

BEFORE THE ARKANSAS CEMETERY BOARD

IN THE MATTER OF:

**ASHDOWN MEMORIAL
GARDENS; ASHDOWN,
ARKANSAS**

ORDER NO. 5113-09-OR01

ORDER

The Arkansas Cemetery Board (“Board”) held its quarterly meeting on May 6, 2009, pursuant to Ark. Code Ann. § 20-17-1005 and Rule 4 of the Rules of the Arkansas Cemetery Board. Among the matters considered was a request by Ashdown Memorial Gardens (“Ashdown Memorial”) located in Ashdown, Arkansas, to ratify a proposed permanent maintenance trust fund agreement. Upon consideration of the testimony of the witnesses, the exhibits, and all other matters presented, the Board hereby finds and concludes:

FINDINGS OF FACT

1. Ashdown Memorial is a perpetual care cemetery located in Ashdown, Arkansas. Ashdown Memorial is licensed by the Board as a perpetual care cemetery as defined by the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. §§ 20-17-1001 through 20-17-1029 (“Act”).
2. On February 5, 2009, Ashdown Memorial filed a proposed permanent maintenance trust fund agreement with the Board. This permanent maintenance trust fund agreement would replace Ashdown Memorial’s current permanent maintenance trust fund agreement and would establish Jack Madden, Jr., as trustee. A copy of the proposed trust agreement is attached hereto as “Exhibit A.”

3. The proposed permanent maintenance trust fund agreement meets all statutory requirements as set forth in Ark. Code Ann. § 20-17-1013(d)(1).

CONCLUSIONS OF LAW

4. A new permanent maintenance trust fund agreement shall be executed in writing, and approved by the Board. Ark. Code Ann. § 20-17-1013(d)(1).

ORDER

IT IS HEREBY ORDERED that the permanent maintenance trust fund agreement proposed by Ashdown Memorial establishing Jack Madden, Jr., as trustee of Ashdown Memorial's permanent maintenance trust fund is hereby approved.

IT IS SO ORDERED.

Dated this 2nd day of June, 2009.

ARKANSAS CEMETERY BOARD



Bill Booker
Chairperson



A. HEATH ABSHURE
Secretary

TRUST AGREEMENT
ASHDOWN MEMORIAL GARDENS

THIS AGREEMENT made, entered and executed by and between Jack Madden, Sr. and Jack Madden, Jr. d/b/a Ashdown Memorial Gardens, Inc. organized and existing under and pursuant to the laws of the State of Arkansas, having its principal place of business in Ashdown, Arkansas, hereinafter called "Cemetery, Jack Madden, Jr. Trustee".

WITNESSETH:

WHEREAS, The Cemetery has title to a tract of land situated in Little River County, Arkansas, being more particularly described as:

Being a part of the SW $\frac{1}{4}$, SE $\frac{1}{4}$, Section 20, Township 12 South, Range 29 West, Little River County, Arkansas, more particularly described as follows:

Being at the NE corner of SW $\frac{1}{4}$, SE $\frac{1}{4}$, Section 20, Township 12 S, Range 29 W, thence S $00^{\circ} 43' 58''$ W 760.0 feet, thence N $89^{\circ} 26' 01''$ W 460.0 feet, thence N $00^{\circ} 43' 58''$ E 760.0 feet, thence S $89^{\circ} 26' 01''$ E 460.0 feet to the Point of Beginning, containing 8.02 acres, more or less.

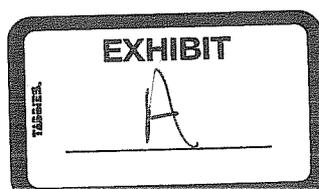
Also, a forty feet wide easement from the NE corner of above described tract west 787 feet to Hicks Road.

WHEREAS, the Cemetery proposes to sell interment rights and continually care for said tract of land, may be acquired by it as burial ground to be know as Ashdown Memorial Gardens, Inc. and,

WHEREAS, the Cemetery proposes and covenants that upon full payment of the purchase price of the cemetery lot, grave or space, burial rights, it shall pay to the Trustee an amount equal to twenty (20%) percent of the total gross purchases price from such sale; and

WHEREAS, the Trustee shall accept the funds so tendered without responsibility of determining the sufficiency of such payment and shall place said amounts in a fund to be called the Ashdown Memorial Gardens Perpetual Care Fund.

NOW THEREFORE, for and in consideration of the premises, covenants and agreements set forth herein below, the Cemetery does hereby create the Ashdown Memorial Gardens Perpetual Care Fund, to be held by the Trustee in trust for the use and



benefit of the Cemetery and the respective lot owners in said Cemetery, permanently and perpetually, upon the following terms and conditions:

1. The Ashdown Memorial Gardens Perpetual Care Fund is hereby declared to be a trust fund for the purpose of administration, care, and maintenance of the Cemetery, including lots, graves, spaces, burial rights or otherwise.
2. The Trustee, as an individual trustee, shall deposit funds directly into a savings account or certificate of deposit in a state or national bank not less than forty-five (45) days after collection as provided by Section 13A(3) of said Act (Act 352 of 1977). The Trustee shall deposit all funds of Ashdown Memorial Gardens, Inc. in The First National Bank, Ashdown, Arkansas. These funds shall be federally insured. This fund is restricted so that the principal amount of said funds cannot be withdrawn without the written approval of, and on a form approved by the Secretary of the Arkansas Cemetery Board. And not less than once a year, interest from said funds may be withdrawn by the Trustee, in behalf of the cemetery company.
3. The Trustee shall pay the net income from such Fund to the Cemetery as often as the same shall become available, unless directed to hold the same by the Cemetery, and shall furnish annually at the end of each calendar year a statement showing the total income received from such Perpetual Care Fund and any expenses or deductions made there from.
4. The Trustee shall be under no duty or obligation to see to the proper application of any of the monies paid out under the terms of this Agreement after such monies have been paid to or received by the Cemetery upon the terms and in the manner herein provided.
5. The Trustee shall incur no liability to any body in acting upon any notice, request, consent, certificate, note, bond, document, or paper believed by the Trustee to be genuine and to have been signed by the proper person.
6. The Trustee may consult and advise with legal counsel to be selected and employed by him, and reasonable fees and expenses therefore shall be paid for anything done or suffered in good faith by him from the income of said Perpetual Care Fund.
7. The Trustee shall make no covenant or representation respecting the rights of purchasers of rights of interment in sections or lots in the cemetery.

8. The Trustee shall be under no duty or liability in respect to any tax which may be assessed against the Cemetery or against the Trustee or against the purchasers or owners of interment rights in sections or lots in the Cemetery; nor shall the Trustee be under any duty to pay or see to the payment of such tax or to take notice of the assessment thereof or to give notice of the assessment thereof to the Cemetery or to the purchasers or owners of interment rights in sections or lots.
9. The Trustee shall be entitled to charge and receive reasonable and proper compensation for acting as Trustee under the provisions of this Agreement.
10. The Cemetery may, from time to time, change the Trustee by giving written notice to said Trustee herein named, and, in such event, the Trustee shall, within ten (10) days after receiving said notice, deliver to the Successor Trustee the corpus of the Trust and accumulated income and render a full accounting, where necessary, to the Cemetery. Provided, however, that prior to making any amendment or change in the party acting as Trustee, the Trustee and Cemetery shall file with the Arkansas Cemetery Board such proposed change in Trustee and shall receive approval in writing of the proposed change from the Secretary of the Arkansas Cemetery Board.
11. The Trustee shall have the right to resign from the position of Trustee under this Agreement at any time upon giving ten (10) days written notice of such intention to the Cemetery. The Cemetery agrees that in the event of the resignation of the Trustee, it will, within a reasonable time thereafter, appoint a Successor Trustee, who is properly qualified and equipped to perform the duties proposed by this Agreement, and said Trustee and change in Trustee shall be filed with the Arkansas Cemetery Board. Said Trustee shall begin to operate as Trustee until receipt of approval in writing of the proposed change of Trustee from the Secretary of Arkansas Cemetery Board.
12. This Trust Agreement may be amended or modified by the Trustee then serving and acting, provided however, that prior to making any amendment or change whatsoever to the Trust Agreement, the Cemetery and the Trustee shall file with the Arkansas Cemetery Board such proposed amendment or change. Furthermore, that prior to making any amendment or change effective, the Cemetery and Trustee shall receive approval in writing of the proposed amendment or change from the Secretary of the Arkansas Cemetery Board.
13. The fiscal year of the Trust shall be from January 1 to December 31 of each year. The Trustee shall publish each year, a statement of the receipts and disbursements and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the Trust by independent certified public accountants.

14. The Trustee must maintain at a minimum the following:
 - a) General ledger and general journal or comparable books of entry, showing all receipts, disbursements, assets, liabilities and income for the Trust Fund;
 - b) Documents supporting and verifying each asset of the Trust Fund; and,
 - c) Trust Agreement.
15. The Perpetual Care Fund may also receive, take and hold therefore and as part thereof or as incident thereto any property, real and personal, or mixed, bequeathed, devised, granted, given or otherwise contributed to the Fund.
16. Within sixty (60) days after the end of each calendar year, the Trustee of the Perpetual Care Fund shall be required to file under oath, with the Arkansas Cemetery Board, a detailed annual report of the condition of the Fund, setting forth the description of the assets of the Fund, a description of any property upon which any such security constitutes a lien, the cost of acquisition of each such asset, the market value of any asset at the time of its acquisition, the current market value thereof, the status thereof with reference to default and stating that the same are not in any way encumbered by debt, that none of the assets of such fund constitute loans to the Cemetery company for which the Trust Fund is established or to any Officer or Director thereof or any other information the Trustee of the Board deems pertinent.

Such reports shall show the amounts of principal and undistributed income of the Fund at the beginning of the period, the amounts deposited by the Cemetery during the period, the details of any investment or reinvestment during the period, and the balance of principal and income at the end of the period being reported.

The Trustee shall file a copy of such annual report with the County Clerk of the County where the Cemetery is located.

IN WITNESS WHEREOF, Ashdown Memorial Gardens, Inc. has caused this Agreement to be signed by its President and to be hereunto attested by its Vice President, and the Trustee has affixed his signature on this _____ day of _____, 2009.

ASHDOWN MEMORIAL GARDENS, INC.

By: _____
Jack Madden, Sr., President

ATTEST:

Jack Madden, Jr., Vice President

By: _____
Jack Madden Jr., Trustee