

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
 20<sup>TH</sup> JUDICIAL DISTRICT  
 AT NASHVILLE  
 PART II

**FILED**

2015 JUL 15 PM 1:13

CLERK & MASTER  
 DAVIDSON COUNTY CHANCERY COURT

STATE OF TENNESSEE, )  
*ex rel.* JULIE MIX MCPEAK, solely in her )  
 official capacity as Commissioner of )  
 Commerce & Insurance, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 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. )

\_\_\_\_\_ D.C. & M.

No. 14-102-II

FIFTH INTERIM REPORT OF THE SPECIAL DEPUTY RECEIVER  
 FOR GALILEE MEMORIAL GARDENS

Pursuant to the Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction (the “Order”) entered by this Court on February 21, 2014, Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance, as Receiver for Galilee Memorial Gardens (the “Cemetery”), through her appointed Special Deputy Receiver, David Kustoff, hereby files this Fifth Interim Report regarding the status of the receivership, including describing progress made since the Fourth Interim Report,

and listing the steps to be done in light of the time or expense required, and the sequence and priority the Receiver assigns to achieving those steps as required by the Court at the April 28, 2015 status conference.

### **Progress Made Since the Fourth Interim Report**

1. On Memorial Day, May 25, 2015, the Receiver opened the Cemetery for a limited opening from 2:00 to 5:00 p.m. in cooperation with the City of Bartlett and with leaders and volunteers from Fullview Missionary Baptist Church and Faith Baptist Church, with flowers donated by Flowers By Regis. The Receiver would recognize and thank the efforts and donations of these organizations for their assistance in making this event a success. During this event families were allowed to take a shuttle from Faith Baptist Church to the Cemetery where they were assisted by community volunteers. A memorial service was also held at this event. The event was highly attended and the Receiver believes that it was a success. A number of families expressed appreciation for the opening. Prior to this event, the Special Deputy Receiver procured services for road repair, as well as the repair of a culvert that had been crushed under the road in order to assure safe passage through the Cemetery for the visitors at this event. As a result of these services, the Special Deputy Receiver requested payment from Commercial Bank and Trust, the trustee for Galilee's Improvement Care Trust Account. As a result of this request, Commercial Bank and Trust issued a check on or about July 3, 2015 in

the amount of \$21,450.00 for reimbursement for improvement care provided at the Cemetery. Regular mowing of the Cemetery continues through the growing season. Further, arrangements have been made to clear the large grassy area near the office at the back of the Cemetery as well as mounds of pine needles and thickets that needed to be trimmed that were not cleaned through the regular mowings.

2. On May 27, 2015, the Special Deputy Receiver filed with this Court an Agreed Order Permitting Receiver to Accept Deed of Adjoining Property for the Cemetery and for Cemetery Purposes. This property, which totals approximately 3.6 acres of property adjoining the existing Cemetery property, was conveyed to the Cemetery In Receivership by the N.I.M. Charitable Remainder Unitrust Agreement of Robert F. and Martha H. Fogelman under Trust Agreement dated September 14, 1996. The Court entered this Order on May 27, 2015, and the deed was recorded with the Shelby County Register of Deeds on June 1, 2015.
3. On or about June 1, 2015, Special Deputy Receiver Robert Moore, with Receivership Management, Inc., began to send notices by U.S. Mail to persons that have previously contacted the Department and Special Deputy Receiver Kustoff regarding owning the right to pre-need burial at the Cemetery. A copy of that letter, and the attached affidavit, are attached hereto as Exhibit A. Mr. Moore also posted a sign at the Cemetery notifying those passing the Cemetery that they should contact

Receivership Management, Inc., at 615-370-0051 if they believed they own a lot in the Cemetery. Both the letter and the sign provide a deadline for responses of August 15, 2015. Further, the Receiver sent out a press release to area media notifying them of the claims process. A number of newspapers and local television outlets carried the story. To date Special Deputy Receiver Moore has received ninety-one (91) responses to these requests as of July 7, 2015.

4. On June 8, 2015, Special Deputy Receiver Moore began the process of auditing the Garden of Gethsemane and producing maps of the other Gardens. Special Deputy Receiver Moore is probing each grave space in the Garden of Gethsemane and will be moving forward with a complete probing audit of the remaining Gardens.
5. At this time, the Receiver is using the following procedure if the use of an existing pre-need space becomes necessary:
  - a. The party responsible for the deceased person must provide sufficient proof of ownership of a burial space at the Cemetery.
  - b. The funeral home should contact RMI to seek permission to inter.
  - c. Upon confirmation of ownership, RMI will provide a map to the funeral home to show where the lot is located.
  - d. Long's Cemetery Service in Memphis, Tennessee, has been selected by RMI to probe all grave spaces during the receivership in order to ensure that they are vacant. The Receiver would also propose that

Long's also be the sole source for openings and closings during the receivership to ensure consistency and the highest level of communication with RMI regarding the status of such burials.

6. At this time, no burials have been held at Galilee since the beginning of the Receivership. While RMI was contacted regarding the use of a space on or about June 29, 2015, the family subsequently made alternate arrangements for the burial of their loved one.
7. In RMI's audit of the Garden of Gethesemane, a total of 1,153 grave spaces were identified in both platted and non-platted areas of the Cemetery. Of those, there are 86 spaces that are not useable due to dimensions or trees, 305 are marked grave spaces (of those, 36 grave spaces have markers with dates of death but are vacant), 392 are occupied but not marked and 370 are vacant (of these, 40 are not useable due to location or dimensions). Of the 370 'vacant' spaces, many have had burials recorded in the records of the Cemetery. Further, this garden was originally platted for only 845 spaces. The platting has no consistency on grave space dimensions nor with the platting system. Spaces were found to range from 3.5' x 9' to 3' x 6.5' and platted border areas were used up to the edge of the road. It may be necessary for RMI to move forward with placing additional dirt on top of some grave spaces to maintain the Cemetery grounds as a result of the depths of some spaces. A copy of the original map of Gethesemane is attached hereto as Exhibit B, and the new

map generated by RMI is attached as Exhibit C. In Exhibit C, the borders in dark are the original lots and those with lighter borders are those that were created through burials outside of the platting system.

8. Total costs for this Receivership as of July 7, 2015 total at or around \$295,819.77 for bills through May 2015 for the services of the Special Deputy Receivers, as well as honoraria to recognize the Fullview Missionary Baptist Church and Faith Baptist Church for their assistance with the limited opening. Of this amount, \$21,450.00 was reimbursed for improvement care, as described above, from the proceeds of the Improvement Care Trust. The remaining amounts have been paid from the Cemetery Consumer Protection Account. As of May 31, 2015 the Cemetery Consumer Protection Account has a balance of \$200,528.34.

### **Priority of Remaining Tasks**

In response to the Court's Order of May 6, 2015 the Receiver provides the following list of remaining tasks and their priority. Although it is uncertain at this time, the Receiver is still in the process of determining if the Cemetery could be used for further sales and burials in the future. Performing the following tasks will directly assist the Receiver in making a determination and recommendation of the status of the Cemetery following the conclusion of the Receivership.

1. Identifying persons with a remaining property interest in the Cemetery and determining what, if any, allowance can be made for additional burials at the Cemetery. Currently, Receivership Management, Inc.

("RMI"), has requested that those claiming a pre-need ownership interest should contact RMI by August 15, 2015. After that date, RMI will compile a list of all of those claiming pre-need ownership interests and attempt to resolve any ownership conflicts or conflicts with known occupied spaces. It is expected that this resolution process will take approximately one hundred and twenty (120) days, although the process could take longer depending on the number of claims filed. At that time, all persons that submitted a valid claim through the claims process are expected to receive a certificate of ownership through the receivership. It is expected that the land received from the Fogelman Trust may be able to be used to create additional grave spaces in order to honor these existing pre-need contracts. If this is to be done, the Receiver must also investigate what, if any, zoning allowances must be made through the City of Bartlett in order to effectuate the use of the transferred property by the Cemetery in the future.

2. The Receiver does not believe that the Cemetery can or should be returned to its prior ownership given the findings of the Cemetery and the Cemetery's records. As such, providing for the future upkeep, maintenance and opening of the Cemetery will be an important task in resolving this matter. Special Deputy Receiver RMI and representatives of the Receiver have reached out to community members in Shelby County to discuss the possibility of reaching an agreement for the continuing care

of the Cemetery, as well as allowing the Cemetery to be open to the public in the future. The Receiver hopes to continue discussions with community leaders within the next six months to help them explore possible options for the ongoing care and maintenance of Galilee. The Receiver's ultimate goal is to explore any and all possibilities regarding the future upkeep of the Cemetery.

3. Developing a process for future pre-need burials. At this time, the Receiver expects that the procedure will be similar to the one that RMI is using to consider current requests for the honoring of a pre-need contract. As such, this process is already developed and would be proposed to be finalized in the final order of this Court in this matter. The proposed procedure would be as follows:
  - a. The party responsible for the deceased person must provide sufficient proof of ownership of a burial space at the Cemetery. It is expected that, following the claims process, this will generally be a certificate of ownership issued through the receivership, but it is expected that some number of people will not participate in the claims process even though they have a valid burial right. These persons will be responsible for providing sufficient proof of such right to the funeral home.



- b. The funeral home would then be responsible for confirming that the space is vacant and performing the opening, closing, any vault installation and marker installation.
4. Mapping the cemetery. This process is underway and the RMI will produce a map of Gethsemane, which has been audited by probing every space, as well as a map of the other gardens generated through visual inspection. Following completion of this mapping process, RMI will proceed with a complete audit of the Cemetery, which is expected to take several additional weeks and will likely result in substantial costs, which are estimated to be approximately \$18,780.00 in additional expenditures.
5. Providing public access to the records of the cemetery. These records, including the maps and interment records generated by this receivership will be the lasting record of the cemetery going forward. This process would be expected to be completed at the time of the final filing in this matter.
6. Making a determination as to the viability of the Cemetery to handle additional burials in the future. This task can only be completed upon a complete review of the reports of the Special Deputy Receivers and the records generated as a result of the above-described processes. As a result, it is expected that a recommendation will be made once sufficient information is available.

## Conclusion

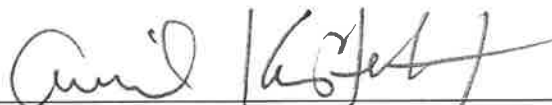
There is still a great deal of work to be completed at the Cemetery, including completing the audit of the Cemetery and completing the preneed claims process. As such, the Special Deputy Receiver would respectfully request that the next report be set for September 30, 2015. At that time, the Special Deputy Receiver hopes that additional information will be known regarding both the status of the cemetery grounds as well as the claims for preneed contracts.

Respectfully submitted,



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*Special Counsel to Julie McPeak, the  
Commissioner of Commerce and  
Insurance in her capacity as receiver for  
Memorial Gardens Cemetery*



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DAVID F. KUSTOFF (15516)  
Special Deputy Receiver, Galilee  
Memorial  
Attorney at Law  
22 N. Front St., Suite 660  
Memphis, TN 38103  
(901) 527-0255

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Fifth Interim Report of the Special Deputy Receiver has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 15<sup>th</sup> day of July, 2015:

Attorney for Defendants

William J. Haynes, III  
Bone McAllester Norton PLLC  
511 Union Street, Suite 1600  
Nashville, TN 37219  
Via email to [whaynes@bonelaw.com](mailto:whaynes@bonelaw.com)

Herbert H. Slatery, III (09077) *by hand*  
Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202-0207

Michael A. Meyer (9230) *by hand*  
Deputy Attorney General  
Special Litigation Division  
P.O. Box 20207  
Nashville, TN 37202-0207

  
\_\_\_\_\_  
SARAH A. HIESTAND

# Receivership Management, Inc.

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783 Old Hickory Blvd., Suite 255 Brentwood, TN 37027 (615) 370-0051 Fax (615) 373-4336

DATE

NAME

ADDRESS

CITY, STATE ZIP

RE: **Galilee Memorial Gardens Cemetery—Bartlett, Tennessee  
Request for Information**

Recently, the State of Tennessee Department of Commerce and Insurance filed a regulatory action against The Galilee Memorial Gardens Cemetery for non-compliance with the Tennessee Cemetery Act of 2006. The Court appointed the Commissioner of Commerce and Insurance as Receiver over the Galilee Memorial Gardens Cemetery. Receivership Management Inc. was appointed Special Deputy Receiver to assist the Commissioner.

The Commissioner of Commerce and Insurance is making every effort to make sure your burial rights are protected. We are seeking your help to resolve ownership of vacant grave spaces. Grave spaces that are occupied or have a marker (regardless of whether the space is occupied) are not at issue. **ONLY OWNERSHIP OF UNMARKED VACANT GRAVE SPACES IS AT ISSUE.** You are receiving this letter because the records of the cemetery indicate you may be the owner of a vacant unmarked grave space or you responded to the Cemetery notice.

**INSTRUCTIONS:**

**If you are the owner of an Unmarked Vacant grave space (there is no marker), in order to preserve your burial rights, you need to do the following:**

1. Complete the enclosed affidavit and have your signature notarized.
2. Mail by Certified Mail **no later than August 15, 2015**
  - A. The completed original affidavit
  - B. A **copy** of the deed or bill of sale issued, or other supporting documents which you believe establishes your ownership to:

Robert E. Moore, Jr.  
Receivership Management Inc.  
783 Old Hickory Blvd., Suite 255  
Brentwood, TN 37027

Sincerely,

Receivership Management Inc.



AFFIDAVIT OF GRAVE SPACE OWNERSHIP

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do hereby swear or affirm the following:  
(Name)

1. I reside at \_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(City, State and Zip Code)

2. I am of the age of majority, fully competent, and I am knowingly, freely, and truthfully giving this affidavit.

3. I: (initial only **ONE** of the Following)

\_\_\_\_\_ Am the rightful owner of Vacant Grave Spaces in the Galilee Memorial Gardens Cemetery of Bartlett, Shelby County, Tennessee as reflected on and described in the attached copies of Deed(s) or Bill(s) of Sale.

\_\_\_\_\_ Am the rightful owner of Vacant Grave Spaces in the Galilee Memorial Gardens Cemetery of Bartlett, Shelby County, Tennessee but I do not have a copy of the Deed or Bill of Sale for the Vacant Grave Space(s) I own; however, a family member is buried near my Vacant Grave Space(s). My family member's name is \_\_\_\_\_. He/She is my : \_\_\_\_\_ ( i.e. Mother/Father/Aunt/Son). I own \_\_\_ # Grave Spaces near this family member. These Grave Spaces were purchased from (Name) \_\_\_\_\_ in (Year) \_\_\_\_\_.

\_\_\_\_\_ Am the rightful owner of Vacant Grave Space(s) in the Galilee Memorial Gardens Cemetery of Bartlett, Shelby County, Tennessee but I do not have a copy of the Deed or Bill of Sale for the Vacant Grave Space(s) and I have no family member buried near my Vacant Grave Spaces. I have attached other information which I believe establishes my ownership of Vacant Grave Space(s) in the Galilee Memorial Gardens Cemetery. I own \_\_\_ # Grave Space(s). These lots were purchased from (Name) \_\_\_\_\_ in (Year) \_\_\_\_\_. The Grave Spaces are located: (describe the location of your grave space(s)).  
\_\_\_\_\_  
\_\_\_\_\_

Further Affiant saith not.

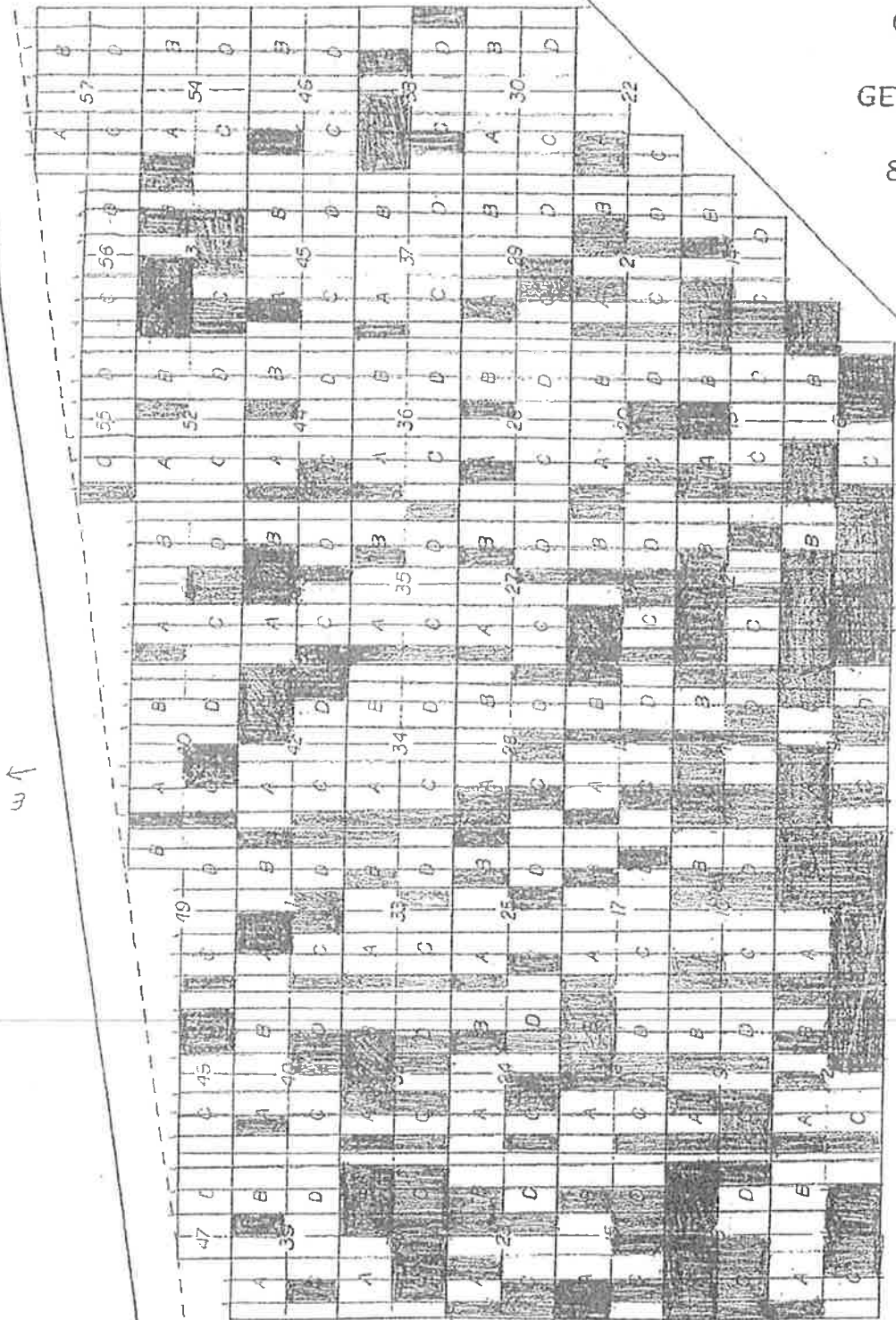
\_\_\_\_\_  
Signature of Affiant

SUBSCRIBED AND SWORN BEFORE ME, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

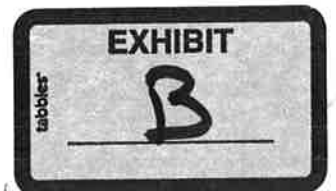
My Commission Expires: \_\_\_\_\_

GARDEN OF  
GETHSEMANE  
845 SPACES

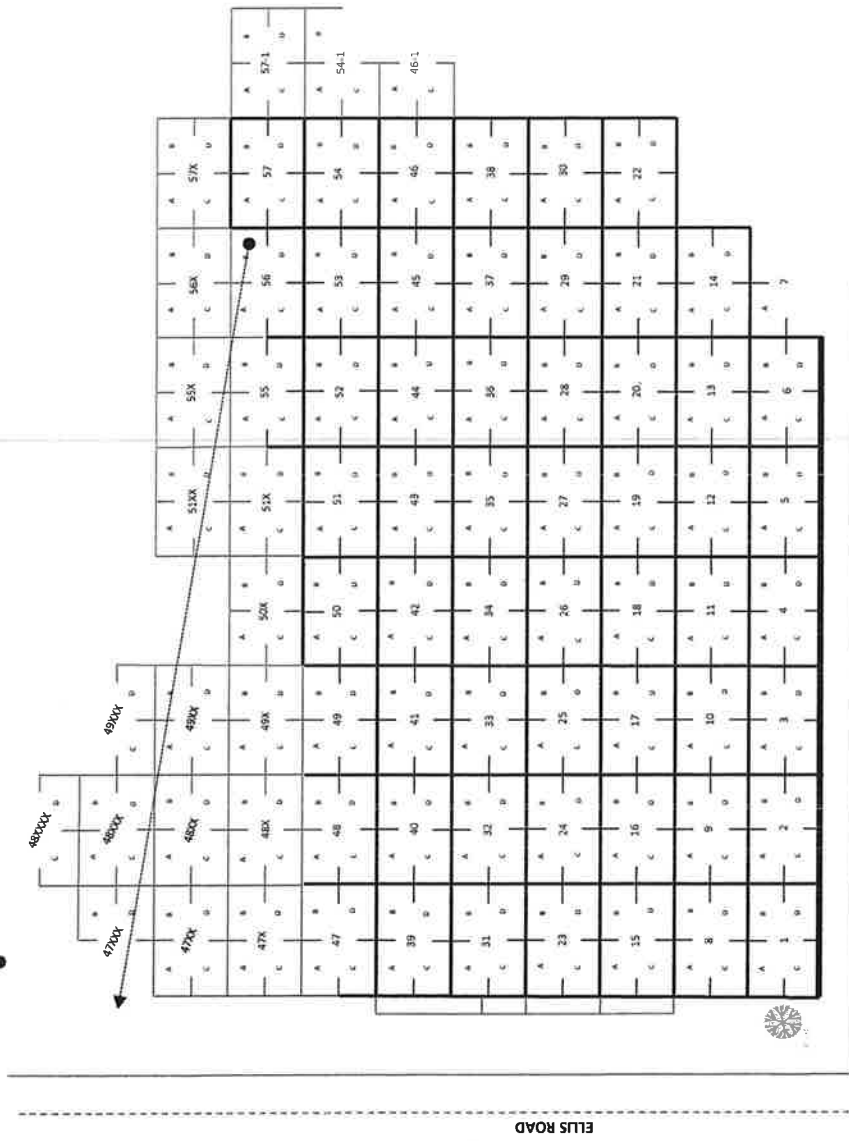
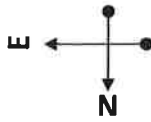
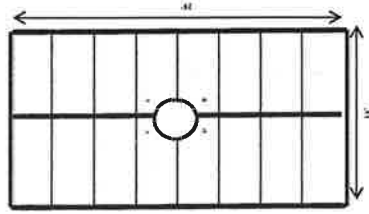


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GALILEE MEMORIAL GARDENS  
GARDEN OF GETHSEMANE



DRIVEWAY

ELUS ROAD

