

## **ENDOWMENT CARE CEMETERY TRUST AGREEMENT**

This irrevocable Endowment Care Cemetery Trust Agreement (the “Trust Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by and between the “Cemetery Authority” and “Trustee” executing the signature pages.

### **WITNESSETH:**

WHEREAS, it is a common practice for consumers (“Endowment Care Purchasers”) to contract with cemetery authorities for Endowment Care grave or lawn crypt space, mausoleum crypt or niche, or special care funds prior to the time when death is imminent;

WHEREAS, the Cemetery Authority is engaged in the business of selling Endowment Care grave or lawn crypt space, mausoleum crypt or niche, or special care funds under Endowment Care Contracts subject to the provisions of Title 27, Chapter 17A of the Code of Alabama 1975, as amended, and related rules and regulations of the State of Alabama, as amended;

WHEREAS, certain amounts received for Endowment Care Contracts are required to be placed in trust pursuant to Title 27, Chapter 17A of the Code of Alabama 1975 and deposited with a trustee meeting the requirements of Title 27, Chapter 17A of the Code of Alabama 1975 as amended;

WHEREAS, Trustee is qualified to serve as a trustee of funds required to be deposited for Endowment Care Contracts pursuant to Title 27, Chapter 17A of the Code of Alabama 1975 as amended; and

WHEREAS, CEMETERY AUTHORITY wishes to contract with Trustee; and

WHEREAS, Cemetery Authority and Trustee wish to set forth the terms and conditions whereby all accumulated deposits hereafter deposited under this Trust Agreement and all accumulated appreciation and income thereon, (such accumulated deposits and accumulated appreciation and income shall hereafter be referred to as “Endowment Care Funds”) shall be administered in accordance with Title 27, Chapter 17A of the Code of Alabama 1975;

NOW THEREFORE, in consideration of the declarations of trust and the mutual covenants of the Cemetery Authority and Trustee, the parties agree as follows:

### **ARTICLE I TRUST PURPOSE**

**1.1 Creation of the Trust.** The purpose of this Trust Agreement and the trust created pursuant hereto (the “Endowment Care Trust Fund”) is to provide for the administration and investment, pursuant to Title 27, Chapter 17A of the Code of Alabama 1975, of all Endowment

Care Trust Funds received by Trustee from the Cemetery Authority.

1.2 **Appointment of Trustee.** The Cemetery Authority hereby appoints Trustee and Trustee hereby accepts the appointment as Trustee of the Endowment Care Trust Fund in accordance with the terms and conditions of this Trust Agreement and applicable law.

1.3 **Bond.** The Trustee is specifically exempt from posting bond hereunder.

## **ARTICLE II ENDOWMENT CARE DEPOSITS**

2.1 **Deposits Into Trust.** Cemetery Authority may at any time this Trust Agreement is in effect, and in any amount, pay or direct that moneys constituting Endowment Care Funds be paid to Trustee for deposit into the Endowment Care Trust Fund established hereunder by Trustee for Cemetery Authority. Trustee shall not be responsible for any Endowment Care Funds that shall be deposited pursuant to this Trust Agreement until such Endowment Care Funds shall have been actually delivered to Trustee for deposit into Cemetery Authority's Endowment Care Trust Fund.

2.2 **Investment Accounts.** Cemetery Authority may establish one or more separate and distinct investment accounts within the Endowment Care Trust Fund, provided that all statutes, rules and regulations of the State of Alabama, as well as all terms and conditions under this Trust Agreement, are complied with separately for each investment account.

2.3 **Accounts.** Trustee agrees to accept all Endowment Care Funds paid on behalf of Cemetery Authority and to maintain such accounts and records as are necessary to carry out its obligations as Trustee. Cemetery Authority, or its agent, shall be responsible for maintaining records for the purpose of identifying those Endowment Care Funds which relate to specific Endowment Care Purchasers.

2.4 **Information.** It is understood and agreed that the Trustee shall rely upon the accuracy of the information and documentation furnished by Cemetery Authority. Trustee shall have no duty whatever to investigate the activities of Cemetery Authority or to determine or inquire as to Cemetery Authority's operations or the accuracy of information provided by Cemetery Authority. Cemetery Authority agrees to indemnify and hold Trustee harmless against any and all loss, costs, damages or expenses incurred by Trustee resulting from such reliance, which is not attributable, in whole or in part, to Trustee's gross negligence or willful misconduct.

2.5 **Compliance.** Trustee shall not be responsible for determining whether Cemetery Authority has complied with requirements under Title 27, Chapter 17A of the Code of Alabama 1975 concerning the timing or amount of accumulated deposits to be deposited with Trustee.

### **ARTICLE III DUTIES OF THE TRUSTEE**

3.1 **Title To Assets.** Trustee shall take title to any assets conveyed to it by Cemetery Authority to be deposited into Cemetery Authority's Endowment Care Trust Fund for the purpose of investing, protecting and conserving such assets for Cemetery Authority, collecting income earned from such assets and distributing principal and income of such Endowment Care Trust Fund pursuant to the terms of this Trust Agreement, and applicable law.

3.2 **Previous Trustee(s).** Trustee shall have no obligation with respect to the activities of Cemetery Authority or any previous trustee, and shall not be required to examine the accounts, records or acts of Cemetery Authority or any previous trustee; nor shall Trustee in any way or manner be responsible for any act or omission on the part of Cemetery Authority or any previous trustee.

### **ARTICLE IV POWERS OF THE TRUSTEE**

Except as otherwise provided under Title 27, Chapter 17A of the Code of Alabama 1975, Trustee shall have the powers normally granted to trustees under Alabama law, specifically including, but not by way of limitation, the power to:

4.1 Collect, receive and provide receipt(s) for any and all items of income and principal that may be derived from the assets placed under the terms of this Trust Agreement and to allocate same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.

4.2 Invest and reinvest the assets of the Endowment Care Trust Fund pursuant to the provisions of this Trust Agreement and applicable law.

4.3 Treat stock dividends, stock splits and dividends payable in the securities of another company, extraordinary cash or non-cash dividends, liquidating dividends, stock purchase rights, warrants and options of all kinds, and all similar property and the right to property, as income or as principal, or partly one and partly the other, in accordance with usual and customary accounting practices of Trustee.

4.4 Acquire and hold any stock, securities, real estate or any other property, real or personal, in the name of Trustee without disclosing its capacity, or in the name of any other nominee without disclosing its capacity.

4.5 Vote all shares of stock in the Endowment Care Trust Fund howsoever the certificates therefore may be issued, on all matters, and to give special or general proxies to any person, or persons, with or without the power of substitution.

4.6 Execute, acknowledge, deliver and accept any and all deeds, deeds of trust, releases, mortgages, certificates, documents, affidavits, declarations and any and all other papers

and instruments whatsoever deemed by Trustee necessary or appropriate to carrying out the powers and authority herein granted.

4.7 Exercise any option or privilege to buy, sell, exchange, or convert bonds, notes, stock or real, personal or mixed property, of any kind.

4.8 Pay from income of the Endowment Care Trust Fund, the trustee fees as provided for herein and any other expenses which may from time to time be permitted under Title 27, Chapter 17A of the Code of Alabama 1975.

## **ARTICLE V INVESTMENT OF TRUST FUNDS**

5.1 **Permitted Investments.** Trustee shall invest and reinvest the assets of the Endowment Care Trust Fund only in such manner and in such investments as are permitted under Title 27, Chapter 17A of the Code of Alabama 1975, as amended, and any related rules which may now exist or which may be promulgated hereafter.

Subject to the foregoing limitation, Trustee is authorized to invest and reinvest and keep the Endowment Care Funds of the Endowment Care Trust Fund invested in any kind of property; real, personal or mixed; and any kind of investment, including, but not limited to; cash and other liquid assets; common and preferred stocks; any interest in a common trust fund, mutual fund or other such investment maintained by Trustee; voting trust certificates; bonds; notes; debentures; mortgages; trust deeds; mortgage participations; and shares or interests in investment funds.

5.2 **Disposal of Certain Transferred Assets or Investments.** To the extent that an any existing endowment care fund transferred to the Trustee includes assets or investments that the Trustee believes are not in the best interests of the Trust, the Trustee shall dispose of such assets as soon as is practicable, but in any event prior to May 1, 2004.

## **ARTICLE VI INVESTMENT ADVISOR**

6.1 **Employment of Third Parties.** Notwithstanding anything to the contrary contained herein, authority is hereby reserved by Cemetery Authority, subject to any applicable restrictions under Title 27, Chapter 17A of the Code of Alabama 1975, to select an investment advisor ("Investment Advisor"), if Cemetery Authority so chooses, to advise Trustee in the making or retention of any investment. Trustee shall use commercially reasonable efforts to follow such advice received from such Investment Advisor, Cemetery Authority shall designate in writing the name of the Investment Advisor, if any, selected and shall submit the name to Trustee in writing. Such notice shall be effective until revoked by Cemetery Authority upon ten (10) days prior written notice thereof to Trustee.

6.2 **Investment Standards of the Investment Adviser.** The Investment Advisor, in advising Trustee to manage, administer, invest, reinvest and dispose of assets of the Endowment Care Trust Fund, shall conform with the investment standards required of Trustee by Title 27,

Chapter 17A of the Code of Alabama 1975. Provided, that Trustee shall not be required to follow the advice received from such Investment Advisor should Trustee be of the opinion that the actions being advised by the Investment Advisor would violate requirements under Title 27, Chapter 17A of the Code of Alabama 1975 or Trustee's fiduciary obligations.

## **ARTICLE VII DISTRIBUTION OF TRUST FUNDS**

**7.1 Endowment Care Funds – Use of Corpus and Net Income.** The corpus of the Endowment Care Funds held in the Endowment Care Trust Fund shall be retained by the Trustee and shall not, under any circumstances, be withdrawn. Out of the income of the Endowment Care Trust fund shall be paid any expenses incurred by and fees charged by the Trustee in connection with the discharge of his duties under this trust instrument. The income from the Endowment Care Funds remaining after payment of such fees and expenses (the "Net Income") shall be used exclusively for the endowment care of the cemetery. The Net Income shall be retained in the Endowment Care Trust Fund by Trustee until Trustee receives from the Cemetery Authority a written request for withdrawal from the Endowment Care Trust Fund of requested amounts of the Net Income relating to the endowment care of the cemetery.

**7.2 Procedures for Withdrawals.** Subject to Section 7.1 above, Cemetery Authority reserves the right to establish specific forms and procedures to be used and followed by Trustee in the handling of deposits to and withdrawals of Net Income from Cemetery Authority's Endowment Care Trust Fund. Such forms and procedures, and any changes thereto, shall be communicated to Trustee by Cemetery Authority in writing, and Trustee shall use commercially reasonable efforts to make use of and comply with such forms and procedures after receipt thereof.

**7.3 Payment of Distributions.** After Trustee's receipt from Cemetery Authority of Cemetery Authority's request for withdrawal of Net Income and related documentation as set forth above, Trustee shall pay the amount requested to Cemetery Authority. Trustee shall utilize commercially reasonable efforts to make such payment as soon as possible after such receipt, subject to availability of funds. The amount requested by Cemetery Authority shall be based upon records maintained by Cemetery Authority or its agents. Trustee shall have no responsibility for determining the accuracy of any amounts specified or statements made within Cemetery Authority's withdrawal request and related documentation. Trustee may rely conclusively on the amounts specified and statements made in Cemetery Authority's withdrawal request and related documentation. The Cemetery Authority shall indemnify, release and hold Trustee harmless from any liability resulting from such reliance. The Trustee's only responsibility with regard to such request shall be to verify that the form and manner by which such request is submitted comply with the requirements of this Article, and, where such request does comply with such requirements, to issue payment to Cemetery Authority as directed in the request.

**7.4 Trust Records.** Trustee shall maintain such records for the Endowment Care Trust Fund as will evidence the amounts received for deposit, the amounts disbursed and withdrawn, the total amount of Endowment Care Funds held and the location, description, and character of the investments of the Endowment Care Trust Fund. Such books and records shall

be open for inspection and audit by any party so designated by the Cemetery Authority.

7.5 **Cemetery Authority Records.** Cemetery Authority, or its agent, shall be responsible for maintaining individual records by Endowment Care Purchaser.

7.6 **Custodian.** The Trustee shall serve as custodian of the funds, securities, and other properties constituting the Endowment Care Trust Fund.

## **ARTICLE VIII REPORTS**

8.1 **Statements.** Trustee shall furnish Cemetery Authority, or its agent, a statement detailing the activity of Cemetery Authority's Endowment Care Trust Fund for the period covered by the statement, including but not limited to the readily ascertainable market value of Cemetery Authority's Endowment Care Trust Fund as of the last day of the period covered by the statement.

8.2 **Additional Reports.** Trustee will furnish such additional reports or information related to Cemetery Authority's Endowment Care Trust Fund as may be required of Trustee under Title 27, Chapter 17A of the Code of Alabama 1975, as may be requested of Trustee by the State of Alabama or as Cemetery Authority, at its expense, or its agent may reasonably request.

8.3 **Filing of Notices And/Or Reports.** Cemetery Authority shall be solely responsible for filing any notices and/or reports that may now or hereafter be required to be filed with the State of Alabama, except as may be set forth hereinabove, regarding establishment of Cemetery Authority's Endowment Care Trust Fund and the management, investment and disposition of the funds thereunder.

## **ARTICLE IX TRUSTEE'S FEES**

9.1 **Trustee Fees.** The Trustee shall be entitled to reasonable compensation for the services rendered pursuant to this Trust Agreement. Such compensation shall be mutually agreed to by the parties, or if no such agreement is reached, then in such amounts as shall from time to time be set forth in Trustee's published fee schedule in effect at the time related services are rendered.

9.2 **Withholding Trustee Fees.** Trustee is hereby authorized to withhold such compensation from income of the Endowment Care Trust Fund to the extent permitted under Title 27, Chapter 17A of the Code of Alabama 1975. In the event the Endowment Care Trust Fund is insufficient to cover payment of such compensation, or to the extent such compensation cannot be fully paid from income to the Endowment Care Trust Fund due to limitations imposed under Title 27, Chapter 17A of the Code of Alabama 1975, Cemetery Authority shall pay that portion of such compensation which is not paid from such income upon receipt of written notice

by Trustee.

## **ARTICLE X RELIANCE**

10.1 **Reliance.** In no event shall Trustee incur any liability to any person when acting upon any notice, direction, or request as set forth in an instrument reasonably believed by Trustee to be genuine and reasonably believed by Trustee to have been executed by the persons authorized by Cemetery Authority to provide Trustee with such notices, directions and requests.

Further, Trustee shall not be liable to anyone whomsoever or accountable before any court for any act or omission taken or made in accordance with any direction of an Investment Advisor as to the investment and/or reinvestment of the Endowment Care Funds.

10.2 **Liability.** The Trustee shall not be liable for any action taken or omitted hereunder by Trustee except in the case of bad faith, gross negligence or willful misconduct.

## **ARTICLE XI RESIGNATION OR REMOVAL OF TRUSTEE**

11.1 **Trustee Resignation.** Trustee shall have the right, upon thirty (30) days prior written notice delivered to Cemetery Authority or its agent, to resign as trustee of Cemetery Authority's Endowment Care Trust Fund.

11.2 **Removal of Trustee.** Cemetery Authority shall have the right, upon thirty (30) days prior written notice delivered to Trustee and upon payment of the accrued and unpaid Trustee's fees as provided herein, to remove Trustee as Trustee of Cemetery Authority's Endowment Care Trust Fund.

11.3 **Successor Trustee.** Upon such resignation or removal, Cemetery Authority shall appoint a successor trustee, subject to compliance with Title 27, Chapter 17A of the Code of Alabama 1975. Should Cemetery Authority fail to appoint a successor trustee within ten (10) days prior to the expiration of the thirty (30) day notice period, Trustee may secure the appointment of a successor trustee for Cemetery Authority's Endowment Care Trust Fund in any manner permitted by law.

11.4 **Transfer of Records.** Upon the appointment, and timely notification to Trustee, of a successor trustee as provided herein, Trustee shall transfer and convey to the successor trustee all trust assets held by Trustee in Cemetery Authority's Endowment Care Trust Fund within \_\_\_\_\_ days. When said transfer and conveyance are completed, Trustee shall be released and discharged from all liability relating to further administration and investment of Cemetery Authority's Endowment Care Trust Fund.

## **ARTICLE XII**

## MISCELLANEOUS

**12.1 Amendment or Modification of the Trust.** Trustee and Cemetery Authority may from time to time amend and modify the provisions of this Trust Agreement, in any manner consistent with Title 27, Chapter 17A of the Code of Alabama 1975, by written instrument, provided that any changes affecting the responsibilities of Trustee must be approved in writing by Trustee.

Trustee and Cemetery Authority shall amend this Trust Agreement when necessary to conform to any applicable statutes, rules or regulations. Any amendments to this Trust Agreement shall be subject to approval by the State of Alabama.

**12.2 Governing Law.** This Trust Agreement shall be governed by the laws of the State of Alabama.

**12.3 Severability.** Should any provision of this Trust Agreement be held to be unlawful, invalid or unenforceable for any reason, such provision shall not affect the remaining provisions of this Trust Agreement, but shall be fully severable, and the Trust Agreement shall be construed as if such unlawful, invalid or unenforceable provision had never been included herein.

**12.4 Parties In Interest.** This Trust Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**12.5 Notices To Parties.** All communications provided for hereunder shall be in writing and shall be deemed to be given when delivered in person or deposited in the United States Mail, first class, postage prepaid and properly addressed as described below.

**12.6 Counterparts.** This Trust Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be an original and all of which when taken together shall constitute one and the same instrument.

**12.7 Headings.** The headings, subheadings, and numbering of the different paragraphs of this Trust Agreement are inserted for convenience of reference only and are not to be taken as part of this Trust Agreement or to control or affect the meaning, construction or effect of the same.

**12.8 Effective Date.** This Trust Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, each of the undersigned have executed this Trust Agreement on the date first hereinabove written.

**“Cemetery Authority:”**

Legal name of business entity\_\_\_\_\_

Name of cemetery\_\_\_\_\_

Street\_\_\_\_\_

P.O. Box \_\_\_\_\_

City, State, Zip \_\_\_\_\_

By: \_\_\_\_\_

Printed Name:\_\_\_\_\_

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

**“Trustee”**

Legal Name \_\_\_\_\_

Street\_\_\_\_\_

P.O. Box \_\_\_\_\_

City, State, Zip \_\_\_\_\_

By: \_\_\_\_\_

Printed Name:\_\_\_\_\_

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