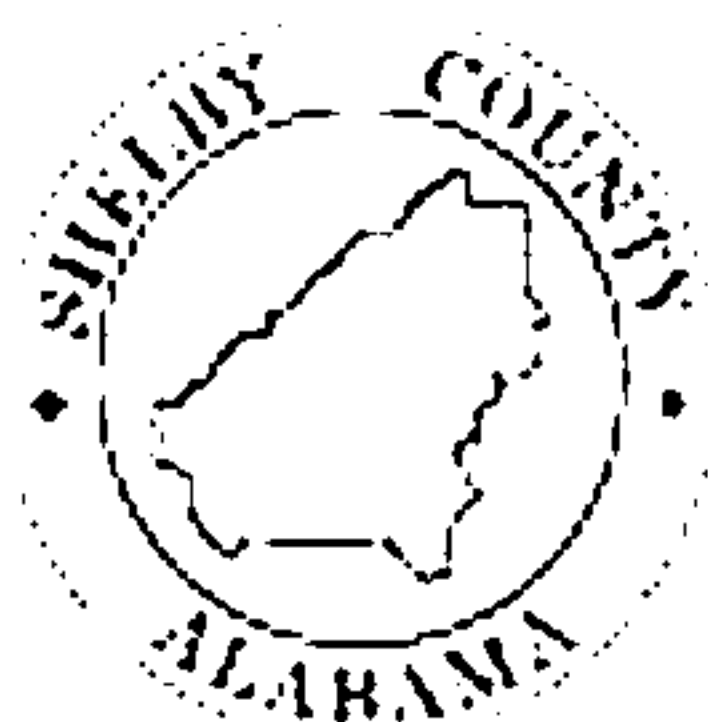
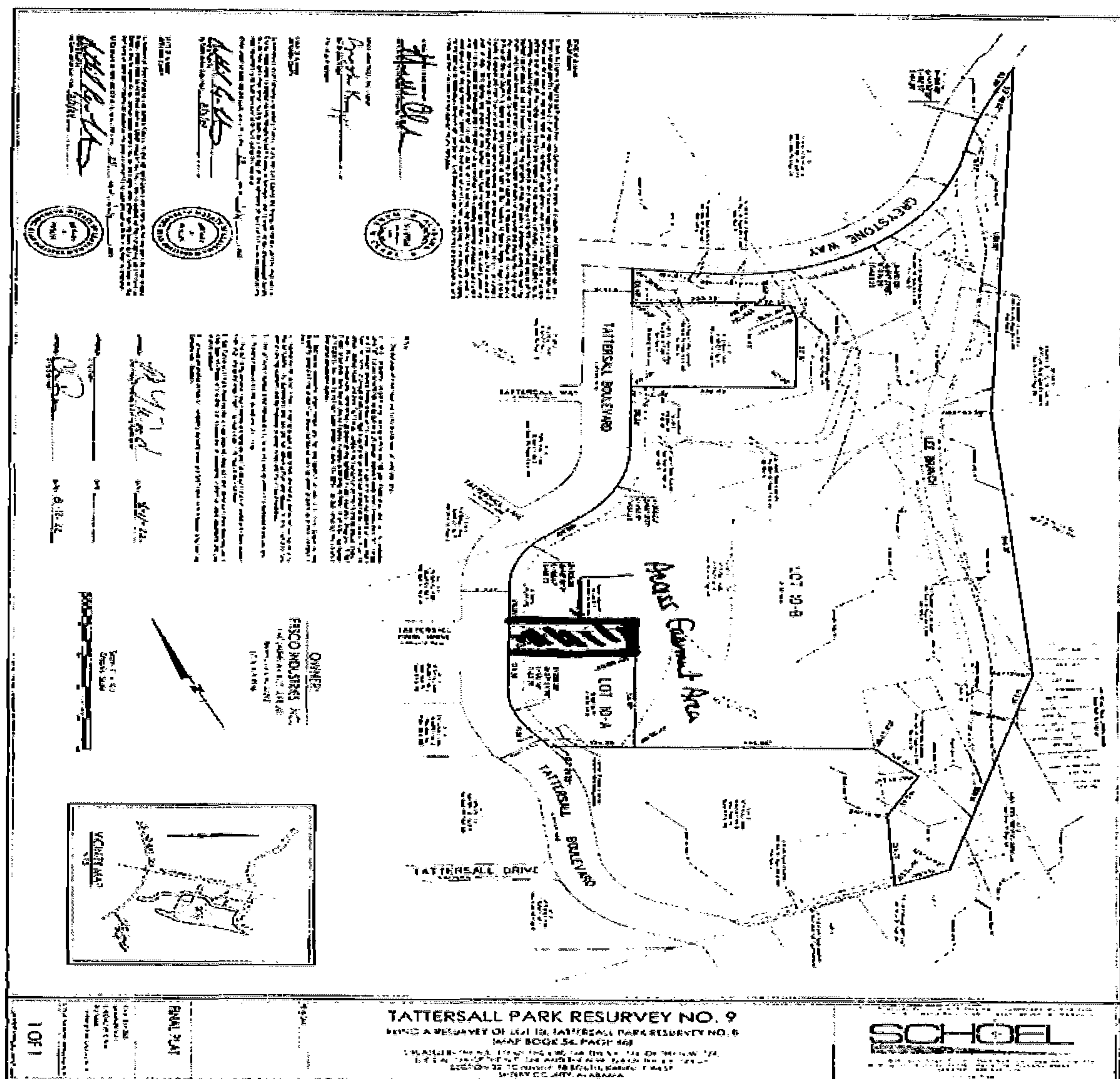
EXHIBIT "A"

Development A

Lot 10-A, according to the Amended Map of Tattersall Park Resurvey No. 9, as recorded in Map Book 56, Page 82, in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

Access Easement Area



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/30/2022 11:51:29 AM
\$43.00 JOANN
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Allie S. Bayl