

## CEMETERY PERMANENT MAINTENANCE TRUST FUND AGREEMENT PROVISIONS ATTACHMENT

Important: This form contains mandatory cemetery permanent maintenance trust fund agreement provisions and must be attached to all copies of any cemetery permanent maintenance trust fund agreement.

The \_\_\_\_\_, as trustee, located at \_\_\_\_\_, and \_\_\_\_\_, as trustor, agree that the following provisions are hereby incorporated into the cemetery permanent maintenance trust fund agreement to which it is attached and made a part thereof, said agreement being the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is understood and trustee expressly agrees that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the agreement in which this attachment is incorporated. If determined by a court of law that the underlying trust agreement is in conflict with Kansas statutes, then that portion of the underlying trust agreement is null and void and shall be of no further force or effect.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas, specifically K.S.A. 17-1308 *et seq.*
3. **Termination, Transfer, or Amendment of Agreement:** The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.
4. **Acceptance of Agreement:** This agreement shall be considered effective upon written approval by the secretary of state.
5. **Trustee's Authority to Agreement:** By signing this agreement, the trustee thereby represents that such person(s) is duly authorized by the financial institution to execute this agreement on behalf of the financial institution and the trustee agrees to be bound by the provisions thereof.
6. **Additional Trustee Responsibilities:** The trustee recognizes the following responsibilities and agrees to enforce them:
  - The trustee shall submit a quarterly report to the Office of the Secretary of State. The report shall be in a form and manner prescribed by the secretary of state and shall contain the following:
    - Deposits to principal
    - Any withdrawals from principal
    - All Interest, Dividends, Income Earned
    - Interest Withdrawn
    - Capital Gains or Capital Losses
    - Capital Gains taxes paid from capital gains
  - The trustee shall use deposit and withdrawal forms prescribed by the secretary of state
  - The trustee shall be solely responsible for the investment of moneys held under this fund. The trust instrument must state that control of the funds by the trustor is prohibited.
  - The trustee shall invest the trust funds subject to the requirements of subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto.
  - The trustee may recover from the earnings of the fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services.
  - The taxes and costs may be paid from earnings of the fund prior to the distribution of income. If all income is exhausted, any remaining capital gains tax liability may be paid out of the realized capital gains before the balance reverts to principal.
  - By accepting the trusteeship of the permanent maintenance fund, the trustee submits personally to the jurisdiction of the courts of this state. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.
  - The trustee acknowledges the primary purpose of the fund is to maintain the corpus of the trust.
  - The trustee shall retain all liability and fiduciary responsibility for managing and administering the permanent maintenance fund.
  - It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of the secretary of state.
  - At least annually, the trustee shall determine the income for the fund, less reasonable costs, taxes and fees, and pay the income to the cemetery corporation. The trustee shall report to the secretary of state the calculation of income paid to the cemetery within 30 days, in a form and manner prescribed by the secretary of state.
7. \_\_\_\_\_ **Co-Trustee Relationship:** Trustee must initial here if they have entered into a co-trustee relationship or agreement and refer to Addendum A for additional requirements.
8. \_\_\_\_\_ **Market Value Less Than \$100,000:** Trustor shall initial here if the fund has less than \$100,000 and the trustor has chosen to put the funds in a certificate of deposit or business savings account. Refer to Addendum B for requirements. If you initial here, the trustee does not need to sign below.

I do hereby certify under penalty of perjury and pursuant to the laws of the state of Kansas, that I have read, understand, and agree to comply with the requirements of K.S.A. 17-1308 *et seq.*, and amendments thereto.

**TRUSTEE**

**TRUSTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Printed Name of Signer

Remit to: Kansas Secretary of State; Audit Manager; Memorial Hall, 1<sup>st</sup> Floor; 120 SW 10<sup>th</sup> Ave.; Topeka, KS 66612

**ADDENDUM A  
CO-TRUSTEE RELATIONSHIP OR AGREEMENT**

**Important:** This form contains mandatory cemetery permanent maintenance trust fund provisions for a co-trustee relationship or agreement and must be attached to all copies of any permanent maintenance trust agreement.

The \_\_\_\_\_, as trustee, located at \_\_\_\_\_, and \_\_\_\_\_, as co-trustee, located at \_\_\_\_\_, agree that the following provisions are hereby incorporated into the cemetery permanent maintenance trust fund agreement to which it is attached and made a part thereof, said agreement being the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is understood and trustee and co-trustee expressly agree that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the agreement in which this attachment is incorporated. If determined by a court of law that the underlying trust agreement is in conflict with Kansas statutes, then that portion of the underlying trust agreement is null and void and shall be of no further force or effect.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas, specifically K.S.A. 17-1308 *et seq.*
3. **Termination, Transfer, or Amendment of Agreement:** The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.
4. **Acceptance of Agreement:** This agreement shall be considered effective upon written approval by the secretary of state.
5. **Trustee and Co-Trustee's Authority to Agreement:** By signing this agreement, the trustee and co-trustee thereby represent that such person(s) is duly authorized by the financial institutions to execute this co-trustee relationship agreement on behalf of the financial institutions and the trustee and co-trustee agree to be bound by the provisions thereof.
6. **Additional Trustee and Co-trustee Responsibilities:** In addition to those outlined on the Cemetery Permanent Maintenance Trust Agreement Provision Attachment, the trustee and co-trustee recognize the following responsibilities and agree to enforce them:
  - The trustee may appoint one or more agents to provide administrative or investment advisory services, provided the trustee shall not assign or delegate the liability and fiduciary responsibilities owed to the permanent maintenance fund to another financial institution or agent.
  - Nothing in this act shall prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto, from entering into a co-trustee relationship with another trustee, who would not independently satisfy the requirements of that section provided the co-trustee: (A) Is authorized to do business in Kansas; and (B) submits personally to the jurisdiction of the courts of this state. Under no circumstances shall any trustee assign or delegate their liability or fiduciary responsibilities under the provisions of this act.
  - Both trustees and co-trustees are jointly and severally liable for the actions of the trustee. All contractual agreements shall be subject to, governed by, and construed according to the laws of the state of Kansas.

I do hereby certify under penalty of perjury and pursuant to the laws of the state of Kansas, that I have read, understand, and agree to comply with the requirements of K.S.A. 17-1308 *et seq.*, and amendments thereto.

**TRUSTEE**

**CO-TRUSTEE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Printed Name of Signer

Remit to: Kansas Secretary of State; Audit Manager; Memorial Hall, 1<sup>st</sup> Floor; 120 SW 10<sup>th</sup> Ave.; Topeka, KS 66612

**ADDENDUM B**  
**PERMANENT MAINTENANCE FUND MARKET VALUE LESS THAN \$100,000**

Important: This form contains mandatory permanent maintenance trust fund agreement provisions for funds that have a market value of less than \$100,000.

The \_\_\_\_\_, trustor, has chosen to deposit permanent maintenance funds with \_\_\_\_\_, a Kansas financial institution, located at \_\_\_\_\_, said agreement being the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is understood and trustor expressly agrees that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the agreement in which this attachment is incorporated. If determined by a court of law that the underlying agreement is in conflict with Kansas statutes, then that portion of the underlying agreement is null and void and shall be of no further force or effect.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas, specifically K.S.A. 17-1308 *et seq.*
3. **Termination, Transfer, or Amendment of Agreement:** The cemetery corporation shall obtain prior written approval from the secretary of state before any agreement shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to any agreement before the amendments shall become effective.
4. **Acceptance of Agreement:** This agreement shall be considered effective upon written approval by the secretary of state.
5. **Trustor's Authority to Agreement:** By signing this agreement, the trustor, thereby represents that such person(s) is duly authorized to execute this agreement and agrees to be bound by the provisions thereof.
6. **Additional Responsibilities:** The trustor recognizes the following responsibilities and agrees to enforce them:
  - If the market value of the permanent maintenance fund is less than \$100,000, the permanent maintenance fund may be held in a Kansas financial institution, in either certificates of deposit or a business savings account which is insured by the federal deposit insurance corporation, provided that the fund assets are maintained in a segregated account.
  - The trustor shall comply with the reporting requirements of this act.
  - The trustor shall ensure the financial institution shall submit a quarterly report to the Office of the Secretary of State. The report shall be in a form and manner prescribed by the secretary of state and shall contain the following:
    - Deposits to principal
    - Any withdrawals from principal
    - All Interest, Dividends, Income Earned
    - Interest Withdrawn
    - Capital Gains or Capital Losses
    - Capital Gains taxes paid from capital gains
  - The trustor shall use deposit and withdrawal forms prescribed by the secretary of state
  - The trustor acknowledges the primary purpose of the fund is to maintain the corpus of the trust.
  - The trustor shall retain all liability and fiduciary responsibility for managing and administering the permanent maintenance fund.
  - It shall be a provision of any such agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustor, except upon the written permission of the secretary of state.
  - At least annually, the trustor shall determine the income for the fund, less reasonable costs, taxes and fees, and pay the income to the cemetery corporation. The trustor shall report to the secretary of state the calculation of income paid to the cemetery within 30 days, in a form and manner prescribed by the secretary of state.

I do hereby certify under penalty of perjury and pursuant to the laws of the state of Kansas, that I have read, understand, and agree to comply with the requirements of K.S.A. 17-1308 *et seq.*, and amendments thereto.

**TRUSTOR**

**TRUSTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Printed Name of Signer

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