

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 10/10/2013

Action Requested By:
Landscape
Management

Agenda Item Type
Resolution

Subject Matter:

City of Huntsville and Maple Hill, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Property Transfer Agreement between the City of Huntsville and Maple Hill, Inc.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: Select...

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Jay Hinkle

Date: 10/7/2013

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Landscape Management

Council Meeting Date: 10/10/2013

Department Contact: Joy McKee

Phone # 5048

Contract or Agreement: **Property Transfer Agreement between the City of Huntsville and Maple Hill, Inc.**

Document Name: **Property Transfer Agreement between the City of Huntsville and Maple Hill, Inc.**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name:
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Department	Signature	Date
1) Originating		10-8-13
2) Legal		10-8-13
3) Finance 		10/9/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agency Appropriation Agreement by and between the City of Huntsville and Maple Hill, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Property Transfer Agreement between the City of Huntsville and Maple Hill, Inc.," consisting of twenty (20) pages, including Exhibits "A, B, C and D" and the date of October 10, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 10th day of October, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of October, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)

PROPERTY TRANSFER AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE, ALABAMA AND MAPLE HILL, INC.

This Property Transfer Agreement (this "Agreement") is made and entered into on this the _____ day of _____, 2013, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and Maple Hill Cemetery, Inc., hereinafter referred to as "MHI".

WITNESSETH

WHEREAS, Maple Hill Cemetery is a cemetery owned and maintained by the City of Huntsville; and

WHEREAS, Maple Hill Cemetery, Inc. owns and maintains a private cemetery on approximately 7.7 acres located adjacent to the Maple Hill Cemetery, which is also known as "Maple Hill Cemetery"; and

WHEREAS, MHI desires to transfer to the City, the said private cemetery (hereinafter referred to as the "Private Section"); and

WHEREAS, the City desires to assume ownership and control of the Private Section; and

WHEREAS, the public interest of having Maple Hill Cemetery maintained in a uniform and appropriate manner will be served by the City assuming ownership and control of the Private Section;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. MHI agrees to take all actions necessary to transfer to the City fee simple title to the approximately 7.7 acres more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Conveyance of title shall be by warranty deed with full covenants, executed by MHI, to the City. Title to be conveyed shall be good and

President of the City Council of the
City of Huntsville, Alabama
Date: _____

marketable but shall be subject to all existing encumbrances, matters of record, burial rights and internment rights previously sold or conveyed. MHI agrees to complete the said transfer within sixty (60) days of the execution of this agreement by both parties or dissolution of the Perpetual Care Trust Agreement as provided in Section 3, whichever occurs last. The Mayor of the City of Huntsville shall have full authority to execute any and all documents necessary to complete the transfer of the Property.

2. If, at the time of transfer of title, the Property or any part of the Property is subject to an assessment or assessments payable in installments, all such installments not due at the time of transfer shall, nevertheless be deemed to be due and payable at such time and as liens on the real property described above, and all such assessments shall be paid and discharged by MHI.

3. Prior to the transfer of the Property as described in Section 1 herein, MHI and the City will cooperate to have that certain trust more particularly described in "The Maple Hill Cemetery, Inc. Perpetual Care Trust Agreement" (attached hereto and incorporated herein as Exhibit "B") judicially dissolved and the principal and all undistributed income of said trust held in an escrow account to be transferred to the City upon the transfer of the Property to the City. The parties understand and agree that dissolution of the said trust is an essential term of this Agreement and that the terms of this Agreement will not take effect unless and until the said Trust is judicially dissolved and the proceeds thereof held for the benefit of the City. MHI shall take no actions to diminish the value of the said trust prior to its dissolution. MHI shall bear all costs associated with the dissolution of the said trust. MHI represents that the value of the trust at the time of the execution of this Agreement is approximately \$1,300,000.00. MHI may elect to terminate any legal proceedings for the dissolution of the Perpetual Care Trust at any time in its discretion. MHI will notify owners of burial spaces of the transfer by publication in the Huntsville Times. MHI shall have no further obligation to provide notifications to burial space owners.

4. Upon transfer of title as specified in Section 1 of this agreement, the City will provide all future burial and maintenance functions for the Property and will continue to operate the Property in perpetuity as a cemetery. All necessary administrative functions for the operation of the Property as a cemetery will be performed by the City of Huntsville.

5. MHI will transfer to the City all records relating to the Property including but not limited to all files, computer records, maps and deed books which are in its possession. MHI will have an employee (to be approved by the City) available to the City during normal business hours for a period of one year after transfer of title to provide information regarding the said records.

6. After the transfer of the Property to the City, all monuments installed after such date shall be in compliance with the City's Rules and Regulations for the Cemetery. However the following requirements shall continue with regard to the Property: 1) spaces that have been

restricted to flat bronze markers will continue to be restricted to such markers; 2) foot stones in the Property will be restricted to flat markers; 3) cremation monuments shall continue to be limited to their current size limitation; and 4) upright monuments will be placed in their designated head spaces.

7. Upon execution of this Agreement and transfer of all title and assets described in Sections 1, 2 and 3 of this Agreement, the agreement between the City of Huntsville and Maple Hill, Inc. dated October 1, 1987, adopted and approved by the City Council of the City of Huntsville by resolution No. 88-677, as amended by the "First Amendment to the Agreement between the City of Huntsville and Maple Hill Cemetery, Inc., dated May 9, 1996, adopted and approved by the City Council of the City of Huntsville by resolution No. 96-306, shall be rescinded and Maple Hill Cemetery, Inc. shall be released from all obligations of the said Agreement as modified.

8. In the event that MHI desires to sell the real property and improvements located at 202 Maple Hill Drive, Huntsville, Alabama 35801 and more particularly described in Exhibit "C" attached hereto and incorporated herein by reference, MHI shall not do so without offering the City first refusal on the said property. If the City exercises its right of first refusal, the sale price shall be one half the market value as determined by an appraiser selected by the mutual agreement of the parties, and the remainder of the appraised value shall be a gift from MHI to the City. The City shall provide MHI with such acknowledgements of the gift in such form as may be required by the Internal Revenue Code. Conveyance of title shall be by warranty deed with full covenants, executed by MHI, to the City. Title conveyed shall be good and marketable.

9. The Property shall contain twenty-four (24) unsold burial spaces that have been reserved for the correction of any burial errors plus additional unused space as shown in the map attached hereto and incorporated herein as Exhibit "D".

10. The City shall not assume any liability of MHI except as specifically set forth in this Agreement. The City shall have no obligation to hire or compensate any employees of MHI.

11. MHI, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses, and expenses, including but not limited to, reasonable attorney's fees, arising out of or resulting from MHI's operation of the private cemetery operated on the Property and known as Maple Hill Cemetery. MHI's obligation to indemnify the City shall include any claims or actions brought by burial space owners or others having an interest in the Private Section contesting the transfer of the Private Section to the City. Notwithstanding the foregoing, MHI's indemnity obligations hereunder are limited to the amount of insurance coverage which is

available to pay any such claims and which is provided to MHI under any liability policy it maintains.

12. The City, to the extent limited by Alabama law, shall indemnify and hold harmless MHI, against all claims, losses and expenses, including but not limited to, reasonable attorney's fees, resulting from operation of the Private Section as a cemetery after the transfer described in Section 1 of this agreement.

13. For a period of six (6) years after the execution of this Agreement by the last party to execute it, MHI shall keep in place a policy of insurance covering all aspects of its operation of the Private Section as a cemetery. Said policy of insurance shall have a general aggregate limit of \$1,000,000.00. The City, its officers, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of lots and monuments sold or burials performed by MHI prior to the transfer of the Property. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or specified volunteers. Additional Insured status on the CGL shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide coverage as per this Agreement.

MHI's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of MHI's insurance and shall not contribute to it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

SIGNATURES FOLLOW ON THE NEXT PAGE

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

MAPLE HILL CEMETERY, INC.

By: _____ (seal)
Its: _____

ATTEST:

Exhibit "A"

Legal Description of the Property

Lots Number One (1), Two (2), Three (3), Four (4), and Five (5), according to the Plat of land belonging to Thomas W. White, according to the Plat and Survey, made for the said Thomas W. White, by George I. Motz, County Surveyor, and recorded in the Probate Office of Madison County, Alabama, on September 19, 1892, in Plat Book One (1) Page 20, being all the lots embraced in said Plat and containing an aggregate of 7.7 acres, and lying and being in the City of Huntsville, Madison County, Alabama.

**FIRST AMENDMENT AND RESTATEMENT
OF THE MAPLE HILL CEMETERY, INC.
PERPETUAL CARE TRUST AGREEMENT**

This amendment and restatement of the Maple Hill Cemetery, Inc. Perpetual Care Trust Agreement is made and entered into this the 29 day of July, 2002 by and between Maple Hill Cemetery, Inc. ("Cemetery") and SouthTrust Bank ("Trustee").

WHEREAS, Cemetery did enter into that irrevocable Trust Agreement dated April 4, 1999 with Trustee for the purpose of providing perpetual care and upkeep of cemetery properties owned by the Cemetery; and

WHEREAS, the Legislature of the State of Alabama did enact the Pre-Need Funeral and Cemetery Act, (the "Act") on January 31, 2002 and which became effective on May 1, 2002, requiring cemeteries in the State of Alabama to establish an endowment care fund in accordance with the terms of the Act; and

WHEREAS, Paragraph 8 of the Trust Agreement allows the Trust to be amended and the Trustee and Cemetery desire to restate and amend the Trust to comply with the provisions of the Alabama Pre-Need Funeral and Cemetery Act, Title 27, Chapter 17A Code of Alabama 1975; and

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; and

WHEREAS, the Cemetery 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 wishes to contract with Trustee; and

WHEREAS, Cemetery 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 and Trustee the parties do amend and restate the Trust Agreement in its entirety 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. Any provision of the original trust agreement not specifically set forth or restated herein is cancelled and revoked.

1.2 **Appointment of Trustee.** The Cemetery 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 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. 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's Endowment Care Trust Fund.

2.2 **Investment Accounts.** Cemetery 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 and to maintain such accounts and records as are necessary to carry out its obligations

as Trustee. Cemetery , 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. Trustee shall have no duty whatever to investigate the activities of Cemetery or to determine or inquire as to Cemetery's operations or the accuracy of information provided by Cemetery . Cemetery 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 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 to be deposited into Cemetery's Endowment Care Trust Fund for the purpose of investing, protecting and conserving such assets for Cemetery , 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 **Tax Returns.** The Trustee shall prepare and file all necessary federal and state tax returns of the Trust.

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

Income shall be retained in the Endowment Care Trust Fund by Trustee until Trustee receives from the Cemetery 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 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's Endowment Care Trust Fund. Such forms and procedures, and any changes thereto, shall be communicated to Trustee by Cemetery 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 of Cemetery's request for withdrawal of Net Income and related documentation as set forth above, Trustee shall pay the amount requested to Cemetery . 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 shall be based upon records maintained by Cemetery or its agents. Trustee shall have no responsibility for determining the accuracy of any amounts specified or statements made within Cemetery's withdrawal request and related documentation. Trustee may rely conclusively on the amounts specified and statements made in Cemetery's withdrawal request and related documentation. 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 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 .

7.5 Cemetery Records. Cemetery , or its agent, shall be responsible for maintaining individual records of Endowment Care Purchasers indicating the property purchased and price paid for such property.

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, at least quarterly, Cemetery, or its agent, a statement detailing the activity of Cemetery's Endowment Care Trust Fund for the period

covered by the statement, including but not limited to the readily ascertainable market value of Cemetery'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'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, or its agent may reasonably request.

8.3 **Filing of Notices And/Or Reports.** Cemetery 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'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 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 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, 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 or its agent, to resign as trustee of Cemetery's Endowment Care Trust Fund.

11.2 **Removal of Trustee.** Cemetery 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's Endowment Care Trust Fund.

11.3 **Successor Trustee.** Upon such resignation or removal, Cemetery shall appoint a successor trustee, subject to compliance with Title 27, Chapter 17A of the Code of Alabama 1975. Should Cemetery 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'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's Endowment Care Trust Fund within 30 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's Endowment Care Trust Fund.

ARTICLE XII MISCELLANEOUS

12.1 **Amendment or Modification of the Trust.** This trust is irrevocable and Cemetery relinquishes all right to amend the trust except for administrative reasons or to comply with Alabama law and Title 27, Chapter 17A of the Code of Alabama 1975. Any changes affecting the responsibilities of Trustee must be approved in writing by Trustee.

Trustee and Cemetery 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 this the 29th day of July, 2002.

Maple Hill Cemetery, Inc.

By: E. R. Ragland
Its: President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that on this day personally appeared before me F.R. Ragland, as President of **MAPLE HILL CEMETERY, INC.**, and who is known to me and acknowledged before me that he/she, as such officer and with full authority, voluntarily executed the same as and for the act of said corporation on the day the same bears date.

THIS the 27th day of July, 2002.

Heather R. Pitts
Notary Public

(SEAL)

My Commission Expires: My Commission Expires 06-28-2005

SouthTrust Bank

By: [Signature]
Its: Group Vice President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that on this day personally appeared before me Dean Johnson, as Group Vice President of **SOUTHTRUST BANK**, and who is known to me and acknowledged before me that he/she, as such officer and with full authority, voluntarily executed the same as and for the act of said association on the day the same bears date.

THIS the 29th day of July, 2002.

Heather R. Pitts
Notary Public

(SEAL)

My Commission Expires: My Commission Expires 06-28-2005

Exhibit "D"**Spaces to be transferred to the City of Huntsville**

Lot 208	Section I	Spaces	5-6-7-8
Lot 208	Section II	Spaces	13-14-15-16
Lot 453	Section I	Spaces	1-2-3-4-5-6-7-8
Lot 453	Section II	Spaces	9-10-11-12-13-14-15-16

These spaces are two rows of 12 adjacent spaces on the West side of the property.

