

AGREEMENT

This **AGREEMENT** (this "*Agreement*") is entered into as of the ____ day of November, 2017 (the "*Effective Date*"), by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, whose address is 200 East Main Street, Lexington, Kentucky 40507 ("*LFUCG*"), and the **LEXINGTON CEMETERY COMPANY**, a Kentucky non-profit corporation whose address is 833 West Main Street, Lexington, Kentucky 40508 ("*LCC*").

WITNESSETH:

THAT WHEREAS, LFUCG is the owner of a 12 foot bronze statue of Confederate General John Hunt Morgan as shown on **Exhibit A** (the "*Morgan Statue*") and an 8 foot bronze statue of Confederate Secretary of War John C. Breckinridge (the "*Breckinridge Statue*") as shown on **Exhibit B** (the Morgan Statue and the Breckinridge Statue being collectively referred to as the "*Statues*"), both of which were previously located near the old Fayette County Courthouse at 215 and 251 West Main Street, Lexington, Kentucky;

WHEREAS, the LFUCG Urban County Council (the "*Council*") has previously voted to relocate the Statues away from the former Courthouse and the Statues are currently in storage;

WHEREAS, the Mayor of Lexington (the "*Mayor*") has requested that LCC accept the relocation of the Statues on the LCC grounds (the "*Cemetery*");

WHEREAS, John C. Breckinridge and John Hunt Morgan are buried in the Cemetery;

WHEREAS, the Board of Directors of LCC (the "*Board*") has considered the Mayor's request and has agreed to accept relocation of the Statues subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. Agreement to Take Possession. LCC agrees to accept the relocation of the Statues to the Cemetery, subject in all cases to the terms and conditions set forth herein, within ninety (90) days of the completion of all preparatory work necessary to install the Statues at the Cemetery, including but not limited to modification (as described herein) and installation of the Statues' pedestals. The acceptance by LCC of the Statues and their installation at the Cemetery constitutes merely a personal license, revocable by LCC as provided herein. LFUCG shall not acquire any leasehold or ownership interest in the Cemetery by virtue of the location of the Statues therein.

2. Term. The term of this Agreement (the "*Term*") shall commence as of the Effective Date, and, continue unless and until terminated as provided herein.

3. Location and Bases of Statues. The Breckinridge Statue shall be located in Section G of the Cemetery at the location shown on **Exhibit C** attached hereto, and may have a base not exceeding 3 feet in height and being not more than 4 feet by 4 feet in area, with an inscription on the base of the Statue as approved by LCC and LFUCG. The Morgan Statue shall

be located in Section P of the Cemetery at the location shown on Exhibit D attached hereto, and may have a base not exceeding 3 feet in height and being not more than 9 feet by 4 feet in area, with an inscription on the base of the Statue as approved by LCC and LFUCG. The materials, design and inscription on the base of the Statues shall be subject to the approval of LCC and LFUCG. The approximate locations of the Statues in the Cemetery grounds shall be as shown on Exhibit E attached hereto. If, at any time during the Term, LCC shall reasonably determine that it is in its best interest to relocate the Statues within its grounds, LFUCG shall bear all reasonable costs and expenses associated with said relocation, including but not limited to the cost of any footers, foundations or other work or construction needed for relocation of the Statues on the LCC grounds, provided that the procurement of goods and services necessary to effectuate this relocation is done pursuant to LFUCG procurement and purchasing standards. In the event that the funding for such security is provided by the Fund (as defined in Section 11 hereof), the LFUCG procurement and purchasing standards shall be waived by the parties. Upon termination of this Agreement as provided herein for any reason, LFUCG shall remove the Statues from the Cemetery, repair any damage to the Cemetery caused thereby and restore the grounds to the same condition they were in as of the Effective Date, all at the sole cost of LFUCG.

4. Security. Throughout the Term, LFUCG shall, at its sole cost and expense, and, in accordance with LFUCG procurement and purchasing standards, provide such protection, whether by the LFUCG Police Department, an independent security guard, through a security system installed in the Cemetery (including a security analysis) at the cost of LFUCG, or otherwise, as is reasonably necessary to keep the peace on the LCC grounds and to prevent and limit any adverse impact caused directly or indirectly by the relocation or presence of the Statues on the LCC grounds on interments, visitors, special activities, landscaping, access, cemetery operations or the general atmosphere of the Cemetery in keeping with its sole purpose as a Cemetery. In the event that the funding for such relocation is provided by the Fund (as defined in Section 11 hereof), the LFUCG procurement and purchasing standards shall be waived by the parties.

5. Modification; Maintenance.

(a) Throughout the Term, LCC shall have the right, after consultation with and approval of LFUCG, to make any reasonable further alterations or modifications to the Statues, including but not limited to modifying the height, foundations, pedestals or other features thereof, and modifying any plaques or signage related thereto, as LCC and LFUCG deem necessary and appropriate. The cost of any such modifications or alterations shall be reimbursed by LFUCG to LCC upon receipt of an invoice therefor, provided, however, that (i) such work and materials are procured in accordance with LFUCG procurement and purchasing standards and that LFUCG approves the work prior to it being performed, and (2) LCC shall not be required to seek approval of LFUCG for the modifications described in Section 3 hereof, except as expressly provided in Section 3. In the event that the funding for such modifications or alterations is provided by the Fund (as defined in Section 11 hereof), the LFUCG procurement and purchasing standards shall be waived by the parties.

(b) LFUCG shall have the sole responsibility for the maintenance, repair, restoration and replacement of the Statues, which shall be in compliance with all state and

federal laws and regulations and which obligations shall be performed in conformity with the manner and timetable for existing LCC statues. LCC shall have the right, but not the obligation, to effectuate such maintenance, repair, restoration and replacement if LFUCG fails to do so after reasonable notice is given to LFUCG pursuant to Section 13; provided, however, that LFUCG shall reimburse LCC for the reasonable cost of any necessary maintenance, repair, restoration and replacement performed by or on behalf of LCC upon receipt of an invoice therefor. LCC shall have no liability to LFUCG or otherwise, and LFUCG hereby forever releases and discharges LCC, for any maintenance, repair, restoration or replacement of the Statues by LFUCG or LCC, or any damage, deterioration or destruction to the Statues and LFUCG shall be liable to LCC for any such claims, expenses or losses incurred by LCC under this Section 5. LCC agrees that LFUCG shall have the right to enter the Cemetery at reasonable times to inspect the Statues and/or the security system and to perform any of LFUCG's duties set forth herein.

6. Liability; Insurance; Release.

(a) LCC understands and agrees that LFUCG is a governmental, self-insured entity and that it is protected from third-party claims by the doctrine of sovereign immunity. It is understood and agreed to by the parties that the below provisions are not intended to operate or act as a waiver of sovereign immunity as to these types of claims but also that this provision will not be invoked by LFUCG to avoid its contractual obligations to LCC hereunder or to otherwise make LCC responsible for the cost of any claims or actions related to the specific matters enumerated herein. As a means of furthering the mutual obligations in this Agreement, and upon receipt of an invoice, LFUCG shall reimburse LCC annually for five years from the Effective Date, the cost of an umbrella commercial liability insurance policy of \$2 million above LCC's existing umbrella commercial liability insurance policy limit.

(b) LFUCG agrees that if the Kentucky Military Heritage Commission ("*KMHC*") brings suit against LCC for any claim relating to the presence of the Statues on the grounds of the Cemetery, including, but not limited to, any claims by KMHC for wrongful, unlawful, or invalid removal, relocation, alteration of the Statues or similar claims with respect to the Statues and their relocation to the Cemetery Grounds, including any claim arising from the alteration of the pedestals of the Statues as contemplated by this Agreement, LFUCG agrees that it shall defend LCC in any administrative or civil proceeding and shall be responsible for any court ordered remedies that are finally determined by an appropriate competent authority. LFUCG hereby forever releases and discharges LCC with respect to any and all claims arising out of or under this Agreement, except for any claims as set forth in Section 6(c). LFUCG's obligations to LCC under this Section 6(b) shall survive the expiration or any termination of this Agreement for a period of five (5) years.

(c) LCC agrees that LFUCG shall not be liable for any activities occurring on or about the Cemetery grounds that do not relate to the relocation or presence of the Statues in the Cemetery, including claims arising from activities that took place prior to the execution of this Agreement, or claims for improper interment or cremation, grave desecration, grave violation, abuse of a corpse, criminal actions, intentional torts, wrongful death, injury, drowning, or negligence, or any other claim that does not directly or indirectly involve the relocation or presence of the Statues in the Cemetery, nor shall it be liable for any intentional torts or acts of

gross negligence performed by LCC or any of its officers, directors, employees, agents, or affiliates.

7. Relocation. Upon the occurrence of any events, whether formal or informal, planned or unplanned, and/or by a person or persons, including but not limited to protests, demonstrations, pickets, sit-ins, marches, rallies, disputes, disturbances, unlawful, objectionable or disruptive conduct, uprisings or riots related to the relocation or presence of the Statues on the LCC grounds, which, in LCC's reasonable discretion, breach the peace on the LCC grounds or adversely impact interments, visitors, special activities, landscaping, cemetery operations or the general atmosphere of the Cemetery and/or the property of LCC, or upon any other occurrences or circumstances having an adverse impact on the Cemetery, as reasonably determined by LCC, including, but not limited to, a claim by KMHC that the Statues have been wrongfully or unlawfully relocated, removed or altered, which claim impairs or jeopardizes the rights and obligations of LFUCG or LCC under this Agreement, and upon written notice from LCC, LFUCG shall relocate the Statues outside the Cemetery within a reasonable amount of time. Furthermore, should it be finally determined by an appropriate competent authority that the KMHC has jurisdiction over the Statues, and LCC is not seeking an immediate relocation of the Statues off the Cemetery Grounds, LFUCG shall undertake such reasonable and necessary steps to secure the approval by the KMHC of the relocation of the Statues to the Cemetery Grounds, and the alteration of the Statues, as provided in this Agreement, and if LFUCG shall be unable to secure such approvals by the KMHC then LFUCG shall promptly relocate the Statues to a location off the grounds of the Cemetery. This relocation shall be at LFUCG's sole cost and expense, and LFUCG shall repair any damage to the Cemetery caused thereby and restore the grounds to the same condition they were in as of the Effective Date. Upon such relocation of the Statues outside the Cemetery, this Agreement shall be terminated, except for the provisions which provide for survival of this Agreement.

8. Ownership. During the Term, and notwithstanding any maintenance, repair, restoration or replacement of the Statues undertaken by LCC hereunder, LFUCG shall remain the sole owner of the Statues.

9. Costs and Expenses. The parties acknowledge that LCC has agreed to accept the relocation of the Statues at the request of LFUCG, and LCC shall not be burdened with any expense related to such relocation or associated with the maintenance, care, upkeep, repair, relocation, restoration, replacement or security of the Statues, all of which shall be the sole responsibility of LFUCG. LFUCG shall bear the cost of installation, maintenance and removal, as necessary, of any footers, foundations or other work or construction needed for the initial installation or any subsequent relocation of the Statues at the Cemetery. LFUCG shall promptly reimburse LCC for its reasonable attorneys' fees and costs incurred in connection with the approval by the Board of Directors of LCC of the resolution authorizing this Agreement, drafting and negotiation of this Agreement, further approvals as may be required of the Board of Directors of this Agreement and any and all additional reasonable attorneys' fees and costs relating to the enforcement of or any amendments to this Agreement. Further, any work to be performed by LFUCG hereunder, including but not limited to installation of the Statues on the grounds of LCC, any relocation of the Statues required hereunder, and LFUCG's obligations set forth in Section 5 hereof, shall be done at LFUCG's sole cost and expense, and free of liens and encumbrances, and LFUCG shall furnish upon request lien waivers relating to such work

performed. LFUCG shall be liable to LCC for any and all claims resulting from a breach of this Section 9.

10. Default; Remedies. The parties acknowledge and agree that money damages alone would not be a sufficient remedy for any breach of this Agreement. In the event that either party refuses or fails to perform any of its obligations set forth herein within the time frame hereinabove set forth, the non-defaulting party shall be entitled to seek specific performance from the defaulting party with respect to such obligations. In addition, in the event that LFUCG refuses or fails to perform any of its obligations set forth herein within the time frame hereinabove set forth, in addition to any other remedies available at law or in equity, LCC (i) shall be entitled to perform such obligations and immediately seek reimbursement from LFUCG for the reasonable cost of such performance, and (ii) shall be entitled to pursue a claim against LFUCG for the direct and indirect damages incurred by LCC as a result of the failure or refusal of LFUCG to perform such obligations. In addition thereto, in the event of a default by LFUCG, LCC shall be entitled to a claim against the insurance required to be maintained by LFUCG hereunder. In no event shall LCC be liable to LFUCG for money damages for any breach of this Agreement, or any claims at law or in equity, (and LFUCG hereby forever releases and discharges LCC for such claims), except the right of specific performance as set forth in the first sentence of this Section 10.

11. Fund. The parties understand and agree that one or more funds have been created to pay for the relocation, maintenance, repair, and upkeep of the Statues; these funds are administered by Blue Grass Community Foundation, Inc. (hereinafter referred to as the “**Fund**”). The Fund may be used to pay for some or all of the costs incurred by LFUCG pursuant to the terms of this Agreement, and the application of LFUCG procurement and purchasing standards shall not be necessary in said event. LCC shall be entitled to seek reimbursement for all amounts due by LFUCG under this Agreement by submitting said requests for reimbursement to the Fund and to LFUCG, provided LFUCG acknowledges and agrees that notwithstanding such reimbursement process, LFUCG shall be primarily liable for all such amounts due by LFUCG under this Agreement. LCC acknowledges that the Board of Advisors of the Fund shall have sole discretion to approve or disapprove the use of the Fund for reimbursement of the expenses outlined in this Agreement.

12. Ordinance. The Council has enacted, or will enact prior to the Effective Date, a resolution directing the Mayor to execute this Agreement.

13. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by certified mail return receipt requested or by express overnight mail service via a national courier, addressed to the parties at their respective addresses set forth above.

14. Assignment. Neither party shall be permitted to transfer or assign its interest in this Agreement, in whole or in part, without the consent of the other party to this Agreement. No assignment will release the assigning party of its obligations under this Agreement.

15. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto, their heirs, executors, devisees, legatees, successors and permitted assigns.

16. Waiver and Modification. Failure by either party to insist upon or enforce any of its or their rights shall not constitute a waiver thereof, but provided, however, that either party may, in writing, waive the benefit of any provision or provisions for its or their benefit contained in this Agreement. No oral modification hereof shall be binding upon the parties, and any modification must be in writing and signed by both of the parties in order to be effective against either party.

17. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

18. Entirety of Agreement. This Agreement constitutes the final, complete and exclusive understanding of the parties with respect to the matters set forth herein, and supersedes all prior and contemporaneous oral and written agreements or understandings as to its subject matter. This Agreement may not be modified or amended except in writing, signed by each of the parties hereto.

19. Gender; Number; Captions. The use of the masculine, feminine or neuter gender, or the singular or plural number, shall be deemed to apply to any other gender or number as the context of any provisions of this Agreement may require. The term "person" shall include individuals, partnerships, corporations, and all other legal entities. The several captions of this Agreement are inserted for convenience only, and shall be ignored in interpreting the provisions of this Agreement.

20. Time. Time is of the essence in the performance of this Agreement.

21. Severability. If any provision of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

22. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(End of Text; Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized officers or representatives on the dates indicated below, in duplicate original, and further agree that upon the full execution of this Agreement, the same shall be effective as of the date and year first above written

LFUCG:

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

By: _____

Its: _____

Date: _____

LCC:

LEXINGTON CEMETERY COMPANY

By: _____

Its: _____

Date: _____

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11/10/2017 2:10 pm

JOHN HUNT MORGAN MONUMENT



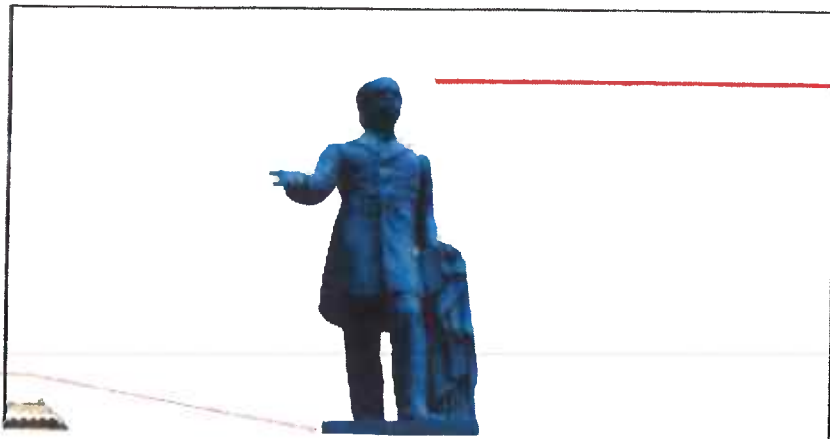
8'x3' @ Base

Bronze Statue - 12'-0"



JOHN C. BRECKINRIDGE MONUMENT

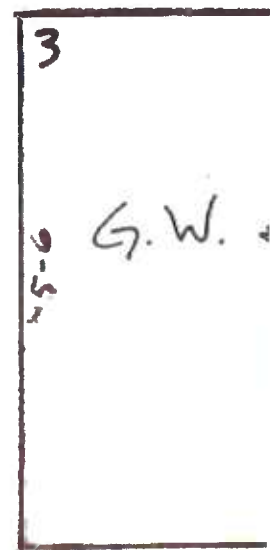
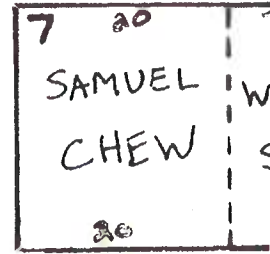
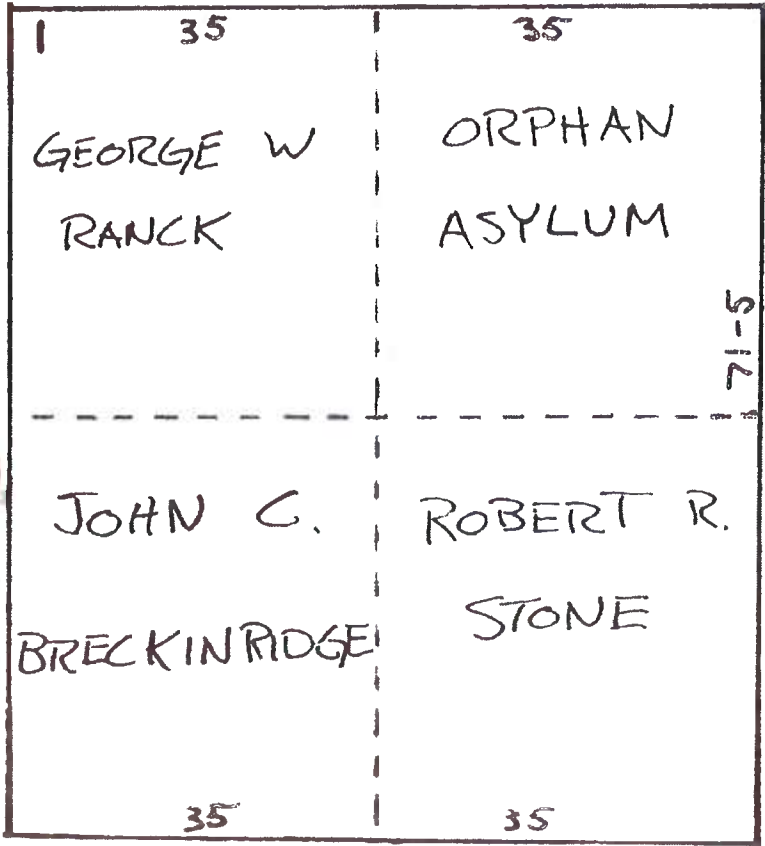
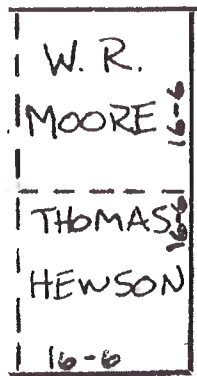
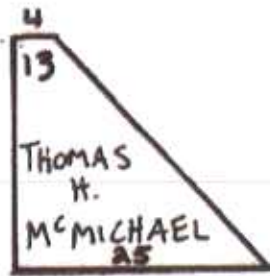
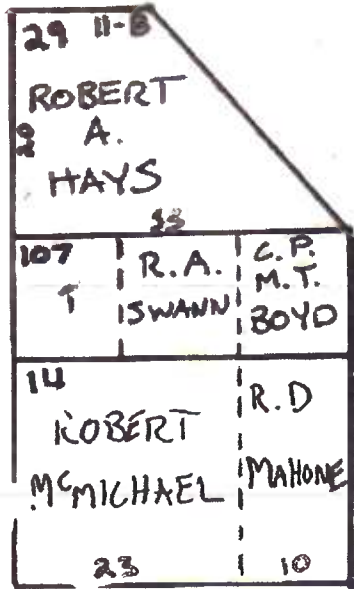
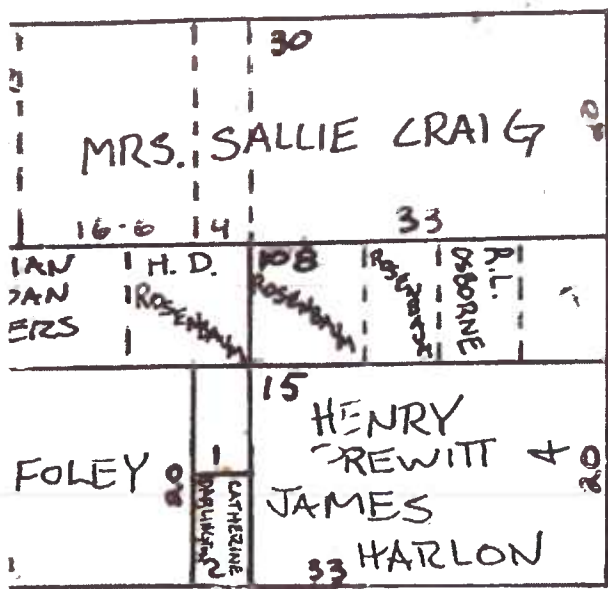
3'-0" Square @ Base



Bronze Statue - 8'-0"

EXHIBIT

B



Breckinridge

Section G



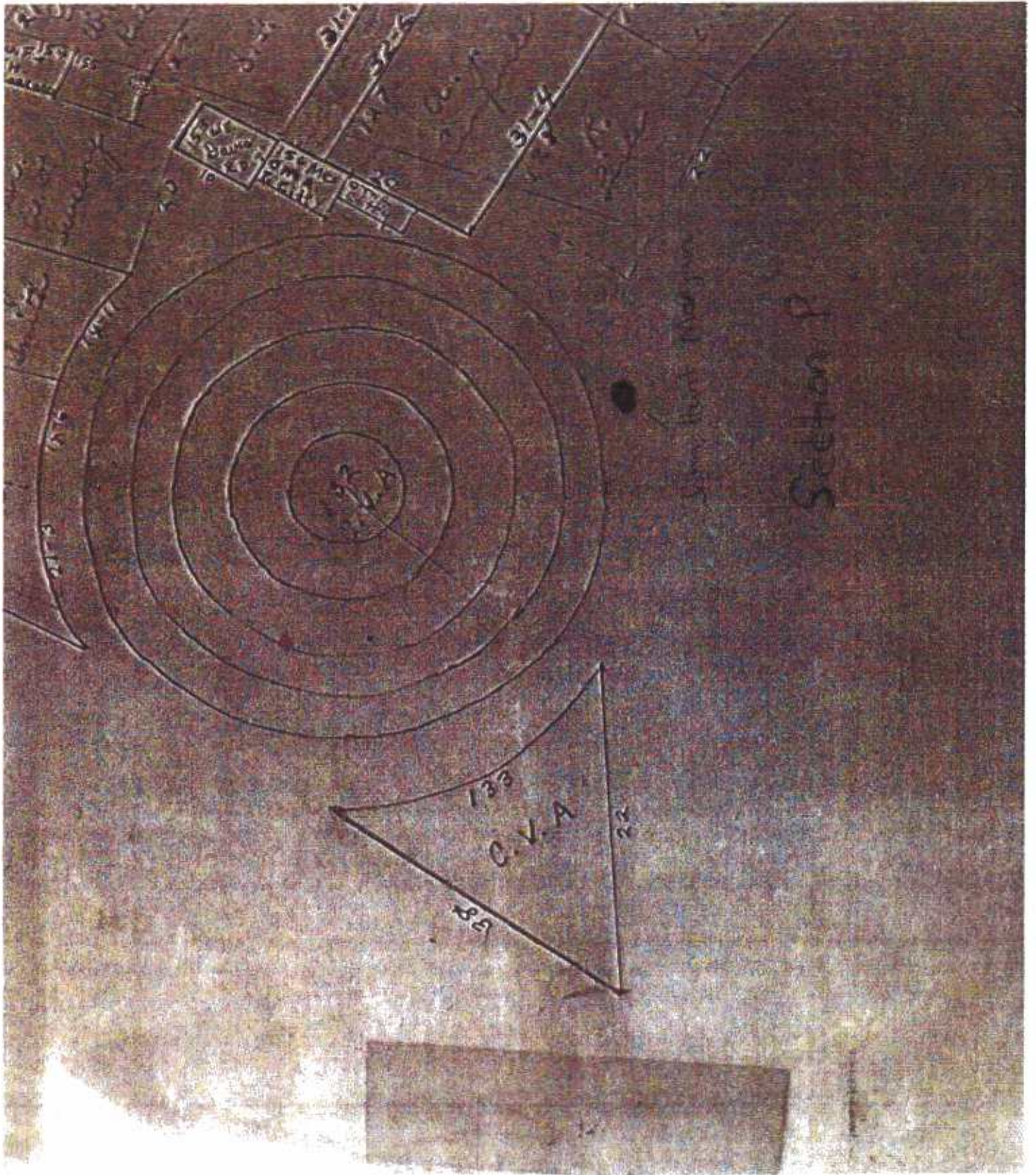
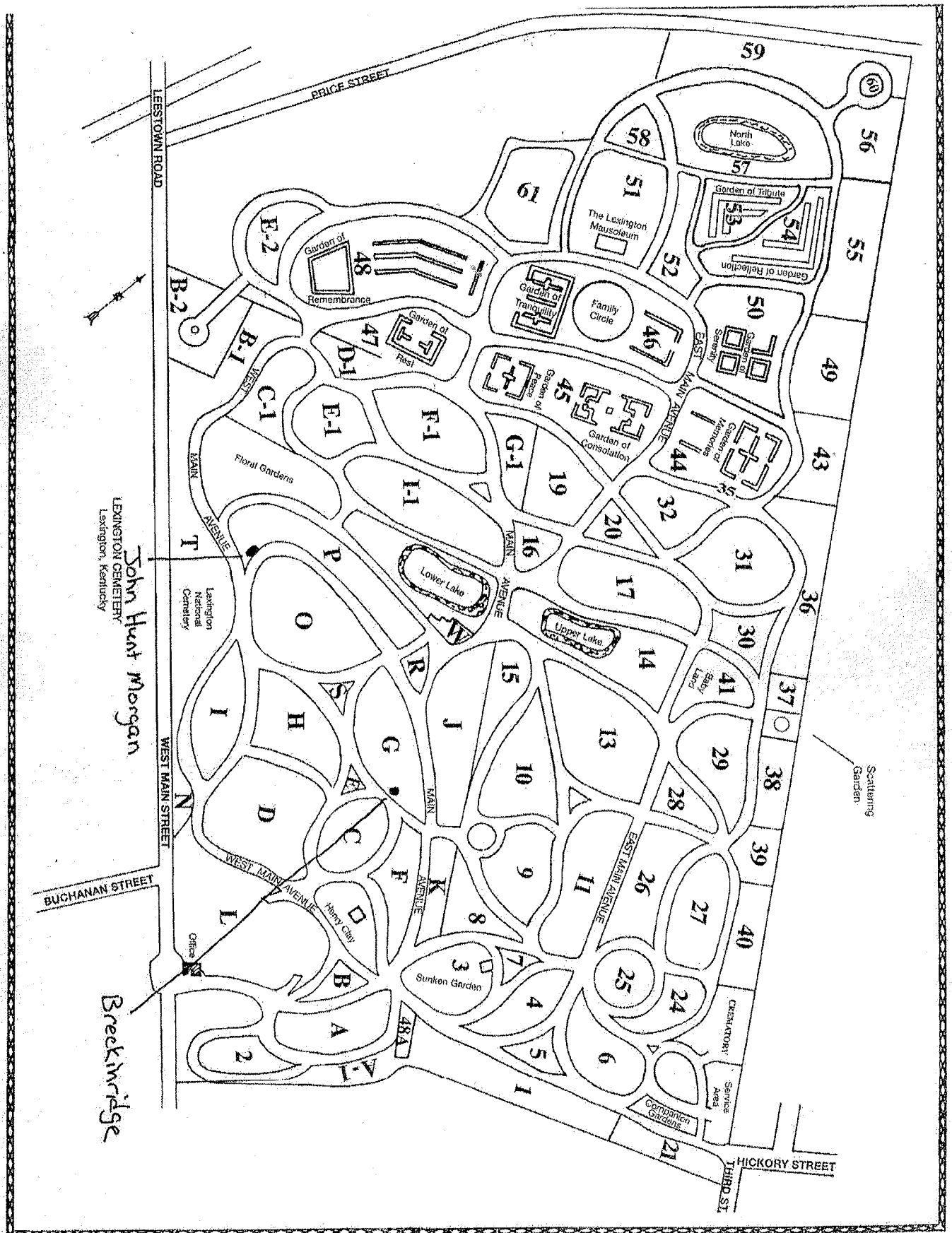


EXHIBIT
D



John Hunt Morgan
LEXINGTON CEMETERY
Lexington, Kentucky

EXHIBIT
E