

PERPETUAL CARE TRUST FUND AGREEMENT
OF
NAME OF CEMETERY CORPORATION

THIS PERPETUAL CARE TRUST FUND AGREEMENT is made and entered into this _____ day of _____, 20__ by and between **CEMETERY CORPORATION NAME**, organized and existing under the laws of the State of Texas, and doing business *as CEMETERY D.B.A.*, having its principal office and place of business in **CITY CEMETERY LOCATED**, Texas, (hereafter “Settlor”), and **NAME OF TRUSTEE**, a **TYPE OF INSTITUTION** with trust powers organized and existing under the laws of the State of Texas, having its principal office in **CITY**, Texas (hereafter “Trustee”).

WHEREAS, SETTLOR operates a perpetual care cemetery known as **NAME OF CEMETERY**, located in **CITY, COUNTY**, Texas; and

WHEREAS, **NAME OF TRUSTEE** is willing to accept the trust assets and act as TRUSTEE, subject to the terms of this Trust Agreement, the applicable Texas statutes, the rules and regulations of the Texas Department of Banking, and Chapters 711 and 712 of the Texas Health and Safety Code.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1 - NAME OF TRUST

1.1 The Trust Fund to be administered pursuant to this Trust agreement, for convenience, shall be known as the “**CEMETERY NAME** Perpetual Care Trust,” and it shall be sufficient that it be referred to as such in any instrument of transfer, deed or assignment.

ARTICLE 2 - DEFINITIONS

Whenever used in this Trust Agreement, unless the context requires otherwise;

2.1 “Trustee” refers to the single, multiple and successor trustees who at any time may be appointed and acting in a fiduciary capacity under the terms of this Trust Agreement.

2.2 “Net Income” shall mean cash income after the payment of all trust administration expenses, including Trustee’s expenses, fees and taxes.

2.3 “Trust Fund” shall mean all assets held in trust under this Trust Agreement.

2.4 “Department” shall mean the Department of Banking of the State of Texas.

2.5 “Cemetery” shall mean **NAME OF CEMETERY, CITY**, Texas.

2.6 The singular includes the plural and vice versa.

ARTICLE 3 - PURPOSE OF TRUST

3.1 The Trust Fund was established by Settlor for the purpose of managing funds received for the general care and maintenance of the Cemetery. Deposits are made to the Trust Fund from a portion of the proceeds received from the sale of interment, entombment, and inurement rights in sections, lots, mausoleums, lawn crypts, and niches in the Cemetery, pursuant to the provisions of Texas law, and the terms hereof shall be construed in accordance with such statute or statutes.

3.2 This Trust Agreement shall forthwith be submitted by Settlor to the Department for filing and any amendment, change or modification to this Trust Agreement must be in writing and signed by all parties, and filed with the Texas Department of Banking.

ARTICLE 4 - GENERAL PROVISIONS

4.1 This Trust Agreement shall govern the administration of the Trust Fund from and after the time when both the Department's approval of this Trust Agreement has been given to the Trustee and the trust assets have been received by Trustee.

4.2 No grantee, purchaser or other person dealing with Trustee, while Trustee is purporting to act in such capacity under any power or authority granted Trustee herein, need inquire into the existence of facts upon which the purported power or authority depends or into the continued existence of such power, or of the expediency of the transaction or of the proper application of the proceeds or other consideration.

4.3 This Trust Agreement has been accepted by Trustee in the State of Texas, and it shall be construed and regulated and all rights under it shall be governed by the laws of that state.

4.4 Any amendment, change or modification to this Trust Agreement must be in writing and signed by all parties, and filed with the Texas Department of Banking.

ARTICLE 5 - TRUST FUND DEPOSITS AND DISTRIBUTIONS

5.1 Settlor shall set aside and transfer to Trustee for deposit into the Trust Fund, within the time period required by law, the percentages or amounts required by Texas law, as amended, which are received from sales of burial rights.

5.2 Trustee shall have no obligation to determine the amount of funds to be deposited under any of Settlor's customer contracts, nor the time within which to transfer the funds, nor to see that the funds are deposited with Trustee. Trustee's powers and obligations hereunder shall commence only upon the receipt of such funds from Settlor.

5.3 The principal of such fund shall be held intact by Trustee and shall be invested in the manner hereinafter stated and the Net Income from the principal of such fund shall be paid by Trustee to Settlor as provided for hereafter.

5.4 Trustee shall pay the Net Income from the Trust Fund to Settlor at least quarterly, and Trustee shall furnish Settlor periodic accounting, not less than quarterly, showing all investments, their cost, their current market value, all income earned thereon, all expenses paid or deductions

made therefrom and all income paid to Settlor during the period covered by said statement. All appreciation, gains, stock dividends or other benefits, other than cash income, shall in all instances be added to the principal and any losses on investment shall be charged against principal.

5.5 Settlor covenants and agrees to use the income so received from the Trust Fund for the general care and maintenance for the cemetery, and such income shall be applied in such manner as Settlor may, from time to time, determine to be in the best interests of the Cemetery. The income from the Trust Fund may not be used for improvement or embellishment of unsold property to be offered for sale.

5.6 It is expressly understood and agreed that Trustee shall be under no obligation to see to the proper application of any of the monies paid to Settlor under the terms of this Trust Agreement.

ARTICLE 6 - TRUSTEE

6.1 Trustee hereby accepts the Trust Funds upon the terms and conditions hereof, and agrees to serve as Trustee hereunder until such time as it resigns or is removed and its successor is appointed.

6.2 Trustee may resign at any time, by giving written notice to Settlor and the Department at least thirty (30) days before the effective date of such resignation, and Settlor may remove Trustee at any time by giving written notice to Trustee and the Department at least thirty (30) days before the effective date of such removal.

6.3 Upon the resignation or removal of Trustee, or any successor trustee, Settlor, after receiving approval of the Department, shall appoint a national bank, a state bank or a trust company to serve as successor trustee, and in the event Settlor fails to make such appointment, Trustee may apply to any court of competent jurisdiction for an order appointing a successor trustee.

6.4 Any successor trustee shall, by written instrument, accept the appointment and agree to serve on the terms and conditions herein, a signed copy of which shall be delivered to the former trustee and the Department, and such successor trustee shall assume the duties thereof immediately upon the effective date of the resignation or removal of the former trustee.

6.5 Any resigning or removed trustee shall execute all instruments and do all acts necessary to vest such title to the Trust Fund in any successor trustee without court accounting. A successor trustee shall have no duty to examine the accounts, records or acts of any former Trustee and shall in no way or manner be responsible for any act or omission on the part of any former trustee.

6.6 Each successor trustee, including a successor to any corporate trustee by consolidation, merger, transfer of trust business or otherwise, shall have exercise and enjoy all the rights, privileges and powers, both discretionary and ministerial, given to the former trustee and shall incur all of the duties and obligations imposed upon the former trustee.

6.7 Trustee shall prepare an accounting for each taxable year of the trust and, whenever a Trustee ceases to serve, an accounting shall be prepared from the time of the last prior accounting to the end of the period of service. Trustee shall deliver a copy of all accounting to Settlor, and when appropriate, the successor trustee. The written approval of an accounting by Settlor shall be final and binding as to all matter accurately stated therein or shown thereby and binding upon Settlor and upon all persons then or thereafter claiming any interest to or under Settlor. If no objection to any accounting is made within ninety (90) days of the date said, accounting is received by Settlor, the accounting will be deemed to be approved as to all matters accurately stated therein or shown thereby.

6.8 Trustee shall be entitled to reasonable compensation for services rendered hereunder, which shall be in accordance with its published schedule of fees in effect for the type of services contracted for herein. Any such revision of the schedule of fees shall become effective between the parties on the ninetieth (90) day after the mailing of notice of such revision by Trustee to Settlor.

6.9 To the extent income earned on deposits held by Trustee is insufficient for the payment of expenses incurred in the administration of this Trust Fund, including compensation of Trustee, Settlor shall reimburse Trustee for such expenses incurred on demand.

ARTICLE 7 - POWERS OF TRUSTEE

7.1 In administering this Trust, Trustee shall have the express powers enumerated herein, together with all other powers conferred by Texas law upon trustees generally, and may exercise them at any time in any valid manner without court order or supervision.

7.2 Trustee shall exercise in acquiring, investing, reinvesting, exchanging, retaining, selling, supervising and managing the Trust Fund, the judgment and care under the current circumstances that persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable increase in value and the safety of their capital.

7.3 The Trustee may acquire and retain every kind of property and every kind of investment, including bonds, debentures, and other corporate obligations, preferred or common stock, and interest in investment trusts and mutual funds, that persons of ordinary prudence, discretion, and intelligence acquire or retain for their own account in accordance with the standard set forth in Property Code Section 113.056 for Trust Management and Investment.

7.4 The Trustee is empowered to sell, convey, transfer, exchange or otherwise dispose of any trust asset on any terms deemed advisable and to take or cause to be taken all action deemed necessary or proper in connection therewith.

7.5 The Trustee is empowered to hold any or all of the trust assets, real or persona, in Trustee's own name or in the name of any corporation, partnership or other person as Trustee's nominee for holding the assets, with or without disclosing the fiduciary relationship.

7.6 The Trustee is empowered, to any extent reasonable necessary, to employ attorneys-at-law, brokers, investment advisors, realtors, managers for businesses, technical consultants, attorneys-in-fact, agents or any other consultants and assistants Trustee deems advisable for a proper administration of the Trust Fund.

7.7 The Trustee is empowered to cause to be prepared and filed all periodic accounting required by this Trust Agreement under Texas Law, and all tax returns, and, if applicable, appropriate forms to establish the Trust Fund's tax-exempt status.

7.8 In addition to and not in limitation by implication or otherwise of the immunities elsewhere herein granted to or conferred upon Trustee or conferred by law or otherwise, it is covenanted and agreed as follows:

(a) Trustee makes no covenant or representation respecting the rights of purchasers or rights of interment in spaces or lots in the Cemetery, and Trustee shall be under no duty or obligation with respect to any sales of interment rights or of the sales or any other rights or things.

(b) Trustee shall incur no liability to any person, firm, or corporation in acting upon any notice, request, consent, certificate, note, bond, document or paper reasonably believed by Trustee to be genuine and authentic.

(c) Trustee shall not be required to furnish bond or other security, unless required by law.

(d) Trustee shall not, in the absence of fraud or bad faith, be liable to any party or beneficiary under this Agreement or to any other person, firm, or corporation for any act performed while acting as a trustee hereunder, for any failure to act in such capacity, or for any decline in value of the Trust Fund; and the Trust Fund shall indemnify and save it and hold it harmless from any and all claims, demands, causes of action, costs, or expenses in connection with or arising out of acts or omissions as trustees under this Agreement, except for acts or omissions constituting fraud or bad faith.

(e) The Trustee is entitled to rely upon, and shall be fully protected from any liability in relying upon the opinion of any attorney employed by the Trustee, the advice given by any accountant employed on behalf of the Trust by the Trustee, and any such other and further professional counsel and advice as the Trustee shall deem necessary and appropriate in connection with the matters contained herein. The Settlor agrees that the trustee shall be fully protected and held harmless from any and all liability for any action it may take or fail to take, if such action is made in good faith by the Trustee. Save and except for fraud, or willful wrongdoing, the Trustee shall not be liable for any act, omission, loss, damage or expense arising from the performance of his duties under this Agreement.

ARTICLE 8 - RIGHTS AND POWERS RESERVED BY SETTLOR

8.1 Settlor shall have the right and power, which may be exercised at any time by an instrument in writing executed and delivered to Trustee, to alter or amend this Trust Agreement in any and every particular; provided, that the duties and liabilities of Trustee shall not be altered without consent and, if required, without the approval of the Department.

8.2 In the event of a sale or other disposition by Settlor of the Cemetery, Settlor shall have the right, by written instrument signed by Settlor, such grantee or transferee, and by Trustee, to substitute such grantee or transferee in the place and stead of Settlor herein and hereunder, and in such event Settlor shall thereupon have no further rights, obligations or liabilities hereunder.

8.3 Notwithstanding anything contained herein to the contrary, the rights and powers reserved by Settlor and this Trust Agreement shall not be exercised in any manner which contravenes the provisions of any applicable Texas law or rule or regulation.

8.4 The validity, construction, interpretation, and administration of the Trust shall be governed by the laws of the State of Texas, regardless of the situs or place of administration of the Trust.

8.5 This Agreement shall extend to and be binding upon Trustee, Settlor, and their respective heirs, executors, administrators, successors, and assigns.

8.6 The unenforceability of any provisions of this Agreement shall not affect the enforceability of any other provision of this Agreement.

8.7 All titles, headings, and captions used in this Agreement have been included for administrative convenience only and do not constitute matters to be construed in interpreting this instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be signed as of the day and year first written above.

Cemetery Corp Name: _____

BY: _____

NAME: _____

TITLE: _____

Accepted by:

_____, *Trustee*

BY: _____

NAME: _____

TITLE: _____