

**IN THE SUPERIOR COURT OF WHITFIELD COUNTY
STATE OF GEORGIA**

IN RE: CEMETERY TRUSTS (HELD BY) CASE NO. _____
WELLS FARGO BANK, N.A.))
)
) FILED ELECTRONICALLY
)

**PETITION TO TERMINATE AND APPROVE DISTRIBUTION, CONDITIONS AND
COSTS/FEEES OF CERTAIN CEMETERY TRUSTS**

TO THE HONORABLE JUDGES OF THE SAID COURT:

By this Petition, Wells Fargo Bank, N.A. respectfully represents that:

1. Petitioner is Wells Fargo Bank, N.A. (“Petitioner”), in its capacity as trustee of the Elizabeth Roberts Cemetery Trust, the Margaret H. Bard Cemetery Trust and the W.C. Martin Cemetery Trust (each, a “Trust” and collectively, the “Trusts”).

2. Each of the Trusts benefits particular plots located at cemeteries owned by the City of Dalton, Georgia (the “City”). The Trusts’ beneficiaries, restricted purposes and fair market values are listed on Exhibit A, which is attached hereto and incorporated herein by reference.

3. Petitioner is located at 101 North Independence Mall East, 6th Floor, Philadelphia, Pennsylvania 19106.

4. With respect to the Elizabeth Roberts Cemetery Trust, such trust’s governing document provides that trust income is to be distributed to West Hill Cemetery for the care and maintenance of one or more particular plots at such cemetery.

5. The Margaret H. Bard Cemetery Trust’s governing document provides that trust income is to be distributed to West Hill Cemetery and Old Presbyterian Cemetery for the care and maintenance of one or more particular plots located at such cemeteries.

6. Finally, the W.C. Martin Cemetery Trust's governing document provides that trust income is to be distributed in part to West Hill Cemetery for the care and maintenance of one or more particular plots located at such cemeteries.

7. The Trusts were created solely for the benefit of a particular plot or plots at one or more cemeteries and, therefore, the Trusts are treated as noncharitable trusts.

8. The Trusts' financial statements are attached hereto as Exhibit B and incorporated herein by reference. True and correct copies of the Trusts' governing documents are attached hereto as Exhibit C and incorporated herein by reference.

9. Petitioner believes that each Trust's fair market value is insufficient to justify each Trust's continued administration.

10. Petitioner previously attempted to terminate the Trusts nonjudicially and distribute each Trust's remaining assets, less final costs and expenses (the "Net Assets") to the City, to be used by the City to maintain the applicable plots at the applicable cemeteries.

11. The City advised that it was unable to subaccount for the Net Assets to maintain the applicable plots at the applicable cemeteries, but that it could add the Net Assets to its existing cemetery fund to be used for the care and maintenance of the cemeteries as a whole (which include the applicable plots).

12. Because Petitioner has no legal authority to unrestrict the Net Assets for the care of the cemeteries as a whole, as requested by the City, the Trusts were not terminated nonjudicially.

13. As such, Petitioner brings this Petition to terminate the Trusts and distribute the Trusts' remaining assets, less final costs and expenses (the "Net Assets"), outright, to the City, to be added to the City's cemetery fund for the care and maintenance of the cemeteries as a whole (which include the applicable plots) (the "Proposed Distribution").

14. In exchange for the Proposed Distribution, the City has agreed to the following conditions (collectively the “Conditions”):

- a. The City will execute a Receipt and Refunding Agreement in a form substantially similar to the form attached hereto as Exhibit D and incorporated herein by reference;
- b. The City will deposit the funds in its cemetery fund to be used to care for and maintain West Hill Cemetery and Old Presbyterian Cemetery where the plots associated with the Trusts are located; and
- c. The City will use the funds from its cemetery fund to add to the funds available to the City so as to provide maintenance of the West Hill Cemetery, and Old Presbyterian Cemetery as a whole, but has not agreed to be otherwise required to maintain any specific cemetery plot or any specific cemetery headstone.

15. Petitioner desires that the costs and fees incurred in connection with this matter (including, but not limited to, attorneys’ fees) be assessed, pro rata, against each Trust’s principal prior to the Trusts’ terminations; provided, however, that any tax preparation fees incurred on behalf of a specific Trust shall be chargeable to such Trust individually and shall not be prorated.

16. Petitioner proposes that the pro rata costs and fees incurred in connection with this matter (including, but not limited to, attorneys’ fees) to be paid by each Trust be determined by dividing the Trust’s fair market value set forth herein by the total fair market value of all Trusts set forth herein and multiplying such resulting percentage by the total costs and fees incurred by Petitioner, on behalf of the Trusts.

17. Petitioner respectfully requests that this Honorable Court: (i) approve the Trusts’ terminations, (ii) approve the Proposed Distribution, (iii) approve the Conditions, and (iv) approve

Petitioner's costs and fees associated with the preparation and filing of this Petition and termination of the Trusts, and the payment of such costs and fees, pro rata or individually, as applicable, from the Trusts' principal prior to termination/distribution.

**Request for Approval of Termination, Distribution, Conditions and
Payment of Expenses and Costs/Fees**

18. Pursuant to O.C.G.A. § 53-12-65(b), a court may terminate a trust "if it determines that the value of the trust property is insufficient to justify the cost of administration."

19. Additionally, upon petition, a court may terminate a trust if the continued costs of administration would defeat or substantially impair the trust's purposes. O.C.G.A. § 53-12-61(d)(6)(A) and (e).

20. Pursuant to O.C.G.A. § 53-12-61(c)(2), the court shall approve a petition to "[t]erminate an irrevocable trust if all qualified beneficiaries consent, the trustee has received notice of the proposed termination, and the court concludes that continuance of such trust is not necessary to achieve any material purpose of such trust."

21. Petitioner is the trustee of the Trusts and, pursuant to O.C.G.A. § 53-12-61(e), is authorized to file this Petition to terminate the Trusts.

22. The value of each Trust is insufficient to justify the continued cost of administering each Trust, especially in light of the unique dispositive provisions of each Trust.

23. Further, Petitioner believes that the City, as the owner of the applicable cemeteries, is best equipped to determine the ongoing maintenance needs of the applicable cemeteries and address such needs without intervention by Petitioner.

24. For the reasons set forth herein, Petitioner respectfully requests that this Honorable Court approve the termination of each Trust.

25. Petitioner respectfully requests that this Honorable Court approve the Proposed Distributions.

26. Petitioner respectfully requests that this Honorable Court approve the Conditions.

27. Finally, Petitioner respectfully requests that this Honorable Court authorize Petitioner to pay from each Trust's principal, on a pro rata basis, all costs and fees incurred by Petitioner, in its capacity as trustee of the Trusts, in preparing and filing this Petition and terminating the Trusts; provided, however, that any tax preparation fees incurred on behalf of a specific Trust be chargeable to such Trust individually.

Parties in Interest

28. Notice of any petition to terminate a trust under O.C.G.A. § 53-12-61(d) shall be given, *inter alia*, to the settlor, if living, and the qualified beneficiaries. O.C.G.A. § 53-12-61(f).

29. A qualified beneficiary is (i) a distributee or permissible distributee of income or principal, (ii) would be a distributee or a permissible distributee if the interests of the current distributees terminated without causing the trust to terminate, or (iii) would be a distributee or a permissible distributee if the trust terminated. O.C.G.A. § 53-12-2(10)(A)-(C).

30. The settlors of the Trusts are all deceased.

31. The qualified beneficiaries of the Trusts are the applicable cemeteries listed herein; and the City, on behalf of each such cemetery, consents to this Petition, as evidenced by the written Consents and Joinders attached hereto as Exhibit E and incorporated herein by reference.

32. The only other party known to Petitioner to have an interest in the Trusts is the Office of the Attorney General for the State of Georgia (the "Attorney General's Office").

33. Notice of the intended filing of this Petition and a copy of the Petition have been delivered to the Attorney General's Office.

WHEREFORE, Petitioner respectfully requests that this Honorable Court issue an Order (i) approving each Trust's termination, (ii) approving the Proposed Distribution, (iii) approving the Conditions and (iv) approving Petitioner's costs and fees incurred in preparing and filing this

Petition and terminating the Trusts, and the pro rata or individual payment of such costs and fees, as applicable, from each Trust's principal prior to termination/distribution.

Respectfully submitted on this the _____th day of _____, 2024.

FOX ROTHSCHILD LLP

By: /s/ Kristy M. Caron

Kristy M. Caron
Georgia Bar Number: 917583

Jordan B. Forman
Georgia Bar Number 269298

G. Marshall Kent, Jr.
Georgia Bar Number 415129

999 Peachtree Road, NE
Suite 1500
Atlanta, Georgia 30309
Telephone: (404) 962-1000
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Email: Kcaron@foxrothschild.com
JForman@foxrothschild.com
MKent@foxrothschild.com

*Attorneys for Wells Fargo Bank, N.A.,
Trustee*

**IN THE SUPERIOR COURT OF WHITFIELD COUNTY
STATE OF GEORGIA**

**IN RE: CEMETERY TRUSTS (HELD BY)
WELLS FARGO BANK, N.A.)) CASE NO. _____
)
) FILED ELECTRONICALLY
)**

ORDER

AND NOW, this _____ day of _____, 2024, upon consideration of the Petition to Terminate and Approve Distribution, Conditions and Costs/Fees of Wells Fargo Bank, N.A., Trustee (“Petitioner”) (the “Petition”), as trustee of the cemetery trusts listed in the Petition (collectively the “Trusts”), and any response thereto, it is hereby **ORDERED** and **DECREED** that the Petition is **GRANTED**.

It is **FURTHER ORDERED** that the Trusts shall terminate, and their remaining assets, less final costs and expenses (the “Net Assets”), shall be distributed, outright, to the City, to be added to the City’s existing cemetery fund and used for the care and maintenance of West Hill Cemetery and Old Presbyterian Cemetery where most of the plots associated with the Trusts are located.

It is **FURTHER ORDERED** that the City shall comply with the “Conditions” (as such term is defined in the Petition).

It is **FURTHER ORDERED** that Petitioner is hereby authorized to pay from each Trust’s principal, on a pro rata basis, all costs and fees incurred by Petitioner, on behalf of the Trusts, in preparing and filing this Petition and terminating the Trusts, prior to distributing the Net Assets; provided, however, that any tax preparation fees incurred on behalf of a specific Trust shall be chargeable to such Trust individually and shall not be prorated.

It is **FURTHER ORDERED** that the pro rata costs and fees to be paid by each Trust shall be determined by dividing the Trust's fair market value as set forth in the Petition, by the total fair market value of the Trusts, and multiplying such resulting percentage by the total costs and fees incurred by Petitioner, on behalf of the Trusts.

BY THE COURT:

**JUDGE, SUPERIOR COURT OF WHITFIELD COUNTY
CONASAUGA JUDICIAL CIRCUIT**

Order Prepared by:

By: /s/ Kristy M. Caron

Kristy M. Caron

Georgia Bar Number: 917583

Jordan B. Forman

Georgia Bar Number 269298

G. Marshall Kent, Jr.

Georgia Bar Number 415129

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Attorneys for Wells Fargo Bank, N.A., Trustee

**IN THE SUPERIOR COURT OF WHITFIELD COUNTY
STATE OF GEORGIA**

IN RE: CEMETERY TRUSTS (HELD BY) CASE NO. _____
WELLS FARGO BANK, N.A.))
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petition to Terminate and Approve Distribution, Conditions and Costs/Fees on behalf of Petitioner, Wells Fargo Bank, N.A., has been served this ____ day of _____, 2024, by first class mail, postage prepaid, upon:

Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

By: /s/ Kristy M. Caron

Kristy M. Caron
Georgia Bar Number: 917583

Jordan B. Forman
Georgia Bar Number 269298

G. Marshall Kent, Jr.
Georgia Bar Number 415129

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MKent@foxrothschild.com

*Attorneys for Wells Fargo Bank, N.A.,
Trustee*

VERIFICATION

I, Christy Loomis, hereby certify that I am a Vice President of Wells Fargo Bank, N.A.; that I am authorized to execute this Verification on Petitioner's behalf; and that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

WELLS FARGO BANK, N.A.

BY: Christy Loomis
NAME: Christy L. Loomis
TITLE: Vice President

Date: November 15, 2023

EXHIBIT A

IN THE SUPERIOR COURT OF WHITFIELD COUNTY,
STATE OF GEORGIA

IN RE: CEMETERY TRUSTS (HELD BY WELLS FARGO BANK, N.A.)

CASE NO. _____

EXHIBIT A: TRUSTS

SINGLE-PURPOSE TRUSTS

ELIZABETH ROBERTS CEMETERY TRUST

Beneficiary/Recipient: West Hill Cemetery

Restricted Purpose(s): To maintain the Roberts lot and the graves of Lucy Roberts and Lizzie Roberts on the Kirk lot in West Hill Cemetery.

Cemetery: West Hill Cemetery
City of Dalton
P.O. Box 1205
Dalton, Whitfield County, Georgia 30720

Fair Market Value: \$17,851.45

MULTI-CEMETERY TRUSTS

MARGARET H. BARD CEMETERY TRUST

Beneficiary/Recipient: West Hill Cemetery and Old Presbyterian Cemetery

Restricted Purpose(s): To maintain graves of Testatrix's aunt and mother in West Hill Cemetery.

To maintain graves of Testatrix's father, mother and other relatives in Old Presbyterian Cemetery.

Cemetery: West Hill Cemetery
City of Dalton
P.O. Box 1205
Dalton, Whitfield County, Georgia 30720

Old Presbyterian Cemetery
City of Dalton
P.O. Box 1205
Dalton, Whitfield County, Georgia 30720

Fair Market Value: \$24,359.68

W.C. MARTIN CEMETERY TRUST

Beneficiary/Recipient: West Hill Cemetery and Tilton Community Cemetery

Restricted Purpose(s): To maintain the Lewis family plot, the Testator's wife's plot and the Testator's plat in West Hill Cemetery.

To maintain the Testator's mother's plot in Tilton Community Cemetery.

Cemetery: West Hill Cemetery
City of Dalton
P.O. Box 1205
Dalton, Whitfield County, Georgia 30720

Tilton Community Cemetery
City of Dalton
P.O. Box 1205
Dalton, Whitfield County, Georgia 30720

Fair Market Value: \$14,064.66

EXHIBIT C

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WILL 3013000745

LETTERS ADMINISTRATION, BE BONISINON, WILL ANNEXED, No. 168.

STATE OF GEORGIA, Whitfield COUNTY.

By the Court of Ordinary for Said County.

To all whom these Presents shall come—Greeting:

KNOW YE, That on the 2nd day of April
 in the year of our Lord, One Thousand Nine Hundred and Thirty Four
 the last Will and Testament of Maragret H. Bard late
 of Whitfield County deceased, was exhibited
 in open Court, and in due form of law, proved and admitted to record, a copy of
 which is hereunto annexed, and administration of all and singular, the goods, chat-
 tels and credits of said deceased was granted to The First National Bank of
Dalton, Georgia (W.M. Jones Jr as Trust Officer)
 as Administrator with Will annexed, and he
 having first taken the oath and performed all other requisites required
 by law, He is by order of said Court, and by virtue of these
 presents, legally authorized to administer the goods, chattels and credits of said
 deceased, according to the tenor and effect of said Will and Testament, and accord
 ing to law, and he hereby required to render a true and
 perfect inventory of all and singular, the goods, chattels and credits of the said
 deceased, and appraised and returned to this Court according to Law, and to render
 a true and correct account to the said Court of his actings and doings
 yearly, and every year until his administration is fully completed.

WITNESS my hand as Ordinary, and the seal of the said Court, this 2nd
 day of April Nineteen Hundred and Thirty Four

J. C. Brooks Ordinary.

WILL OF MARGARET H. BARD

PROBATED IN COMMON FORM JANUARY TERM, 1920.

Filed Dec. 9th, 1919.

GEORGIA, WHITFIELD COUNTY.

I, Margaret H. Bard of said county, being of sound and disposing mind and memory, do make this my last will and testament, hereby revoking and annulling all other wills by me heretofore made:

ITEM 1: I desire and direct that my body be buried in a decent Christian like manner suitable to my situation and condition in life.

ITEM 2: I give and bequeath my diamond ring, trunk and watch to my niece Miss Lizzie Bard of the State of Oklahoma.

ITEM 3: I give and bequeath to my niece Mrs. Mary Bosworth of Knoxville, Tennessee all of my embroidered pictures; I may have; I give and bequeath to my niece Jennie Gray Dearmond now being with me, and all other pictures

ITEM 4: I give and bequeath embroidered chair to my nephew John Dearmond.

ITEM 5: My real estate consisting of the homeplace where I now live on Thornton Avenue, in Dalton, Georgia, I desire the same to be converted into money by my executor hereinafter named, and such money to be invested in such securities as my executor hereinafter named may think best and the income from such securities to be used by my executor in keeping up my two cemetery lots whereon are buried my aunt and sister in the cemetery in Dalton, Georgia, and also in keeping up the lots in the old Presbyterian cemetery in West Dalton whereon are buried my father, mother and other relatives.

ITEM 6: I hereby constitute and appoint Mr. J. G. McLellan, of Dalton, Georgia, the sole executor of this my last will and testament, and I expressly confer upon him power as such to administer my estate exorsing him from giving bond or making returns to the Ordinary. And I expressly confer upon him full authority and power to sell at private sale my real estate above designated and also give him power after taking a sufficiency of the money derived therefrom to pay for my burial and other expenses, and all debts which I may owe, to invest the remainder of the proceeds of such real estate in such securities as he may deem best and use the interest or income from such securities in keeping up the above named cemetery lots. And I further empower my said executor with authority to make such provision as in his judgment may be best

for the perpetual collection of the interest on said securities for the purpose of keeping up the cemetery lots as above stated and for reinvesting the money for the same purpose on maturity of any of said securities, and with power to change said securities himself or the authorizing of others by him to do so in the future. It is my intention to give my said executor full and complete authority to do what in his judgment may be wisest and best for the purpose of carrying out the above stated intentions and conditions of this my will.

This 9th day of January, 1915.

Margaret H. Bard.

Signed, sealed, declared and published by Margaret H. Bard as her last will and testament in the presence of us the undersigned who subscribe our names hereto in the presence of said testatrix, after she had signed her name thereto and at her special instance and request and in the presence of each other. This 9th day of January, 1915.

Mary Henning,
P. B. Trammell, Jr.
Emma Wilson.

GEORGIA, WHITFIELD COUNTY:

Whereas I, Margaret H. Bard, of said County, did on the 9th day of Jan. 1915, sign, seal, declare and publish my last will and testament in the presence of Mary Hennig, P. B. Trammell, Jr., and Emma Wilson, who signed the said will and testament as witnesses.

And whereas I am desirous of adding an additional bequest and devise in said will, I therefore make and publish this codicil to said will and testament:

1:

I hereby give, bequeath and devise unto my niece Jennie Gray D'Armond, now living with me, for and during her life, all of the income which may be had from the property or securities mentioned in paragraphs five and six of my original will, after after such sum from said income has been used by my executor as may be necessary in the discretion of my said executor in keeping in good condition the lots in the two cemeteries mentioned in my original will.

2:

And my executor named in my original will is authorized and directed to pay to said Jennie Gray D'Armond the portion of the income above stated from time to time, monthly or annually, or in such other way as is deemed best to do by my said executor. This 23rd day of June, 1915.

The words fairly in paragraph on line 6 stricken before the signing and sealing of this instrument.

Margaret H. Bard

Signed, sealed, declared and published by Margaret H. Bard as her last will and testament, in the presence of us the undersigned,

who subscribe our names hereto in the presence of said testatrix after she had signed her name thereto, and at her special instance and request and in the presence of each other. This 23rd day of June, 1915.

~~M. Anna T. Eshelton~~

Mrs. Nell McWilliams

Martha McWilliams.

Recorded in Will Book "B" page 198, 199, 200, and 201.



TR000452003100



INSTRUMENT

LEGAL FOLDER



01/20/2001

452003100

TW C MARTIN-CEM

TRB 001745

31

Last Will and Testament of W. C. Martin 45-20031-00 Probated in Solemn Form September Term, 1941

Georgia, Whitfield county

I, W. C. Martin, of said County, being of sound and disposing mind and memory, do make this my last will and testament, hereby revoking all wills heretofore made by me.

Item I.

I will and devise that my body be buried in Dalton, Georgia, on our cemetery lot, or such other lot as my wife and my executors may decide upon; and my wife or my executors may spend out of my estate for monument or mausoleum, on such lot, any sum up to \$10,000.00. And my executors are further directed to invest in good bonds the sum of \$2000.00, and use the income each year from such sum in keeping in good condition the cemetery lots of Lewis family, my wife and myself in Dalton, Georgia, and the cemetery lot in Tilton, Georgia, where my mother is buried.

Item II.

I will and direct that all of my just debts be paid as soon as practicable after my death; and for the purpose of paying such debts, I authorize my wife or my executors to sell, at private sale, any property or securities of my estate.

Item III.

After the above, I will and devise all of my property, both real and personal, of whatever kind and wherever situated, to my wife, Ella Lewis Martin, for and during her life; and my said wife to have the right to sell at private sale, exchange or otherwise dispose of any and all property of my estate, for the purpose of making, changing or improving investments, or to get income for her own use.

Item IV.

At the death of my said wife, I will and devise out of my estate as follows;

(a) That my executors have full and complete authority to make distribution of my wife's jewelry and household things, according to any written instructions or memoranda which she may make or leave about such jewelry and things.

(b) That my executors pay in money, or property, or securities, at the best market price, such price to be arrived at by my executors and be binding on all devisees as follows:

To my half-brother, C. C. Gilbert, \$10,000.00, and to the two sons of said C. C. Gilbert, Bob Gilbert and Charles Martin Gilbert, each \$2500.00; to my half-brother, John Gilbert, \$5,000.00, and to his daughter, Grace Gilbert, \$2000.00; to my half-sisters, Mrs. Jennie Messer, Mrs. Mary Best and Mrs. Emma McLain, each, \$5,000.00; to the two daughters of said Mrs. Emma McLain, each \$1000.00; to Mrs. John McCarty, \$10,000.00; to Eleanor McCarty, \$2500.00; to Mrs. T. L. Shelton, \$5000.00; to Ann Shelton, \$2000.00; to Sadie Sapp, \$5000.00.

Item V.

I further will and devise, in money or property or securities, at the best market price, such price to be arrived at by my executors and be binding on all devisees, as follows: To Miss Maggie Stuart, \$1000.00; to Miss Lela Stuart, \$1000.00; to Miss Nora Stuart, \$1000.00; to Miss Mamie Stuart, \$1000.00; to Mrs. Lizzie Stuart Hall, \$1000.00; to Miss Susie Stuart, \$1000.00; to Mrs. Laura McKamy, \$1000.00; to John Martin Mecklin, \$1000.00 to Mary Hope Mecklin, \$1000.00; to Miss Willie White \$1000.00; to Mrs. Jannice Meadows, \$2000.00; to Mattie Jones, colored, \$3000.00; to Gus Harlan, colored, \$2000.00; to Annie Black, colored, \$1000.00; to the trustees of the First Methodist Church, of Dalton, Georgia,

IN WITNESS WHEREOF I have hereunto set my hand and seal of office this 1st day of September 1941. I

(COPY)

\$3000.00, the income from same to be used in keeping in repair the church property.

Item VI.

I will and direct that if for any reason my estate should not be sufficient to pay in full the devisees as named in Items Four and Five, above, then and in that event that my estate be prorated among the legatees as named in Items Four and Five, according to the respective amounts named therein. And it is further directed that if at the time distribution is ready to be made under said Items Four and Five, above, any of the legatees named therein should be dead, the devisees to such one or ones so deceased shall be void and of no effect, and take nothing under this will.

Item VII.

After the above, I will and devise out of my estate, \$25,000.00, to constitute an educational fund, to be known as "W. C. Martin Educational Fund", the income from same to be used annually in helping to educate worthy boys and girls, or to help pay the expense of orphan, needy or dependent children, in any creditable orphan's home in the State of Georgia, or other creditable home in the State of Georgia, for helping such children. My executors to have broad powers in the handling of this fund so as to make it do the most possible good, with authority to sell any property, at private sale, to reinvest the proceeds in such securities, bonds, and stocks, as they may consider the safest and best for the good of the fund, or to change investments, as in their discretion they may deem wise; or to do any other thing which they in their discretion may decide is for the best interest of the fund, or will aid in any way in the handling of the same. And at such time as my acting executor or executors may see fit, they may appoint three trustees to handle this fund, with all the powers and authority above given to executors or trustees, such trustees to be the First National Bank of Dalton, Dalton, Georgia, or some strong bank or trust company, the Ordinary of Whitfield County, Georgia, and the Mayor of the City of Dalton, Georgia. It is further directed that in making investments or changing investments, such bank is to have the right to decide in case the three cannot agree; and such bank to keep all books and all records, and all securities and papers, and make regular annual reports to the Ordinary, or proper court; and for doing this work such bank is to be paid a fee of \$100.00, for taking into possession the property which may come into this fund, and to be paid one per cent on all income of this fund for receiving and paying out same. Title to all property coming into this fund to be in the executors of my estate, as the law of Georgia fixes the same, until trustees are appointed, and then in such trustees of my estate as the law of Georgia fixes the same in such cases; and deeds and all papers dealing with property or other things in this fund to be signed by executors (names of executors) as executors of the estate of W. C. Martin, deceased, and by trustees, when appointed. (names of trustees) as trustees of "W.C. Martin Educational Fund", or signed in such other way as the law or conditions may require. It is directed that if any farm property should come into this fund, that as soon as it is deemed wise that it be sold and the proceeds reinvested under the same uses. It is further suggested that the executors or trustees in helping children may do so from the income of said fund, by loans or donations, as they may think each case requires. Should any condition arise whereby the executors or trustees would not know how to proceed in the handling of this fund, then they should apply to the proper court for direction. It is further directed that this item of my will is not in any way to go into effect until after the death of my said wife, Ella Lewis Martin.

Item VIII.

After the above, I will and devise all the remainder or residue of my estate to the devisees named in Item Four of this will, such residue to be prorated among the devisees in said Item Four of this will, using as a basis in making such prorata division the respective amounts devised to each devisee, as set forth in said Item Four of this will.

THE FIRST NATIONAL BANK OF DALTON

DALTON, GEORGIA

June 24, 1970

Mr. Phillip E. Bailey, Jr.
Whitfield Memorial Gardens
P. O. Box 1445
Dalton, Georgia 30720

Dear Phil:

Re: Trust Dept. Acct. No. 31
Martin Cemetery Trust

You were most kind to spend some time with me today in West Hill Cemetery and to get a good look at the late W. C. Martin's lot.

This is to confirm our instructions to go ahead with re-sodding and re-seeding this tract.

We want this lot to look nice and to be in keeping with the family it represents.

Most cordially,

W. M. Jones
Senior Vice President
and Trust Officer

WMJ/bw

COPY

April 21, 1948

Mr. C.C. Gilbert
Bank of LaFayette,
LaFayette, Georgia

Dear Columbus:

Under Item 1 of the Martin will, the Executors were directed to invest in good bonds the sum of \$2,000.00, and use the income each year from such sum in keeping in good condition the Cemetery lots of the Lewis family, the Martin lot in Dalton and the Cemetery lot in Tilton where Col. Martin's mother is buried.

We are buying today \$2,000.00, U.S. Treasury 2½ of 6/15/62/59. These bonds will be placed in a new Trust Account known as Trust No. 31-Martin Cemetery Fund, and the proceeds from the Coupons on these bonds will be used from time to time in keeping up the Cemetery lots as provided in the will.

At present we have a contract to keep the Dalton lots mowed at least twice a month from April to October at a cost of \$3.00 per mowing.

We do not know where your mother and Col. Martins mother's lot in Tilton is, but we would like for you to either go with us to the lot or give us a description of the lot together with your mothers full name so that we may find it and arrange with some neighbor to take care of it, and arrange so that one of our officers can visit the grave at least once a year.

Yours very truly,

W.M. Jones,
Vice President

WMS/r

TRB 002150



TR000452004000



INSTRUMENT

LEGAL FOLDER



01/20/2001

452004000

TW ELIZABETH ROBERTS-CEM

TRB 002150

ORIGINAL
~~COMPLETE~~ DOCUMENT
IN ARCHIVES

40-6

45-2

ORIGINAL SOURCE

GEORGIA, WHITFIELD COUNTY

I, MISS ELIZABETH ROBERTS, of said state and county, being of sound mind and disposing memory, do hereby make, declare and publish this my Last Will and Testament, expressly revoking and annulling any and all others that I may heretofore have made.

ITEM I. It is my will and desire, and I hereby so direct, that all my just debts be paid by my Executors hereinafter named, as soon as practicable after my death, and that said Executors erect a suitable marker at my grave, similar to the other markers on the lot where I am to be buried.

ITEM II. I hereby authorize and direct my Executors hereinafter named to set aside out of my estate the sum of Two Thousand \$2,000.00 Dollars in cash and invest the same in some good income producing investment, in the discretion of said Executors, and use the income from the same for the purpose of maintaining and keeping the Roberts lot in the Cemetery and the graves of Lucy Roberts and Lizzie Roberts on the Kirk lot.

- CEMETERY TRUST -

ITEM III. After the payment of any indebtedness that may be owing by me at the time of my death, I will and bequeath to my grand-niece, Mary Virginia Robinson, Two Thousand (\$2000.00) Dollars in cash, to be used by her for her education, and to be held by my Executor hereinafter named, and to be paid over to her as she may need the same for her education, any portion of the same not used by her for such purposes to be delivered to her upon her attaining the age of Twenty-One Years.

Elizabeth Roberts.

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I will and bequeath to my niece, MRS. C. E. BUSCH Three Thousand (\$3,000.00) Dollars, to my niece, MRS. LUCILLE STUDEMAN, One Thousand (\$1,000.00) Dollars, to my niece, MRS. J. E. ROBINSON, Three Thousand (\$3,000.00) Dollars, to my niece, MRS. HARRY A. FAIN, Four Thousand (\$4,000.00) Dollars, to my niece MISS HATTIE KIRK, Two Thousand (\$2,000.00) Dollars, to my friend MRS. HOYT WEBB, One Thousand (\$1,000.00) Dollars.

ITEM IV: After the payment of the foregoing legacies, the entire balance, remainder and residue of my estate I will, bequeath and give equally share and share alike to the following:

- (1) First Church of Shrist, Scientist, of Atlanta, Georgia.
- (2) First Methodist Church of Dalton, Georgia.
- (3) The Scottish Rite Hospital of Atlanta, Georgia.
- (4) The Warm Springs Foundation, Inc. of Warm Springs, Georgia.
- (5) The Hamilton Memorial Hospital of Dalton, Georgia, with the request that it be used in the Pediatric Ward (Children's Ward).
- (6) The Methodist Children's Home at Decatur, Georgia.

ITEM V. My household goods, personal effects and belongings, I will bequeath and give to my nieces, MRS. C. E. BUSCH, MRS. J. E. ROBINSON, MRS. HARRY A. FAIN, MRS. LUCILLE STUDEMAN, AND MISS HATTIE KIRK, in equal shares, share and share alike.

ITEM VI. I hereby name, constitute and appoint SAM J. HEAD, and THE FIRST NATIONAL BANK OF DALTON, as Executors of and Trustees under this my Last Will and Testament, expressly relieving them from the making of any bond or the making of any returns or appraisal of my estate to the Ordinary or any other court and

Elizabeth Roberts

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expressly authorizing and empowering them, as such Executors, to administer my estate in any manner they think to the best interest of my estate; they are authorized to sell any part or all of the property belonging to my estate at either public or private sale, with or without order of court and make distribution THEREOF, EITHER in cash or in kind.

IN WITNESS WHEREOF, I, MISS ELIZABETH ROBERTS, do hereby set my hand and affix my seal to this instrument, declaring and publishing the same as my Last Will and Testament, this the 29th day of March, 1949.

(1) First Church of Swiss, Elizabeth Roberts (Seal)

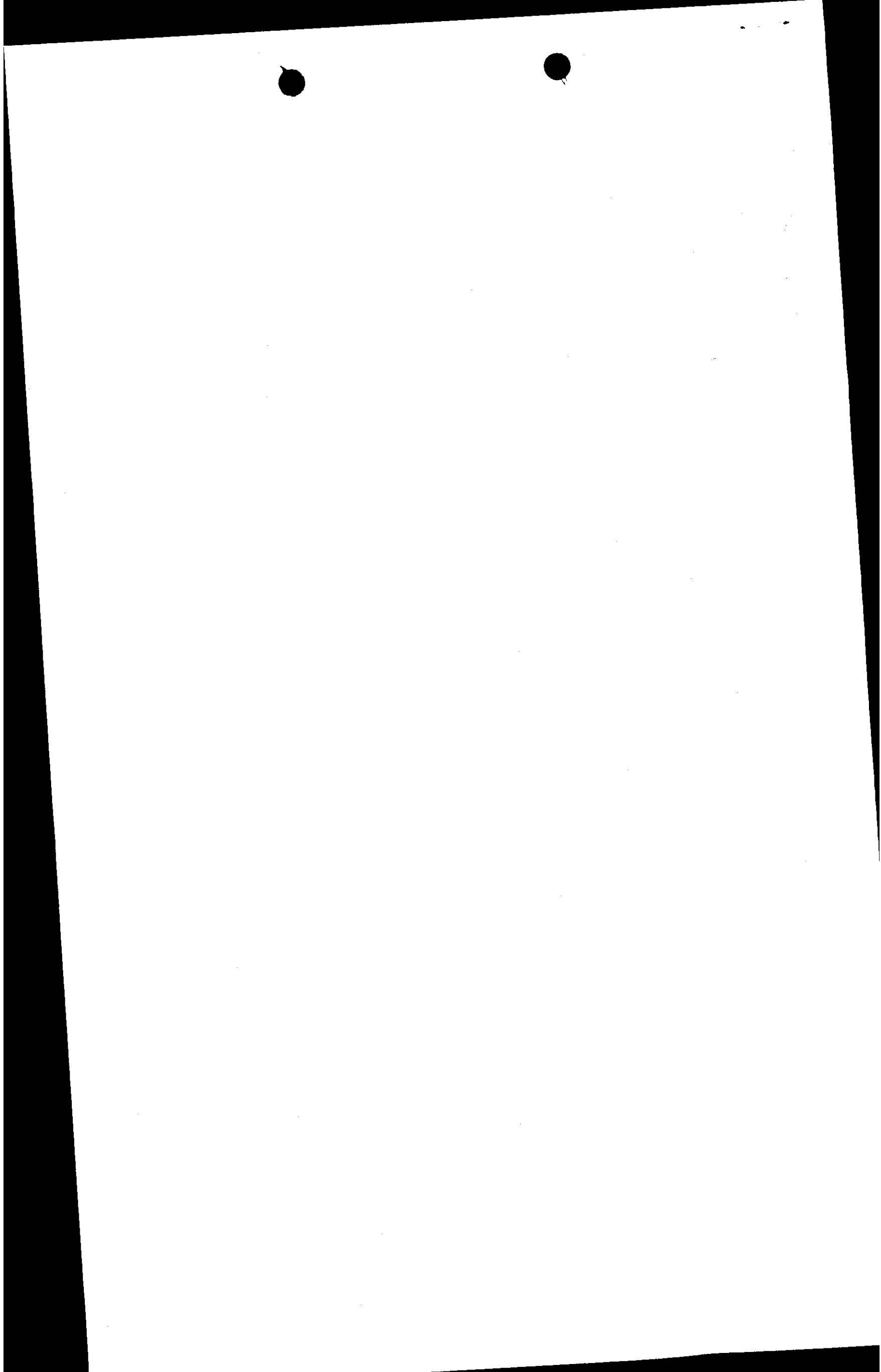
Signed, sealed, declared and published by MISS ELIZABETH ROBERTS as her Last Will and Testament in the presence of each of us the undersigned, she first signing the same in our presence and we then, at her special instance and request, signing the same in her presence, and in the presence of each other.

This the 29 day of March, 1949.

Emma Louese Wilson
Rebecca Richards
Fred H. Tarply

Trustees under this my Last Will and Testament, I hereby request that it be used in the settlement of my estate to the children as my only heirs.

Elizabeth Roberts



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RECEIPT AND REFUNDING AGREEMENT

This Agreement is entered into by and between Wells Fargo Bank, N.A., in its capacity as trustee of the Elizabeth Roberts Cemetery Trust, the Margaret H. Bard Cemetery Trust, and the W.C. Martin Cemetery Trust (the "Trustee") (collectively, the "Trusts"), and the undersigned beneficiary of the Trusts (the "Beneficiary").

In consideration of the final distribution by the Trustee of all assets of the Trusts, without a judicial accounting and decree, the Beneficiary hereby:

Acknowledges receipt of the Beneficiary's interest in the Trusts, effective upon delivery of such assets to the Beneficiary;

Acknowledges that financial statements for the Trusts have been made available to it, and that it has examined such statements to the extent it deems appropriate or waived its right to do so;

Acknowledges that it is entitled to an account of the Trustee's acts as the trustee of the Trusts, and waives all right to any such account and further waives all right to a judicial settlement of the Trustee's account and to the issuance and service of citation or other process in any action or proceeding for the judicial settlement of the account, and consents that a judgment or decree may be entered in any court, without notice to it settling the account;

Acknowledges and agrees that the Trustee has made no representations regarding the tax consequences to the Beneficiary as a result of the execution of this Agreement and the Trusts' terminations;

Acknowledges that the approvals, consents and ratifications presented herein are granted in accordance with state law, and acknowledges it was not induced by improper conduct of the Trustee and that the Beneficiary has knowledge of the material facts relating to the matters contained herein and is aware of its rights; and

Acknowledges that (i) this Agreement is a legal document; (ii) it has been advised to have this Agreement reviewed by its attorney; and (iii) it has had the Agreement reviewed by such attorney.

Agrees to accept the assets from the Trusts on the condition that the Beneficiary is not required to provide any specific maintenance to the headstones of any cemetery lots nor any specific maintenance to any specific cemetery lot.

IN WITNESS WHEREOF, the undersigned, on behalf of the Beneficiary, intending to be legally bound hereby, has executed this Receipt, Release, Refunding and Indemnification Agreement on the date indicated below.

Beneficiary Name:

City of Dalton, Georgia

By: _____

Mayor

Date: _____

I, _____, am the _____ of the Beneficiary, and I do hereby certify that I am authorized to sign this Receipt, Release, Refunding and Indemnification Agreement on behalf of the Beneficiary.

Wells Fargo Bank, N.A., in its capacity as trustee of the Elizabeth Roberts Cemetery Trust, the Margaret H. Bard Cemetery Trust and the W.C. Martin Cemetery Trust

By: _____
Name: _____
Date: _____

EXHIBIT E

CONSENT AND JOINDER

I, _____, hereby certify that I am the _____ of the City of Dalton, Georgia, the owner of West Hill Cemetery and Old Presbyterian Cemetery, in Whitfield County, Georgia (the “Beneficiary”), that I am authorized to execute this Consent and Joinder on its behalf, and that, having read and considered the contents of the foregoing Petition to Approve Termination, Distribution, Conditions and Costs/Fees, I do herewith (i) waive the benefit of all requirements of notice of the presentation or service upon the Beneficiary of said Petition, (ii) authorize the Court to note the Beneficiary’s general appearance in said proceeding as though it had appeared personally or by counsel, (iii) waive all objections to the Court’s jurisdiction, (iv) consent to or join in the Petition’s request that this Court enter an Order terminating the Trust and approving the costs/fees associated with such action and (v) specifically consent to the application of the “Conditions” (as such term is defined in the Petition) to the Beneficiary.

City of Dalton, Georgia

BY: _____
Mayor

Date: _____, 2024