

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 20TH JUDICIAL DISTRICT
 AT NASHVILLE
 PART III

FILED

2020 FEB 28 PM 12:57

CLERK OF THE COURT
 DAVIDSON CO. CHANCERY CT.

EM D.C. & M.

STATE OF TENNESSEE,)
ex rel. HODGEN MAINDA, solely in his)
 official capacity as Commissioner of)
 Commerce & Insurance,)
)
 Plaintiff,)

v.)

No. 14-102-III

GALILEE MEMORIAL GARDENS,)
 JM&M SERVICES, INC.,)
 LAMBERT MEMORIAL CO., aka)
 LAMBERT MEMORIALS, INC.)
 LAMBERT & SONS, INC.)
 JEMAR LAMBERT, MARJE LAMBERT,)
 and MARY H. LAMBERT, and ALL)
 PERSONS ACTING IN CONCERT)
 WITH THEM,)
)
 Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF COMMISSIONER'S MOTION TO
 TERMINATE RECEIVERSHIP OF GALILEE MEMORIAL GARDENS AND FOR
 OTHER RELIEF**

Hodgen Mainda, Commissioner of the Department of Commerce & Insurance, as Receiver for Galilee Memorial Gardens (the "Cemetery" or "Galilee"), through his appointed Special Deputy Receiver, Receivership Management, Inc., submits the following Memorandum of Law in support of the Commissioner's Motion to Terminate Receivership and For Other Relief (the "Motion"). The Motion and this Memorandum are being filed pursuant to the Court's Order entered on December 5, 2019 (the "December 5 Order").

As part of the process for winding down and terminating the Receivership, the Court, in its December 5 Order, instructed the Commissioner to file a Motion and Brief that addresses the “Improvement Care Trust Fund status and uses and other provisions of law” and identifies “any remedy it contends is warranted in law and on the facts of this Cemetery when the termination occurs with or without a responsible owner being willing to take charge, and where, as here, no prior owners are connected to the Cemetery any longer and it cannot conduct business going forward.”

In its Motion, the Commissioner seeks an Order that (1) terminates the Receivership for the Cemetery and discharges the Commissioner as Receiver, (2) authorizes the expenditure of income generated from the Cemetery’s improvement care trust fund (the “ICTF”) to provide limited improvement care services for the Cemetery following termination of the Receivership, (3) approves the hiring of Red and Blue LLC, a Tennessee limited liability company, to serve as responsible party under Tenn. Code Ann. § 46-1-204(e) for providing post-receivership improvement care services at the Cemetery to be funded by the ICTF, (4) authorizes Commercial Bank and Trust of Paris, Tennessee to continue serving as trustee of the Cemetery’s ICTF, (5) at the conclusion of the Receivership, divests title to the grounds at Galilee Memorial Gardens out of the Commissioner as Receiver and reaffirms and makes permanent the injunction against the Defendants taking any future actions with regard to Galilee, and (6) provides for the preservation and maintenance of certain burial records of the Cemetery.

ANALYSIS AND ARGUMENT

I. THE TERMINATION OF THE CEMETERY RECEIVERSHIP IS WARRANTED.

Pursuant to the Court’s Order of Receivership entered on February 21, 2014 (the “Receivership Order”), the Commissioner, as Receiver, was granted all of the powers and authority

under Tenn. Code Ann. §46-1-312(a), including the authority “to take such actions, with all due speed, as are necessary and appropriate to determine whether the Cemetery can be reformed or restored to enable it to continue to operate as a viable ongoing concern or if some other course of action is required.” (Receivership Order, pages 6-7). Further, the Receiver was directed to locate assets of the Cemetery and to initiate a plan to identify decedents buried in, and establish the accurate grid of, all burial sites in the Cemetery. (Receivership Order, Para. K., pages 11-12)

As the Court has acknowledged in its prior Orders and rulings, reasonably diligent efforts have been undertaken by the Commissioner and the Special Deputy Receiver over the past several years to remediate and/or rehabilitate the Cemetery and comply with the Receivership Order. Specifically, the Deputy Receiver has completed its investigations and determined that the Cemetery has no recoverable assets, has no lots useable for future burials, and is no longer a viable going concern. Further, the Deputy Receiver has reconstructed the Cemetery’s records, map and grid of interment sites to the degree feasible but opined that such records remain unreliable for definitively locating any particular person’s actual gravesite and remains.

Based on the current condition of the Cemetery, there is no reasonable justification for continuing the Receivership. Significant public funds from the Cemetery Consumer Fund established by Tenn. Code Ann. § 46-1-105(d) have already been expended by the Commissioner to fund the Receivership, but any additional efforts are unlikely to be cost-effective or result in any tangible improvements in the condition of the Cemetery.¹ Further, receivership proceedings initiated under Tenn. Code Ann. § 46-1-312 are, by their very nature, of limited duration, and the statute does not obligate the Commissioner, once appointed as a receiver, to serve in that role

¹ To date, the total funds expended from the Cemetery Consumer Fund for operations of Galilee exceed \$924,000. Besides administering the receivership itself and ongoing maintenance, these funds have paid for extensive grounds improvement, stabilization and fence installation, among many other tasks as reported to the Court.

permanently or in an open-ended fashion. Accordingly, the Commissioner is certainly justified in seeking the termination of the Receivership and discontinuing the expenditure of state funds for receivership administration. Therefore, the Court should grant the Commissioner's Motion and terminate the Receivership after it has decided all matters scheduled for hearing on March 10, 2020.

II. AS THERE ARE CURRENTLY NO PROSPECTS FOR A NEW OWNER OF THE CEMETERY OR FOR LOCAL GOVERNMENT AUTHORITIES TO ASSUME RESPONSIBILITY FOR THE UPKEEP OF THE CEMETERY, THE INCOME FROM THE CEMETERY'S ICTF SHOULD BE USED TO FUND IMPROVEMENT CARE SERVICES FOR THE CEMETERY FOLLOWING TERMINATION OF THE RECEIVERSHIP.

During the course of the Receivership, no person, entity, corporate body, or governmental body has made a formal proposal for ownership of the Cemetery. Further, no local government, including Shelby County which has intervened in this proceeding, has taken any action to provide funds for the maintenance of the Cemetery pursuant to Tenn. Code Ann. § 46-2-107. In the absence of such assistance from a third party, the only viable option for future upkeep of the Cemetery, which will have no owner or operator after the termination of the Receivership, is to utilize the income generated from the Cemetery's ICTF to provide limited improvement care services.

Although Galilee's ICTF is not an asset of the Cemetery and cannot be used to pay the debts of the now defunct and terminated Lambert cemetery companies pursuant to Tenn. Code Ann. § 46-1-204(g), Tenn. Code Ann. § 46-1-204(e)(2) and (3) authorizes the expenditure of earnings generated by the ICTF to pay for "improvement care" at the Cemetery when no operator exists. The statute provides in pertinent part as follows:

(2) The net earnings of each improvement care trust fund shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while

the cemetery is not being operated by its owner, for the improvement care, as defined in § 46-1-102, of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose.

(3) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery.

Pursuant to Tenn. Code Ann. § 46-1-102(12), "improvement care" includes "the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including cutting of grass, raking and cleaning of cemetery plots at reasonable intervals, and pruning of shrubs and trees..."²

Further, the Cemetery's existing ICTF trust agreements, both of which appoint Commercial Bank & Trust Company of Paris, Tennessee as Trustee of the ICTF, authorize the Trustee to pay for improvement care services from the earnings of the ICTF when the Cemetery is not being operated by its owner.

Section V of the Cemetery's 1993 ICTF trust agreement (entitled "Lambert Memorial Gardens Incorporated d/b/a/ Galilee Memorial Gardens, a Tennessee corporation, June 10, 1993 Trust Agreement Galilee Memorial Gardens ICTF") (copy attached) provides as follows:

The Trustee shall pay the net income from this trust to the Cemetery Company at quarterly intervals or at such other intervals agreed upon from time to time by the parties hereto. However, while a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disperse net income from the trust to compensate any

² Under the Cemetery Act, "improvement care" is defined as being the "the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including cutting of grass, raking and cleaning of cemetery plots at reasonable intervals, and pruning of shrubs and trees; memorial care of commodities; procuring, maintaining and keeping in workable condition the machinery, tools and equipment needed for the shop and replacing the machinery, tools and equipment when necessary; keeping in repair and preserving the drains, water lines, roads, buildings, fences and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or a particular area; and paying of insurance premiums and maintaining necessary records of lot ownership, burials and other necessary information and making the records available to public authorities and interested persons;" Tenn. Code Ann. § 46-1-102(12).

responsible person for work performed or expenses incurred in the improvement and care of the cemetery.

Item 5 (Payment of Income) of the Cemetery's 2012 ICTF trust agreement (entitled "JM&M Services Inc. dba Galilee Memorial Gardens, a Tennessee corporation, Improvement Care Trust Agreement of June 6, 2012") (copy attached) provides:

The "Trustee" shall pay the net income from this trust to the "Cemetery Company" at quarterly intervals or at such other intervals agreed upon from time to time by the parties hereto. While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the "Trustee" may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement and care of the cemetery as authorized by Tennessee Code Annotated § 46-2-302(e)(2) (predecessor to Tenn. Code Ann. § 46-1-204).

As noted in the most recent annual report of Galilee's ICTF on file with the Department (copy attached), the ICTF had a trust account balance market value of \$ 573,590.37 as of December 31, 2019,³ which includes non-distributed earnings/income of \$101,218.16 (the "Retained Earnings").⁴ For the year 2019, the Trust earned investment income of \$13,307.16 and incurred Trustee expenses of \$5,553.63 and taxes/accounting expenses of \$4,208.06. These numbers are not typical of the Trust's net earnings in recent years which were in a range of about \$11,000 to \$15,000 after deducting the expenses [2016 - \$11,101.48, 2017 - \$14,243.67, 2018 - \$15,263.03]. Assuming the Trust's financial results in future years remain on par with these prior years, as much as \$15,000.00 in earnings would be available on an annual basis to fund improvement care work.

³ If the Court approves the Commissioner's proposed Order during the upcoming March 10 hearing, an additional sum of money (approximately \$3,000.00) will be transferred from the Cemetery's Pre-Need Services and Merchandise Trust to the ICTF. That additional amount is not included in the ICTF trust balance figure referenced above.

⁴ Because the Cemetery Consumer Fund established by Tenn. Code Ann. § 46-1-105(d) for no asset cemetery receiverships has been funding the costs of Galilee's Receivership, the earnings/income of the ICTF have not been distributed in recent years. As of December 31, 2019, the Retained Earnings of the ICTF totaled \$101,218.16.

Because the central focus of the statutes governing improvement care trusts and the Cemetery's ICTF's trust agreements is to provide perpetual care, the Trustee is obligated to preserve the corpus of the trust so that it exists for the maximum amount of time to serve its beneficiary cemetery. Further, neither the Cemetery Act nor the Cemetery's trust agreements dictate what improvement care services must be provided and the frequency of those services. Accordingly, any future post-receivership maintenance plan for the Cemetery will be limited by the amount of future earnings generated by the ICTF and its Retained Earnings.

Because the ICTF will generate only a limited amount of net earnings that will be available for the maintenance and upkeep of the Cemetery in future years, the Trustee of the ICTF should be permitted to exercise the authority granted to it under the trust agreements to utilize the Retained Earnings of the Trust to (1) fund the improvement care activities at the Cemetery to the extent the annual earnings of the ICTF are insufficient to pay for a modest maintenance plan for the Cemetery, and (2) pay for future repairs and other larger cemetery expenses when, in the Trustee's discretion, such expenditures are warranted.⁵

III. THE COURT SHOULD DESIGNATE AND APPROVE RED AND BLUE LLC AS THE RESPONSIBLE PERSON AUTHORIZED TO PROVIDE POST-RECEIVERSHIP IMPROVEMENT CARE SERVICES AT THE CEMETERY PURSUANT TO TENN. CODE ANN. § 46-1-204(e) TO BE FUNDED BY THE CEMETERY'S ICTF.

In anticipation of the eventual termination of the Receivership, the Special Deputy Receiver has contacted several individuals and companies seeking proposals for providing future maintenance and upkeep services at the Cemetery. The Special Deputy Receiver received only

⁵ Because the Retained Earnings have been invested by the Trustee and have generated additional annual earnings for the ICTF, any future expenditure of the Retained Earnings by the Trustee will likely reduce somewhat the future earnings of the ICTF. Accordingly, the Retained Earnings should be used sparingly by the Trustee and only when reasonably necessary to provide basic improvement care services and needed repairs for the Cemetery.

one proposal, which was submitted by Red and Blue LLC ("R&B"), a Tennessee limited liability company. A copy of R&B's written proposal is attached.⁶

R&B's managing member is Mr. Frank Colvett, who has been overseeing and coordinating the maintenance at the Cemetery during the Receivership. He is well known in the community, currently serves as a Councilman for the City of Memphis and has a lifetime of experience in landscape design and maintenance.

As reflected in R&B's written proposal, the company will not accept ownership of the Cemetery but is willing to provide grounds maintenance services on an ongoing basis at an annual cost of \$23,500.00.⁷ Specifically, R&B's proposal provides for, *inter alia*, lawn cutting and lawn maintenance every two weeks during the spring and summer months (April through September).⁸ Further, the company is willing to perform additional repair and maintenance services at an additional cost as may be authorized and approved by the ICTF Trustee in the future.⁹ In order to pay for the improvement care services outlined in R&B's proposal on an annual basis, the ICTF Trustee would be required to utilize all the annual net earnings of the ICTF and a portion of the Retained Earnings.

The Commissioner and Special Deputy Receiver believe R&B's written proposal is reasonable and is the best available option for the maintenance and upkeep of the Cemetery.

⁶ In accordance with the Court's December 5 Order, the Commissioner has also filed a Notice identifying Red and Blue LLC as the only organization that has expressed a willingness to take responsibility for the maintenance and upkeep of the Cemetery pursuant to the terms of its written proposal.

⁷ R&B has informed the Special Deputy Receiver that its \$23,500.00 price quote is the lowest amount it can accept for the scope of services outlined in its written proposal. The Special Deputy Receiver believes the quoted price is reasonable.

⁸ Currently, the Cemetery is being mowed every 14 to 21 days during the same months.

⁹ R&B's proposal does not include gate opening and closing services for the Cemetery. In order to eliminate the manpower costs associated with opening and closing the Cemetery's gates on a regular schedule and to maximize the amount of ICTF earnings available for maintaining the Cemetery, the Special Deputy Receiver recommends that the gates of the Cemetery be left open for 24 hour access to the grounds.

Accordingly, the Court should designate R&B as a "responsible person" pursuant to Tenn. Code Ann. § 46-1-204(e)(3) and the Cemetery's trust agreements for performing improvement care services at the Cemetery and should approve the terms of R&B's written proposal.

IV. UPON TERMINATION OF THE RECEIVERSHIP, COMMERCIAL BANK AND TRUST OF PARIS, TENNESSEE SHOULD REMAIN AS TRUSTEE OF THE CEMETERY'S ICTF WITH THE TRUSTEE'S ACTIVITIES GOVERNED BY THE EXISTING TRUST AGREEMENT AND THE COURT'S RECEIVERSHIP TERMINATION ORDER.

Commercial Bank and Trust of Paris, Tennessee has expressed a willingness to continue serving as the Trustee of the Cemetery's ICTF after the Receivership is terminated. The Commissioner and Special Deputy Receiver have been satisfied with the Bank's performance as Trustee and recommend that the Court approve its continued service as Trustee pursuant to the terms and directives of the existing trust agreements. To provide additional direction/guidance for the Trustee going forward, the Court should also include provisions in the final order terminating the Receivership that: (1) designate and approve R&B to be a "responsible person" pursuant to Tenn. Code Ann. § 46-1-204(e)(3) and the Cemetery's trust agreements for performing improvement care services at the Cemetery after termination of the Receivership pursuant to the terms of R&B's written proposal, (2) approve the terms of R&B's written proposal and authorizes the Trustee to negotiate amendments to the written proposal when/if, in the Trustee's discretion, such changes are warranted, (3) authorize the Trustee to utilize net earnings from the ICTF and the Retained Earnings to compensate R&B for its services outlined in the written proposal, (4) direct the Trustee to refrain from expending trust earnings or Retained Earnings for any other improvement care services purportedly performed at the Cemetery by any person or entity unless such services are approved in advance in writing by the Trustee pursuant to a written work proposal, (5) authorize the Trustee to expend Retained Earnings to pay for future repairs and other

larger cemetery expenses when, in the Trustee's discretion, such expenditures are warranted, and (6) authorize the Trustee to select another "responsible person" to replace R&B for providing improvement care services at the Cemetery in the event R&B withdraws from service or the Trustee, in its discretion, elects to replace R&B.

V. UPON TERMINATION OF THE RECEIVERSHIP, THE COMMISSIONER WILL NO LONGER BE ABLE TO HOLD TITLE TO THE CEMETERY AS RECEIVER AND SHOULD BE DIVESTED OF IT. THE INJUNCTION AGAINST THE DEFENDANTS TAKING ANY FUTURE ACTIONS WITH REGARD TO GALILEE SHOULD BE MADE PERMANENT.

As previously recognized by this Court, the cemetery land constituting Galilee Memorial Gardens was historically a single parcel of 8.95 acres that was purchased in 1993 by Lambert Memorials, Inc. (the Original Cemetery Parcel). (June 12, 2019 Order, p. 37, ¶ 78). The Original Cemetery Parcel was placed under the management and control of the Receiver under Tenn. Code Ann. § 46-1-312 by virtue of the Court's February 21, 2014 Order that appointed the Commissioner as Receiver for the Cemetery.

In 2015, the Cemetery was expanded by the Receiver's acquisition of 3.597 acres of U-shaped property that surrounds the Original Cemetery Parcel on three sides (the Expansion Parcel). (June 12, 2019 Order, p. 37, ¶ 78). The neighboring landowner to the Original Cemetery Parcel donated the Expansion Parcel to the Commissioner in her official capacity as Receiver for Galilee. (*Id.*) The Expansion Parcel was acquired following the Receiver's inspections of the property that revealed the improper and illegal burial of bodies on land not within the boundaries of the Original Cemetery Parcel. (*Id.* at ¶ 79).

Following the Receiver's acquisition of the Expansion Parcel, the Receiver sought a Court Order suitable for filing with the Shelby County Register of Deeds that declared the Original Cemetery Parcel and the Expansion Parcel to both be held by "Julie Mix McPeak, Commissioner

of Commerce & Insurance in her capacity as receiver for Galilee Memorial Gardens Cemetery” as a means to assist in future potential conveyances of the cemetery to allow the receivership to end and to effectuate injunctions against the Defendants’ operation of Galilee Memorial Gardens. (*Id.* at p. 37, ¶ 77, p. 71, ¶ L46). The Court granted this request, *id.* at p. 71, ¶ L46, and found that “[t]he Commissioner, as Receiver of all of the cemetery, has good cause to obtain transferable title in the entire cemetery, as preparation for the ultimate orders to end the receivership by providing for a future caretaker of the cemetery or local government to assume ownership.” (*Id.* at p. 73, ¶ L50).

Accordingly, the Court ordered that all rights, title, and interest to the Original Parcel be transferred to the Commissioner so that she could hold both parcels (the Original Parcel and the Expansion Parcel) in her capacity as Receiver in order to bring clarity to the ownership, title, and current scope and size of the grounds of the Cemetery. (*Id.* at p. 79, ¶ 8). This Court-ordered transfer unified the recorded title and ownership of the entire 12.547-acre parcel that now constitutes Galilee. (*Id.* at p. 80, ¶ 9). The Court created transferable title in the entire Cemetery, as requested by the Receiver, in order to facilitate any final transfer of the cemetery property and the conclusion of this receivership. (*Id.*).

The desired final transfer of Galilee to a new owner, though, has not been realized. As there is no one currently willing to take ownership of Galilee, the Court retains ultimate authority over the title to Galilee because the current Commissioner holds the real estate *in custodia legis* in his capacity as Receiver of the Cemetery, which means in custody or keeping of the law. *Butcher v. Howard*, 715 S.W.2d 601,604 (Tenn. Ct. App. 1986) (citing *Tradesman Publ’g Co. v. Car Wheel Co.*, 95 Tenn. 634, 32 S.W. 1097 (1895)).

The Court's power to fulfill the purposes of a cemetery receivership is set forth in Tennessee Code Annotated § 46-1-312. In sweeping fashion, subsection (a)(2) provides that the "court is authorized to make all necessary or appropriate orders to carry out the purposes of this part."

This Court has previously recognized the extensive power granted to it under Tennessee Code Annotated § 46-1-312: "The powers of the court under the receivership act to resolve the circumstances are broad, flexible and remedial in nature because this Court exercises its jurisdiction to address the potential liquidation of the cemetery when rehabilitation is futile. *See State ex rel. Johnson v. Mt. Olivet Cemetery Co.*, 834 S.W.2d 306, 310 (Tenn. App. 1992)." (June 12, 2019 Order, p. 59, ¶ L17). Notably, the Receiver in *Johnson*, much like the Commissioner as Receiver herein, entered his duties and found the cemetery therein suffering from serious mismanagement, unable to pay its debts as they came due, with a substantial deficiency in its improvement trust care fund, and a staggering tax obligation. The court held that the trial judge had discretion under the predecessor to Tenn. Code Ann. § 46-1-312 to decide how a cemetery in receivership could be preserved, and given the circumstances, "the court was not strictly bound by the technical provisions of the Cemetery Act." *Id.* at 310.

Upon termination of the Receivership, the Commissioner will no longer be the Receiver and will lose the right and ability to hold title to the cemetery grounds in that capacity. If he is divested of title, either expressly or by operation of law, that title would revert to the condition it was in prior to the Court's June 12, 2019 Order granting title to the Commissioner as Receiver. Unfortunately, there is no person or entity that will agree to take even bare title to the cemetery grounds going forward.

Upon the Receivership ending and the Commissioner being divested of his *custodia legis* title, the state of the title to the cemetery grounds is, at best, unclear. In order to make sure that the Defendants in this cause can not ever assert some future interest in the cemetery grounds, the Receiver asks that the injunction prohibiting them from engaging in the business of operating Galilee Memorial Gardens be made permanent. Additionally, the Receiver asks that the injunction be clarified to also expressly bar them from ever asserting in the future any title or ownership rights to the grounds that make up the cemetery.

VI. UPON TERMINATION OF THE RECEIVERSHIP, CERTAIN BURIAL RECORDS OF THE CEMETERY SHOULD BE MAINTAINED AND MADE AVAILABLE TO THE PUBLIC AT A LOCATION IN SHELBY COUNTY, TENNESSEE SELECTED BY THE COURT WITH COPIES OF SUCH RECORDS MAINTAINED AT THE OFFICES OF THE DEPARTMENT'S BURIAL SERVICES DIVISION IN NASHVILLE, TENNESSEE.

Currently, the Special Deputy Receiver has custody of certain cemetery records stored electronically in spreadsheets and other formats (the "Records"). The Records, which constitute Exhibits A, B, C, D and I that were attached to the Special Deputy Receiver's Ninth Interim Report filed on June 17, 2016 (and possibly other documents), include information that would be helpful to families and others seeking to ascertain the identities of people who were recorded as buried in the Cemetery.

To insure reasonable public access to the Records, the Commissioner and Special Deputy Receiver recommend that the Court authorize the transfer of the Records to a specific location in Shelby County, Tennessee selected by the Court where the Records will be made publicly available during normal business hours.¹⁰ Further, copies of the Records will be maintained as public

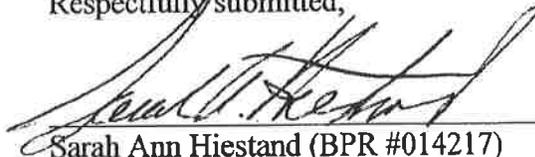
¹⁰ The Commissioner and Special Deputy Receiver are currently making inquiries to locate possible venues in Shelby County which could possibly serve as a repository of the Records at no or very limited cost. The Special Deputy Receiver will update the Court on the progress of such inquiries as soon as possible.

records by the Burial Services Section of the Department of Commerce and Insurance at its offices in Nashville, Tennessee.

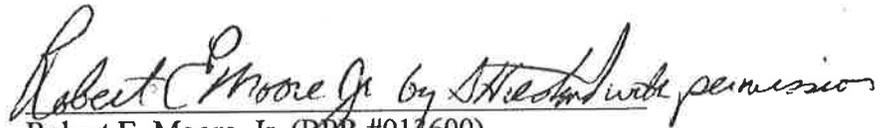
CONCLUSION

For the reasons stated above, the Court should grant the Commissioner's Motion.

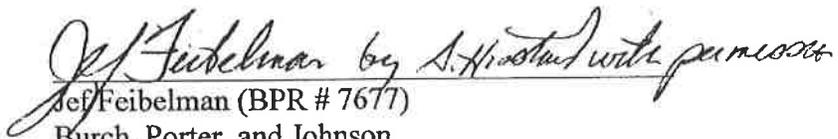
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion to Terminate Receivership has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 28th day of February, 2020:

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SARAH ANN HIESTAND

**ATTACHMENTS TO MEMORANDUM OF LAW IN SUPPORT OF
COMMISSIONER'S MOTION TO TERMINATE RECEIVERSHIP:**

- 1. 1993 and 2012 Trust Agreements for Galilee Memorial Gardens Improvement Care Trust Fund with Commercial Bank & Trust Company (excerpts of Exhibits 5 and 6 to 4-10-2019 hearing).**

- 2. Commercial Bank & Trust Co.'s Annual Report of Trustee on Cemetery Company's Improvement Care Trust Fund for Fiscal Year starting 1-1-2019 and ending 12-31-2019 (electronic version)**

- 3. Red and Blue LLC's Proposal to the Receiver, dated February 21, 2020**

FILED

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CLERK OF SUPERIOR COURT
DAVIDSON COUNTY, N.C.

EM

D.C. & M.

ATTACHMENT 1 – ICTF TRUST AGREEMENTS

RECEIVED

TRUST AGREEMENT
GALILEE MEMORIAL GARDENS
IMPROVEMENT CARE TRUST FUND

FUNERAL BOARD
BURIAL SERVICES

This trust agreement is made and entered into this 10th day of June, 1993 by and between Lambert Memorial Gardens Incorporated d/b/a Galilea Memorial Gardens, a Tennessee Corporation, hereinafter referred to as business, and Commercial Bank and Trust Company, Paris, Tennessee. The corporation having the right and power to act in Fuduciary compacity as Trustee and hereinafter referred to as Trustee. The business has its principle office in Shelby County, Tennessee.

I

TRUST PRINCIPLE AND ADDITIONS

The Cemetery Company hereby transfers and conveys to the Trustee, in trust, the property described on Schedule 1 hereto attached, upon the terms and conditions hereinafter set forth. The Trustee hereby acknowledges receipt thereof and agrees to perform the duties herein imposed upon it. Upon the consent of the Trustee the Cemetery Company from time to time may transfer and convey additional property or make deposits to this trust, to be held in accordance with the provisions hereof, and the receipt of any such additional property or deposits by the Trustee shall be indicative of the Trustee's consent to hold such property or deposits.

II

Galilee Memorial Gardens agrees to deposit to the trust fund additional sums in the minimal amount of:

- (1) For land but not including lawn crypts, Fifty cents (50¢) per square foot of the land sold or Thirty percent (30%) of the total sales price; whichever is the greater.

- (3) For a Mausoleum, crypt, or niche not less than Ten percent (10%) of the total sales price.
- (4) For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker or monument, the full amount received.
- (5) For a commodity, the full amount received for memorial care. All such payments shall be made to the trustee not later than Thirty (30) days after the close of the month in which was received the final payment on the purchase price of each lot, grave space, crypt, or niche, or the final payment for the general or special care of the lot, grave space, crypt, or niche, or of a family mausoleum, memorial, marker or monument; or the final payment for the memorial care of a commodity; such amounts deposited shall be held by the trustee of the improvement care funds of such cemetery in trust and perpetuity for the specific purposes stated in the written agreement.

III

The purpose of this trust is to provide a perpetual care fund in accordance with T.C.A 46-2-302, for the benefit of owners and holders of burial spaces in Galilee Memorial Gardens. However, such care should be furnished only insofar as the net income derived from the amount deposited in the trust will permit. The net income earned from this trust will be paid to, and be used and expended by the owners or officers and directors of the Galilee Memorial Gardens solely for the care of the cemetery for which said monies were collected. The trustee shall not be required to look to the application of such income.

V

The Trustee shall pay the net income from this trust to the Cemetery Company at quarterly intervals or at such other intervals agreed upon from time to time by the parties hereto. However, while a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disperse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement and care of the cemetery.

VI

In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which men of 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 and capital appreciation as well as the probable safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions or limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically included, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which men and women of prudence, discretion and intelligence acquire for their own account.

VII

The trustee shall render each year to the Cemetery Company a written account of the administration of the trust, and its books shall at all reasonable times be open for inspection by the Cemetery

VIII

The Trustee shall receive as compensation for its services the fees provided for by its uniform schedule of fees adopted by its Board of Directors and in effect at the time the services are rendered; and in the absence of such schedule, it shall receive reasonable compensation for its services. The Trustee shall also have the right to pay necessary and proper expenses, charges and compensation incurred in the administration of this Trust Agreement out of the Improvement Care Trust Fund where such expenses and charges are properly chargeable against such fund and where such expenses, charges and compensations are not properly chargeable against such fund, the Trustee shall be promptly paid therefor by Galilee Memorial Gardens. The Trustee shall have the privilege of paying out of the income from the Improvement Care Trust Fund any taxes which may be assessed against the income received on investments or securities held in said Improvement Care Trust Fund provided that this shall not permit the Trustee to withhold from the income to be distributed or to pay any tax which may be due by Galilee Memorial Gardens on such distribution as income or otherwise unless the Trustee shall be required by law to do so.

IX

The Improvement Care Trust Fund shall not be a part of the assets of any Cemetery Company operating under this part, and the Improvement Care Trust Fund shall not be subject to the debts of the Cemetery Company. Further, Galilee Memorial Gardens covenants and agrees that the trust income paid to it shall be used and applied exclusively to the permanent improvement, upkeep, beautification and care of its cemetery.

the Trustee be under any duty to pay, or see to the payment of such tax, or take any notice of the assessment thereof, or to give any notice of the assessment thereof to Galilee Memorial Gardens, or to the purchasers or owners of interment rights in sections or lots.

XI

If Commercial Bank and Trust Company shall at any time be merged in or consolidated with any other bank or banking institution, or after having merged or consolidated, the merged or consolidated company shall again successively merge, or consolidate with any one or more banks or banking institutions or merged or consolidated trust companion or banking institution, such successor or succeeding company or organization, mediately or immediately, and by whatsoever name known, if domiciled in the State of Tennessee, shall be Trustee hereunder.

XII

The Trustee shall have no duty to ascertain that the payments made into the fund by Galilee Memorial Gardens constitute the full amount required by law to be set apart and maintained in such Improvement Care Trust but in that regard it shall be entitled to rely conclusively upon each annual audit report of Galilee Memorial Gardens as showing the total principal amount required by law to be set apart and maintained in such fund.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on this the 10th day of June, 1993.

Galilee Memorial Gardens, Inc.



President

TRUST AGREEMENT
GALILEE MEMORIAL GARDENS
IMPROVEMENT CARE TRUST FUND

SCHEDULE I

1. Balances of Trust account held by Nations Bank.

2012-06-06 15:22

Commercial Bank 731 642 4234 -> 19013834694 P 3/10
IMPROVEMENT CARE TRUST AGREEMENT

JMAX Services, Inc. dba

This trust agreement is made and entered into by and between Galilee Memorial Gardens
a Tennessee Corporation, having its principal located office in Shelby County, Tennessee, and additional
offices in N/A County, Tennessee, hereinafter referred to as the "Cemetery Company" and
Commercial Bank & Trust Co. in Paris Tennessee, a corporation having the
right and power to act in a fiduciary capacity as Trustee, and hereinafter referred to as the "Trustee"

RECEIVED
JUN 11 2012
FUNERAL BOARD

ITEM 1

TRUST PRINCIPAL AND ADDITIONAL

The "Cemetery Company" hereby transfers and conveys to the "Trustee", in trust, the property described on Schedule 1 of
hereto attached upon terms and conditions hereinafter set forth. The "Trustee" hereby acknowledges receipt thereof and
agrees to perform the duties herein imposed upon it. Upon the consent of the "Trustee", the Cemetery Company from
time to time may transfer and convey additional property or make deposits to the trust, to be held in accordance with the
provisions hereof, and the receipt of any such additional property or deposits by the "Trustee" shall be indicative of the
Trustee's consent to hold such property or deposits.

ITEM 2

PURPOSE OF TRUST

The purpose of this trust is to establish a perpetual and irrevocable trust fund in accordance with Tennessee Code
Annotated §46-2-302 for the benefit of owners and holders of burial spaces in Galilee Memorial Gardens.
The net income from this trust shall be used for the improvement care of the cemetery grounds as defined in Tennessee
Code Annotated §46-1-102(11). The "Cemetery Company", however, is bound by law and is herein bound to furnish such
care only insofar as the net income derived from this trust fund will permit, and the "Trustee" shall not be required to look
to the application of such income.

ITEM 3

TERM OF TRUST

This trust shall be irrevocable, and the fund established hereby shall exist in perpetuity; provided, however, the "Cemetery
Company" may change the "Trustee", provided any successor trustee is a trust company approved by the Commissioner
of the Department of Commerce and Insurance of the State of Tennessee or a state or national bank or a savings and
loan association having insurance of accounts as provided by the law.

ITEM 4

DEPOSITS BY CEMETERY COMPANY

4-a. **AMOUNT:** The Cemetery Company agrees to deposit in this trust fund not less than the following minimum
amounts:

- (1) For land, but not including lawn crypts, fifty cents (50¢) per square foot of the land sold or twenty percent (20%) of the total sales price, whichever is the greater;
- (2) For a lawn crypt, twenty percent (20%) of the total sales price of the land excluding the lawn crypt, or fifty dollars (\$50), whichever is greater;
- (3) For a mausoleum, crypt or niche, not less than ten percent (10%) of the total sales price;
- (4) For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial marker or monument, the full amount received;
- (5) For a commodity, the full amount received for memorial care.

The "Cemetery Company" shall be permitted to make deposits in excess of the foregoing minimum amounts; deliberate
excess deposits shall not be credited toward any future liability. The "Trustee" shall not be required to see that such
minimum amounts are paid in.

4-b. TIME OF DEPOSITS: Deposits shall be made by the "Cemetery Company" not later than thirty (30) days after the close of the month in which the final payment was received on the purchase price of such lot, grave space, crypt or niche, family mausoleum or memorial care. The "Trustee" shall not be required to see to the timeliness of any such deposits.

ITEM 5

PAYMENT OF INCOME

The "Trustee" shall pay the net income from this trust to the "Cemetery Company" at quarterly intervals or at such other intervals as may be agreed upon from time to time by the parties hereto. While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the "Trustee", in the Trust Officer's discretion, may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement of the cemetery as authorized by Tennessee Code Annotated §40-2-302(a)(2).

ITEM 6

INVESTMENT

In investing these funds, the "Trustee" shall exercise the judgment and care under the circumstances then prevailing which persons of 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 probable income and capital appreciation as well as the probable safety of their capital. Within the limits of the foregoing standard, the "Trustee" is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically included, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account.

ITEM 7

ACCOUNTING

The "Trustee" shall render each year to the "Cemetery Company" a written account of the administration of the trust, and its books shall at all reasonable times be open for inspection by the "Cemetery Company" to the Cemetery Company's properly authorized agent. The "Trustee" shall also furnish to the Commissioner of Commerce and Insurance of the State of Tennessee such reports as required by the Commissioner.

ITEM 8

COMPENSATION

The "Trustee" shall receive as compensation for its services the fees provided for by its uniform schedule of fees adopted by its Board of Directors and in effect at the time the services are rendered; and in the absence of such schedule, it shall receive reasonable compensation for its services.

ITEM 9

RESIGNATION

The "Trustee" reserves the right to resign as "Trustee" upon written notice of at least thirty days in advance of effective date of resignation and delivered to the "Cemetery Company" by means of certification.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on this 06th day of June, 20 12.

ATTEST: CMG SERVICES, INC dba
CALVER MEMORIAL GARDENS BY: James B. Sambost
COMMERCIAL BANK & PRESIDENT
ATTEST: TRUST COMPANY BY: Amber Johnson 1st. Trust Officer
TRUST OFFICER

FILED

2020 FEB 28 PM 12:57

CLERK OF SUPERIOR COURT
DAVIDSON COUNTY CHANCERY CLERK

Evo D.C. & M.



**DEPARTMENT OF COMMERCE AND INSURANCE
BURIAL SERVICES SECTION**

DAVY CROCKETT TOWER
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-1145
PHONE (615) 741-5062 FAX (615) 632-1903
Website: <http://funeral.tn.gov>

**ANNUAL REPORT OF TRUSTEE ON CEMETERY COMPANY'S
IMPROVEMENT CARE TRUST FUND**

Note: This report must be completed and received no later than forty-five (45) days after the close of each cemetery company's FISCAL YEAR. Mail this report to Burial Services at the address above.

Fiscal year beginning JANUARY 1, 2019 and ending DECEMBER 31, 2019

I. GENERAL INFORMATION

1. Name and address of cemetery: GALILEE MEMORIAL GARDENS, 8283 ELLIS ROAD
MEMPHIS, TN 38114
2. Name and address of the company that owns the cemetery: LAMBERT MEMORIAL GARDEN INC.
PO BOX 140363, MEMPHIS, TN 38114
3. Name and address of the trustee of the Improvement Care Fund: COMMERCIAL BANK & TRUST CO
PO BOX 1090, PARIS, TN 38242
4. Trust identification (style and number): GALILEE MEMORIAL GARDENS IMP #46001
5. Contact person regarding this report: KAYLYN NATION Telephone No.: 731-641-9475

II. STATEMENT OF CHANGES IN TRUST FUND PRINCIPAL (Based on Cost)

1. Beginning balance	\$ 430,496.06
2. Additions:	
a. Payments received from cemetery company (Section VI)	\$ _____
b. Other (explain using separate sheet)	\$ _____
3. Deductions:	
a. Distributions under the "5% rule" (explain using separate sheet; e.g. trustee fees, taxes, amount to cemetery)	\$ _____
b. Withdrawals from principal exceeding \$10,000 (explain using separate sheet)	\$ _____
c. Other (explain using separate sheet)	\$ _____
4. Net capital gain (loss)	\$ 9864.76
5. Ending balance	\$ 440360.82

III. ASSETS OF TRUST FUND PRINCIPAL AT END OF REPORTING PERIOD

Note: Do not include income in this section; income should be reported in Section IV.

	COST	MARKET
1. Cash & Equivalents	\$ (54438.15)	\$ (54438.15)
2. Equities	\$ 134922.00	\$ 166235.32
3. Fixed Income	\$ 359876.97	\$ 360575.04
4. Real Estate	\$ _____	\$ _____
5. Loans:		
a. Mortgages	\$ _____	\$ _____
b. Other (explain) _____	\$ _____	\$ _____
6. Other (explain) _____	\$ _____	\$ _____
7. Liabilities	\$ _____	\$ _____
8. Total Principal	\$ 440360.82	\$ 412372.21

IV. STATEMENT OF INCOME

1. Undistributed balance from last period		\$ 97672.69
2. Add income received from investments*	\$ 13307.16	
3. Less:		
a. Distributions to cemetery	(\$ 0)	
b. Trustee's expenses	(\$ 5553.63)	
c. Other deductions (please explain using separate sheet)	(\$ 4208.06)	
4. Net additions or deductions (Sum of lines 2 - 3a - 3b - 3c)		\$ 3545.47
5. Undistributed balance at the end of this period		\$ 101218.16

*Interest, cash dividends, net rental income, unexercised options premiums distributed, and capital gains if applicable.

V. ANSWER THESE QUESTIONS

- Have there been any sales, exchanges, or leases of any property between the trust and the cemetery company, any owner of an interest in the cemetery company, or relative of any such person? YES NO
- Are there any loans by the trust or fixed income obligations due to the trust which are classified as uncollectable or are in default as of the close of the fiscal year of the trust? YES NO
- Has the trust at any time held twenty percent (20%) of more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests? YES NO
- Has the trust at any time engaged in any transactions or series of related transactions involving twenty percent (20%) or more of the current value of the trust? YES NO
- Were there any purchases of nonpublicly traded securities by the trust, the value of which was set without an appraisal by an independent third party? YES NO

VI. MEMORANDA FOR RECONCILIATION

List all deposits to the improvement care trust fund received from the cemetery during this period. Use a separate sheet if necessary.

DATE / AMOUNT	DATE / AMOUNT	DATE / AMOUNT	DATE / AMOUNT

V. TRUSTEE'S CERTIFICATION

STATE OF TENNESSEE
 COUNTY OF _____

I, _____, duly elected and serving as _____
 _____ of (Name of bank or trust company) _____
 _____, trustee of the improvement care trust fund above named and described, being first duly sworn, do hereby affirm, under penalty of perjury, that the information contained in and submitted with this report is complete, true and accurate.

X _____
 (Trustee's Signature)

(NOTARY SEAL)

Sworn to and subscribed before me this _____ day of _____, 20_____.

My Commission Expires: _____ Notary's Signature _____

IV. Statement of Income

3. C. \$68.28 Foreign Taxes

\$165.00 Tax Preparation Fee

\$1,493.00 Taxes Paid – State Fiduciary

\$2,481.78 Taxes Paid-Federal Fiduciary

FILED

2020 FEB 28 PM 12:57

CLERK OF SUPERIOR COURT
DAVIDSON CO. CHANCERY CT.

E D.C. & M.

ATTACHMENT 3 – RED AND BLUE LLC PROPOSAL

Red & Blue, LLC

6722 Neshoba
Memphis, TN 38120
(901) 331-1975

February 21, 2020

Mr. Rob Moore
Receivership Management
510 Hospital Drive, Suite 490
Madison, TN 37115

Dear Mr. Moore:

As I understand it, the Commissioner/ Receiver and the Trustee of the Improvement Care Trust may be seeking an entity to procure continued landscape maintenance and upkeep of Galilee Memorial Gardens at 8283 Ellis road, Bartlett TN, 38133, Parcel ID: B0158 00132C

In that vein, Red and Blue LLC propose the following:

- Lawn Maintenance to be performed every two weeks from April through September
- Supervision of the above activities
- Billing, bookkeeping, etc.

Cost is \$23,500.00

Cost increases due to rising gasoline costs, labor costs, etc. will be determined on a yearly basis in April.

Items not included above but to be performed, supervised and paid for by the Improvement Care Trust as an extra on an as-needed basis:

- Periodic tree trimming service
- Periodic trimming of the shrubs
- Mulching of the planting beds, if necessary
- Repair of the fence, if ever required

This proposal does NOT include:

- Grave location services
- Marker setting service
- Cemetery merchandise
- Any and all work not specifically stated in the above proposed or as needed items.

The gates will remain open and never be closed.

To be clear, Red and Blue LLC is not liable for anything other than the landscape maintenance and is specifically limited to the services offered in the above proposed or as needed items. Further, when the Improvement Care Trust's funds reach a zero balance, Red and Blue LLC will have no further obligations on or regarding this property.

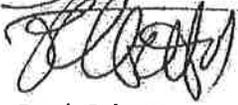
Red and Blue LLC will seek, in coordination and to the satisfaction of the Improvement Care Trustee, acceptable General Liability Insurance coverage.

The start date for this contract shall be on or about April 1, 2020.

February 21, 2020
Mr. Rob Moore
Page 2

Thank you for this opportunity!

Sincerely,



Frank Colvett
Red and Blue LLC

(I/We) agree to the above terms and conditions:

date: _____