



## **RULES, REGULATIONS, AND POLICIES**

Memorial Garden

Westlake Hills Presbyterian Church

*Effective September 1, 2020*

Memorial Garden is a columbarium and garden area located at and owned by Westlake Hills Presbyterian Church (the “WHPC” or “Church”). Memorial Garden provides spaces for the inurnment in a classic columbarium niche and for inground inurnment or burial of cremated remains of church members and other eligible persons.

These rules, regulations, and policies (“Regulations”) are designed to protect the interests of those acquiring the rights of inurnment as well as of WHPC. Adherence to these Regulations preserves the desirability and beauty of the Memorial Garden.

### **1. ADMINISTRATION**

Oversight and direction of the Memorial Garden is provided by the Memorial Garden Committee (“Committee”), a special standing committee established and empowered by the Session and memorialized in the WHPC Manual of Administrative Operations. These Regulations may be amended from time to time by the Session. Day to day management of the Memorial Garden is provided by a designated member of the Church professional staff, herein referred to as the Administrator.

### **2. ELIGIBILITY**

Inurnment by niche or in-ground is limited to the cremains of any pastor or past pastor or staff of WHPC, any member or past Church member, and members of any of the above’s immediate family. Members of the immediate family include spouses, parents, grandparents, children and their spouses, grandchildren and their spouses, and any stepparents, -grandparents, -children and -grandchildren. The Pastor may approve or deny requests for the inurnments of any other person on a case-by-case basis.

### **3. FACILITY**

The initial columbarium consists of 120 8”x8” niches with granite fronts in cabinetry located in with stone markers along the hillside walkway under the trees. The pavilion also has a memorial wall to honor the deceased who may be buried elsewhere. Both the niches and inground spaces accommodate the cremains of one or two people. The master plan provides for expansion of both columbarium niches and inground inurnment, as appropriate.

The Grid accompanying a map of the grounds shows each niche and inground site with a unique number. The Grid is maintained by the Committee and is used by reference in documenting the purchase of rights to inurnment and interment. Both the niche and the inground site are deemed an “Assigned Site.” The Assigned Sites are allocated on a “first come, first served” basis. As Assigned Sites are claimed, they are marked as “taken” on the Grid.

### **4. COSTS AND FEES**

Fees for the right of inurnment include inurnment, up to two urns, the niche or stone marker, inscription, and perpetual care of the Memorial Garden are found in Attachment B. Fees do not include the cost of additional engraving, the cost of cremation, transportation, or other off-church premises costs, which must be provided by the family, heirs, or legal representative of the deceased. Memorial services may be held at WHPC (and may require the payment of additional fees).

Fees may be changed at any time. However, the changed fees will apply to purchases made only after the effective date of the change. Purchases made prior to the date of the change will not be affected and the purchaser may not be assessed (and will not be refunded) any fees beyond those applicable to the original purchase.

### **5. APPLICATION**

An eligible person (“Applicant”) must complete the attached Application to Acquire the Right of Inurnment (“Application”). Once the completed Application is submitted together with the applicable payment to the Administrator, the Administrator will contact the Applicant to confirm that all information is correct.

### **6. CERTIFICATE**

When the information on the Application has been confirmed by the Administrator, the Inurnment Rights Certificate will be issued. (A specimen copy is presented in Attachment A.)

*The approved Application together with the Inurnment Rights Certificate constitute the Contract for the Right of Inurnment between the Applicant and Memorial Garden for and on behalf of Westlake Hills Presbyterian Church.*

The Applicant or his or her assigns or legal representative, as applicable, are together designated the Holder of the Certificate. The Holder acquires no property rights in the Memorial Garden, any of its niches or burial sites, or any other property of the Church. Legal title to the Memorial Garden and all sites and Assigned Sites remain with the Church at all times. The Certificate attests only to the right to inurn the cremains of Eligible Persons named in the Certificate.

## 7. OPERATIONS

- 7.1 *Record of Inurnments.* The Administrator maintains a record of every application for inurnment as well as of each inurnment. The name of the deceased, the deceased's dates of birth and death, and the name of the next of kin or persons with authority to act for the deceased. The Administrator must be notified of any changes in the contact information provided.
- 7.2 *Collection of Obituaries.* The Collection of Obituaries on the Church website provides biographical information as available including photographs, about each person inurned or memorialized in the Memorial Garden. The Administrator reviews and approves each submission before it is posted on the website.
- 7.3 *Operating and Endowment Funds.* All funds received by the Memorial Garden are held in the Memorial Garden Operating Fund and drawn down as necessary to pay for any operating and related expense. The Church has also established the Memorial Garden Endowment Fund to receive and invest any contributions given specifically for the ongoing maintenance of the columbarium and surrounding areas. The Endowment Fund may also receive any realized operating surplus from Memorial Garden.
- 7.4 *Services.* Only the Pastor or Associate Pastor of WHPC, or an ordained or licensed minister invited by the Pastor, is authorized to officiate at an inurnment service in Memorial Garden. The committal service will be held at a time mutually agreed upon between the Pastor and the family of the deceased. The prior approval of the Administrator is also required when the service is to be officiated by an ordained or licensed minister invited by a WHPC Pastor.
- 7.5 *Inscription.* Inscriptions on columbarium niches, stone markers, and memorial plaques will be uniform with name and dates of birth and death set in a single font as determined by the Committee for the Memorial Garden.
- 7.6 *Granite Markers.* The natural stones or granite markers used to mark the inground inurnment site are uniform in source and style as chosen solely by the Committee for the Memorial Garden.
- 7.7 *Columbarium Urns.* The niches in the columbarium cabinet are designed to accept one or two brass urns of a specific type and size to be provided by Memorial Garden. The lid to close the urn is approximately 5"x5" in size. The lid may be engraved with the name and dates of the deceased. The lid may be engraved with words, graphics, images, or other symbols as separately arranged by the Holder.
- 7.8 *Inground Inurnment Receptacles.* An excavation of appropriate size directly beneath the placement of the granite marker is prepared to receive the burial of ashes. No receptacle is required, and the cremains may be placed in the grave to be mixed with the earth. If a receptacle is preferred, the receptacle may be in the form of a cloth or other pliable materials, or an urn provided by Memorial Garden.

- 7.9 *Identification of Cremains.* Permanent marking of the name of the deceased and date of death will be required on all cremains delivered to the Memorial Garden for inurnment. Neither the Church nor the Memorial Garden bears any responsibility for the identification of any cremains at the time of or subsequent to inurnment.
- 7.10 *Access to the Niches or Inground Sites.* The Holder has access to the assigned niche or inground site only for the purpose of inurnment of the designated cremains. Any request to open or unseal a niche, site, or urn must be made by the Holder's assigns or other legal representative and approved by the Committee.
- 7.11 *Decorations.* Floral or other decorations may be temporarily displayed as part of a memorial service approved by the Pastor. No permanent flowers or decorations of any kind may be placed in the Memorial Garden by anyone other than designated personnel.
- 7.12 *Responsibility for Work Required.* All work of any kind on or surrounding areas designated for cremated remains is under the control of Memorial Garden. Such work includes but is not limited to opening and sealing niches, installation and/or removal of memorials, inurnments, dis-inurnments, plantings, landscape care and all other related work.
- 7.13 *Use of Property.* Niches or inground sites are for the sole use of cremated human remains. Other uses of cremation space are prohibited.

## **8. TRANSFER, REMOVAL, AND SECURITY**

- 8.1 *Transfer.* If the Assigned Site in the Memorial Garden is unused, a transfer of the Right of Inurnment is permitted with the written approval of the Committee. If the Holder wishes, he or she may return the Right of Inurnment to Memorial Garden for its re-sale to another eligible person. The seller will be reimbursed in an amount not to exceed the amount of the original investment upon completion of the re-sale, net of any cost incurred by Memorial Garden.
- 8.1 *Removal by the Family.* Cremains remain the property of the family or estate of the deceased. If one or both persons listed on the Certificate have been inurned in their Assigned Site, and the survivors wish to remove all of the cremains that are recoverable, they may make arrangements with Memorial Garden for the sites to be unsealed and the cremains removed by submitting a Termination of Right of Inurnment form to the Committee and payment of applicable fees established by the Committee to cover the cost of removal. Rights to the Assigned Site revert to Memorial Garden, with no compensation due to the Holder or Holder's estate.
- 8.2 *Temporary Removal by the Church.* Cremains in any Assigned Site may not be removed without the prior written consent of the Holder (or the Holder's assigns or other legal representative) and the Committee. However, the inurned cremains may be temporarily removed if needed (for example, because the columbarium or grounds require repair). In that

event, the Administrator will use good faith efforts to provide the Holder (or the Holder's assigns or other legal representative, if known) with prior notice.

- 8.3 *Abandonment.* If after 25 years from the date of the Inurnment Rights Certificate, no cremains have been inurned as specified on the Certificate, and the Holder of the Certificate cannot be located after good faith efforts (e.g., one or more contacts by phone call, email, or U.S. mail) by the Committee, the rights to inurnment as documented in the Inurnment Rights Certificate and the Certificate are deemed null and void and of no further force and effect. The Assigned Site reverts to the Memorial Garden with no reimbursement.
- 8.4 *Reversion.* If the cremains of an Eligible Person (or both the Eligible Person and the second to die in the case of two Eligible Persons) are not inurned in an Assigned Site within twenty-four months of the date of death, and the family of the deceased cannot be located after good faith efforts (e.g., one or more contacts by phone call, email, or U.S. mail), the right to inurnment automatically reverts to the Memorial Garden unless an exception is granted by the Committee, with no requirement for a reimbursement of any of the fees. Thereafter, the Committee may designate the Assigned Site for another Eligible Person.
- 8.5 *Access and Security.* The Church through the design and construction of the facilities has provided a reasonable level of security balanced by the need for visits by loved ones and the availability of the property for prayer and services. (No professional photography is allowed.) The holder of the Rights of Inurnment assumes the risk of loss or desecration of remains.

## **9. WARRANTY, LIMITATION OF LIABILITY, AND INDEMNIFICATION.**

- 9.1 *Limited Warranty.* THE MEMORIAL GARDEN AND RELATED SERVICES ARE OFFERED FOR THE SOLE PURPOSE OF PROVIDING A MEANS OF CHRISTIAN BURIAL. NEITHER THE CHURCH NOR THE MEMORIAL GARDEN MAKE ANY GUARANTEES OR WARRANTIES CONCERNING THE DURABILITY OR THE EXPECTED LIFE OF THE MEMORIAL GARDEN, ITS GROUNDS, ITS FACILITIES, OR ANY PRODUCTS. IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARE EXPRESSLY DISCLAIMED.
- 9.2 *Limited Liability.* The total liability of the Church, the Memorial Garden, and their officers, employees, representatives, and agents from any cause whatsoever, whether for breach of contract or other negligence, misrepresentation, or other contract or tort claim, including for the loss or desecration of any cremains, is limited to the amount of any actual direct damages or loss, up to the total fees paid to the Church for the Assigned Site. In no event will the Church, the Memorial Garden, and their officers, employees, representatives, and agents be liable for any special, incidental, indirect, exemplary, punitive or consequential damages.
- 9.3 *Exclusions Permitted by Law.* Some jurisdictions do not allow the exclusion of certain warranties or conditions or the limitation or exclusion of liability for loss or damage caused by negligence, breach of contract or breach of implied warranties, or incidental or consequential damages. Accordingly, only the above limitations in Sections 9.1 and 9.2 which are lawful in Texas will apply and the liability of the Church and the Memorial Garden will be limited to the maximum extent permitted by law.
- 9.4 *Protection Against Loss.* The Church may carry insurance on the Memorial Garden and its columbarium facilities for its own benefit; however, the Church does not and will not provide any insurance for the benefit of the Holders.

9.5 *Acts of God.* The Church has no liability for any losses to cremains resulting from storms, flooding, or other acts of God.

**10. TERMINATION OF MEMORIAL GARDEN.**

The Right of Inurnment continues as long as WHPC occupies and owns the property forming Memorial Garden. If the property is sold and the Church relocated, WHPC will relocate Memorial Garden as an integral part of the Church at the new location.

**11. GOVERNING LAW.**

These Regulations are governed and interpreted in accordance with the laws of the State of Texas without giving effect to its conflict of laws provisions. The federal and state courts sitting in Travis County, Texas will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of these Regulations.

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Approved by the Session of Westlake Hills Presbyterian Church, effective \_\_\_\_\_.