

**CEMETERY PRENEED MERCHANDISE AND BURIAL PRODUCTS OR SERVICES TRUST AGREEMENT PROVISIONS
ATTACHMENT**

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

The _____, as trustee, located at _____, and _____, as trustor, agree that the following provisions are hereby incorporated into the cemetery merchandise trust 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. 16-320 *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
 - Withdrawals
 - Interest, Dividends, Income Earned
 - Capital Gains or Capital Losses
 - At least within 60 days following December 31 of each year, the trustee shall report the allocation of distributable earnings to the secretary of state. At the request of the trustor, the trustee shall allocate distributable earnings on a regular basis more often than annually and in which case the calculation of the distributable earnings shall be filed quarterly on December 31, March 31, June 30, and September 30 of each year in a form and manner approved by the secretary of state.
 - The trustee shall use deposit and withdrawal forms prescribed by the secretary of state
 - 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. Control of the trust funds by the trustor is prohibited.
 - By accepting the trusteeship of the cemetery merchandise trust 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.
 - Deposits may be carried in the cemetery name and commingled, provided that the accounting records establish a separate account for each item of preneed cemetery merchandise and preneed burial products or services.
 - 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 allocation of earnings to the preneed cemetery merchandise or preneed burial products or services.
 - No part of the moneys required by K.S.A. 16-321, and amendments thereto, to be held under a preneed merchandise contract shall ever be used for any purpose other than investment until the delivery of merchandise is made.
 - The trustee understands the primary purpose of the cemetery merchandise trust fund is to maintain the corpus of the trust fund with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise or preneed burial products or services, at the time of delivery or need.
7. _____ **Co-Trustee Agreement:** Trustee must initial here if they have entered into a co-trustee relationship or agreement and refer to Addendum A for additional requirements.

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. 16-320 *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, 1st Floor; 120 SW 10th Ave.; Topeka, KS 66612

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

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

The _____, as trustee, located at _____, and _____, as co-trustee, located at _____, agree that the following provisions are hereby incorporated into the cemetery merchandise 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. 16-320 *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 Preneed Merchandise and Burial Products or Services Trust Agreement Provisions Attachment, the trustee and co-trustee recognize the following responsibilities and agree to enforce them:
 - The cemetery merchandise trust fund must be maintained with a trustee as defined in K.S.A. 16-320, and amendments thereto.
 - 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 cemetery merchandise trust 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: (1) Is authorized to do business in Kansas; and (2) 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 cemetery merchandise trust 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. 16-320 *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, 1st Floor; 120 SW 10th Ave.; Topeka, KS 66612