

ORDINANCE NO. 2700

DEC 15 2008

AN ORDINANCE TO AUTHORIZE A WARDERMAN
CEMETERY ESCROW/TRUST TO PAY FOR THE BURIAL
OF PAUPERS AT THE WARDERMAN CEMETERY
LOCATED IN THE CITY OF COLUMBIA, ILLINOIS TO BE
FUNDED BY A DONATION FROM CHARLES TODD, JR. OF
COLUMBIA, ILLINOIS

Wiley J. Hefner
City Clerk

WHEREAS, the City of Columbia, Illinois (the "City") is in control of a cemetery located within the corporate limits of the City which is commonly known as the Warderman Cemetery (the "Cemetery" or "Warderman Cemetery") and is authorized to operate the same in such manner as the corporate authorities of the City shall deem necessary under and by virtue of Section 11-52-1 of the Illinois Municipal Code (65 ILCS 5/11-52-1);

WHEREAS, the Illinois Cemetery Care Act authorizes the City to accept funds for the care of the cemetery and to establish a trust fund to hold the same in perpetuity (760 ILCS 100/3);

WHEREAS, Charles Todd, Jr. of Columbia, Illinois has offered and agreed to donate the sum of \$25,000 to be held and used by the City for the burial of paupers in the Cemetery, which escrow/trust would be and become an irrevocable cemetery trust to be maintained in perpetuity by the City for the burial of paupers in the Cemetery;

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is in the welfare and best interest of the Warderman Cemetery and the citizens of the City that the City accept the aforementioned offer of Charles Todd, Jr.; and,

WHEREAS, it is necessary and appropriate that the City shall make and enter into an escrow/trust agreement for the uses and purposes aforesaid in the form attached hereto, which is hereby approved as to form and authorized by this ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois hereby authorizes the Mayor to make and enter into the Escrow/Trust Agreement to provide funds for the burial of paupers at the Warderman Cemetery in the City in the form attached hereto, which is hereby approved as to form; and, said City Council does hereby authorize and direct the

Mayor to execute said Escrow/Trust Agreement for and on behalf of the City, in as many counterparts as the Mayor shall decide; and, the City Council does hereby authorize and direct the City Clerk to attest the same and affix thereto the corporate seal of the City.

Section 3. This Ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Row moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Oberfell, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberfell, Stumpf and

Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTAINED: None.

PASSED by the City Council the 15th days of December, 2008, to take effect on that date, and APPROVED by the Mayor.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



WESLEY J. HOEFFKEN, City Clerk

(SEAL)

After Recording Return To:

Tom D. Adams
Adams & Huetsch
Attorneys at law
P.O. Box 647
321 Wedgewood Square
Columbia. Illinois 62236

**CHARLES TODD JR. - WARDERMAN CEMETERY MEMORIAL
ESCROW/TRUST**

This Warderman Cemetery Escrow/Trust agreement is made and entered into this _____ day of _____, 2008, between the City of Columbia, Illinois, a municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois, (the "City" or "Columbia") as the Party of the First Part and Charles Todd, Jr. now residing at 308 Todd Center Drive, in the City of Columbia, Illinois 62236, ("Todd") as the Party of the Second Part; WITNESSETH:

WHEREAS, the City of Columbia, Illinois is in control of a cemetery located within the corporate limits of the City which is commonly known as the Warderman Cemetery (the "cemetery" or "Warderman Cemetery") and is authorized to operate the same in such manner as the corporate authorities of the City shall deem necessary under and by virtue of Section 11-52-1 of the Illinois Municipal Code (65 ILCS 5/11-52-1);

WHEREAS, the Illinois Cemetery Care Act authorizes the City to accept funds for the care of the cemetery and to establish a trust fund to hold the same in perpetuity (760 ILCS 100/3);

WHEREAS, Charles has: (i) paid for a ground penetrating radar study for the location of unmarked graves and buried human remains in the cemetery which radar study has been completed; (ii) paid for the installation of grave markers for the graves of buried human remains which are currently located in the cemetery which grave markers have been installed in the cemetery; (iii) paid for and installed a columbarium for the burial of the human remains of paupers (as paupers is hereinafter defined in Subsection 3 (A) of this agreement) in the cemetery as authorized by the City; and, (iv) with the permission of the City will be permitted to bury the cremated remains of Charles, his first wife, Virginia Todd and her brother, George Koehler, in the cemetery and shall pay for the relocation of a grave monument for them in the Warderman Cemetery from its current location at the Todd Hall Retreat property where Charles and his second wife, Shirley, now reside;

WHEREAS, Charles has agreed to donate the sum of \$25,000 to be held and used by the City for the burial of paupers in the cemetery (as paupers is hereinafter defined in Subsection 3 (A) of this agreement), which escrow/trust shall be and become an irrevocable cemetery trust to be maintained in perpetuity by the city for the burial of paupers in the cemetery as is hereinafter made and provided in this agreement; and,

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is in the welfare and best interest of the Warderman Cemetery and the citizens of the City that the City accept the aforementioned offer of Charles and that the City and Charles make and enter into this agreement to set up and establish this escrow/trust for the performance of the same.

NOW, THEREFORE, in consideration of the premises, the parties to this Escrow/Trust agreement stipulate and agree, as follows:

(1) Establishment of Escrow. The parties hereto hereby establish the Charles Todd Jr. - Warderman Cemetery Memorial Escrow/Trust to be

known by that name for the uses and purposes and on the terms and conditions hereinafter set forth.

(2) Funding of the Escrow/Trust. The Escrow/Trust shall be funded by an initial donation from Chares in the sum of Twenty Five Thousand Dollars (\$25,000). Said funds shall be deposited at one or more local banks of the City's selection and said funds and the earnings therefrom shall be used and expended as hereinafter provided in the next successive section of this agreement.

(3) Use and Expenditure of Escrow/Trust Funds. The Escrow/Trust funds shall be used and expended, as follows:

(A) The Columbarium aforesaid, (which provides 24 "niches" for the storage of the cremated remains of paupers entitled to be interred in the cemetery) has been purchased by Charles and located in the cemetery and the same shall hereafter be available to be used exclusively for the interring of paupers in the cemetery.

For the purpose of this agreement, a pauper is defined as a person who was a resident of the Columbia, Illinois Community Unit 4 School District (or a successor thereof) who has died and whose estate assets remaining after their death is in amount or value of Ten Thousand Dollars (\$10,000) or less, as determined by the City. Should a deceased pauper have a prepaid burial trust or public funds available for their burial the same shall be used to pay for their burial notwithstanding they otherwise qualify as a pauper for purposes of this agreement, and escrow/trust funds shall not be used and expended for the same until said other funds have first been used and expended for the same;

(B) The said sum of Twenty Five Thousand Dollars (\$25,000) donated by Charles for the establishment of this escrow/trust (and any other funds received by the trust during the period of its existence) shall be held in trust in perpetuity (or until fully used and expended for the purpose intended by this burial trust) and the earnings therefrom shall be used and expended by the City for the burial of paupers in the Warderman Cemetery as "pauper" is defined in the preceding subsection (A) of this agreement as the City shall decide and determine, (except as hereinafter provided in the next paragraph of this agreement).

Until all of the niches in the columbarium have been filled, the funds of the Escrow/Trust shall not be used for maintenance of the cemetery or the maintenance of the graves or the columbarium located therein, which maintenance responsibility shall remain with the City or its successor. After all of the twenty four (24) niches in the columbarium have been utilized for the burial of paupers (as herein provided and required), thereafter if there be funds remaining in the burial trust, those remaining funds (and the earnings therefrom) may be used and expended by the City for the maintenance of the cemetery as the City shall decide and determine is necessary and appropriate.

(4) Revocation and Amendment of Escrow/Trust. At such time as Charles has paid to the City his escrow trust donation in the sum of \$25,000, the Escrow shall be and become an Irrevocable Trust which cannot be changed and amended except by the joint agreement of the City and Charles, (or his heirs or estate if he is deceased). Thereafter, the parties to this agreement shall be required to do and perform all of their obligations undertaken in this agreement.

(5) Remedy on Default. In the event there is a default under this agreement by either of the parties hereto and the default persists after the party in default has received a thirty (30) day prior written notice of default and an opportunity to cure the default from the party not in default, the party injured by the default shall have every remedy provide by law or equity under the law of the State of Illinois at the time of the default, including but not limited to an action for specific performance, an action for money damages caused by the default, and an action for injunctive relief. The remedies herein provided for shall be cumulative and not exclusive of one another.

(6) Attorney fees and costs. In the event there is a default under this agreement and it thereby becomes necessary for the party not in default to employ the services of an attorney to enforce the agreement against the party in default, the party not in default shall be entitled to recover from the party in default their reasonable attorney fees and litigation costs (including court costs and other litigation costs including litigation discovery expenses and expert witness fees) and the same may be made part of any judgment entered by a court of competent jurisdiction in the action brought to enforce the agreement.

(7) Law and Jurisdiction. The parties acknowledge that this agreement was made and entered into in the State of Illinois and Illinois Law shall apply in the interpretation and enforcement of this agreement. Further, the parties stipulate and agree that the Monroe County, Illinois Circuit Court, in and for the Twentieth 20th Judicial Circuit of Illinois, in Waterloo, Illinois, shall have the sole and exclusive jurisdiction (and shall be the venue) for the interpretation and enforcement of this agreement.

(8) Severability. In the event a court of competent jurisdiction determines any of the provisions of this agreement are invalid and unenforceable the remaining provision hereof shall remain and be in full force and effect and the agreement shall be read and enforced as if the invalid provisions had been struck from the agreement.

(9) Assignment. Notwithstanding anything contained in this agreement to the contrary, the City shall have the right to transfer the maintenance and operation of the Warderman Cemetery to Monroe County, Illinois or to another governmental, public or nonprofit tax-exempt charitable organization that will be required to maintain, operate and

preserve the cemetery for its intended use and purpose should the City hereafter find and determine the cemetery can be as well or better operated and maintained by that governmental or public or charitable organization. In the event of such a transfer the City may transfer and assign the burial trust and the City's responsibilities for the operation and management of the burial trust to that organization and that organization shall be subject to, bound by and obligated to comply with and perform the City's obligations under this agreement to the same extent and with the same force and effect as the City was required to do under this agreement.

Notwithstanding anything contained in this agreement to the contrary, the City Council of the City shall have the right to delegate to the Columbia Historic Preservation Commission or another or other agency of the City the responsibility for the operation and maintenance of the cemetery and/or the burial trust (or for the rendering of advise and assistance to the City with regard to the maintenance and operation of the cemetery and/or the burial trust), as the City shall decide and determine.

This agreement shall not be otherwise assignable by either party hereto without the prior written consent of the other party hereto.

(10) Binding Effect. This agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their successors and assigns, and in the case of Charles, successors to include his estate legal representative(s) and/or heirs.

IN WITNESS WHEREOF, the parties hereto have made executed and delivered the above and foregoing agreement for the uses and purposes set forth above on the dates set forth below to take effect on the date set forth above.

City of Columbia, Illinois, the Party
of the First Part:

BY: _____

KEVIN B. HUTCHINSON, Mayor

ATTEST:

Wesley J. Hoeffken, City Clerk

COUNTY OF MONROE)

) SS

STATE OF ILLINOIS)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that KEVIN B. HUTCHINSON and WESLEY J. HOEFFKEN, personally known to me and known to me to be the Mayor and City Clerk, respectively, of the City of Columbia, Illinois appeared before me in person this date and acknowledged that they signed and delivered the above and foregoing document as their free and voluntary act and deed and as the fee and voluntary act and deed of the City of Columbia, Illinois, a municipal corporation, for the uses and purposes therein set forth, pursuant to an enabling ordinance of said city duly enacted.

Given under my hand and Notary Seal this _____ day of _____,
2008.

Notary Public

Charles Todd, Jr., the Party of the
Second Part

STATE OF ILLINOIS)

) SS

COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that CHARLES TODD, JR., personally known to me and known to me to be the same person whose name appears in the above and foregoing agreement as the Party of the Second Part, appeared before in person this date and acknowledged he signed and delivered said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Notary Seal this _____ day of _____, 2008.

Notary Public

THIS DOCUMENT PREPARED BY:

TOM D. ADAMS #13439
ADAMS AND HUETSCH
Attorneys-at-Law
321 Wedgewood Square
P. O. Box 647
Columbia, Illinois 62236
Telephone (618) 281-5185/5186
Fax (618) 281-5553
E-mail address: tdadams@htc.net

After Recording Return To:

Tom D. Adams
Adams & Huetsch
Attorneys at law
P.O. Box 647
321 Wedgewood Square
Columbia. Illinois 62236

**CHARLES TODD JR. - WARDERMAN CEMETERY MEMORIAL
ESCROW/TRUST**

This Warderman Cemetery Escrow/Trust agreement is made and entered into this 15th day of December, 2008, between the City of Columbia, Illinois, a municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois, (the "City" or "Columbia") as the Party of the First Part and Charles Todd, Jr. now residing at 308 Todd Center Drive, in the City of Columbia, Illinois 62236, ("Todd") as the Party of the Second Part; WITNESSETH:

WHEREAS, the City of Columbia, Illinois is in control of a cemetery located within the corporate limits of the City which is commonly known as the Warderman Cemetery (the "cemetery" or "Warderman Cemetery") and is authorized to operate the same in such manner as the corporate authorities of the City shall deem necessary under and by virtue of Section 11-52-1 of the Illinois Municipal Code (65 ILCS 5/11-52-1);

WHEREAS, the Illinois Cemetery Care Act authorizes the City to accept funds for the care of the cemetery and to establish a trust fund to hold the same in perpetuity (760 ILCS 100/3);

WHEREAS, Charles has: (i) paid for a ground penetrating radar study for the location of unmarked graves and buried human remains in the cemetery which radar study has been completed; (ii) paid for the installation of grave markers for the graves of buried human remains which are currently located in the cemetery which grave markers have been installed in the cemetery; (iii) paid for and installed a columbarium for the burial of the human remains of paupers (as paupers is hereinafter defined in Subsection 3 (A) of this agreement) in the cemetery as authorized by the City; and, (iv) with the permission of the City will be permitted to bury the cremated remains of Charles, his first wife, Virginia Todd and her brother, George Koehler, in the cemetery and shall pay for the relocation of a grave monument for them in the Warderman Cemetery from its current location at the Todd Hall Retreat property where Charles and his second wife, Shirley, now reside;

WHEREAS, Charles has agreed to donate the sum of \$25,000 to be held and used by the City for the burial of paupers in the cemetery (as paupers is hereinafter defined in Subsection 3 (A) of this agreement), which escrow/trust shall be and become an irrevocable cemetery trust to be maintained in perpetuity by the city for the burial of paupers in the cemetery as is hereinafter made and provided in this agreement; and,

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is in the welfare and best interest of the Warderman Cemetery and the citizens of the City that the City accept the aforementioned offer of Charles and that the City and Charles make and enter into this agreement to set up and establish this escrow/trust for the performance of the same.

NOW, THEREFORE, in consideration of the premises, the parties to this Escrow/Trust agreement stipulate and agree, as follows:

(1) Establishment of Escrow. The parties hereto hereby establish the Charles Todd Jr. - Warderman Cemetery Memorial Escrow/Trust to be

known by that name for the uses and purposes and on the terms and conditions hereinafter set forth.

(2) Funding of the Escrow/Trust. The Escrow/Trust shall be funded by an initial donation from Chares in the sum of Twenty Five Thousand Dollars (\$25,000). Said funds shall be deposited at one or more local banks of the City's selection and said funds and the earnings therefrom shall be used and expended as hereinafter provided in the next successive section of this agreement.

(3) Use and Expenditure of Escrow/Trust Funds. The Escrow/Trust funds shall be used and expended, as follows:

(A) The Columbarium aforesaid, (which provides 24 "niches" for the storage of the cremated remains of paupers entitled to be interred in the cemetery) has been purchased by Charles and located in the cemetery and the same shall hereafter be available to be used exclusively for the interring of paupers in the cemetery.

For the purpose of this agreement, a pauper is defined as a person who was a resident of the Columbia, Illinois Community Unit 4 School District (or a successor thereof) who has died and whose estate assets remaining after their death is in amount or value of Ten Thousand Dollars (\$10,000) or less, as determined by the City. Should a deceased pauper have a prepaid burial trust or public funds available for their burial the same shall be used to pay for their burial notwithstanding they otherwise qualify as a pauper for purposes of this agreement, and escrow/trust funds shall not be used and expended for the same until said other funds have first been used and expended for the same;

(B) The said sum of Twenty Five Thousand Dollars (\$25,000) donated by Charles for the establishment of this escrow/trust (and any other funds received by the trust during the period of its existence) shall be held in trust in perpetuity (or until fully used and expended for the purpose intended by this burial trust) and the earnings therefrom shall be used and expended by the City for the burial of paupers in the Warderman Cemetery as "pauper" is defined in the preceding subsection (A) of this agreement as the City shall decide and determine, (except as hereinafter provided in the next paragraph of this agreement).

Until all of the niches in the columbarium have been filled, the funds of the Escrow/Trust shall not be used for maintenance of the cemetery or the maintenance of the graves or the columbarium located therein, which maintenance responsibility shall remain with the City or its successor. After all of the twenty four (24) niches in the columbarium have been utilized for the burial of paupers (as herein provided and required), thereafter if there be funds remaining in the burial trust, those remaining funds (and the earnings therefrom) may be used and expended by the City for the maintenance of the cemetery as the City shall decide and determine is necessary and appropriate.

(4) Revocation and Amendment of Escrow/Trust. At such time as Charles has paid to the City his escrow trust donation in the sum of \$25,000, the Escrow shall be and become an Irrevocable Trust which cannot be changed and amended except by the joint agreement of the City and Charles, (or his heirs or estate if he is deceased). Thereafter, the parties to this agreement shall be required to do and perform all of their obligations undertaken in this agreement.

(5) Remedy on Default. In the event there is a default under this agreement by either of the parties hereto and the default persists after the party in default has received a thirty (30) day prior written notice of default and an opportunity to cure the default from the party not in default, the party injured by the default shall have every remedy provide by law or equity under the law of the State of Illinois at the time of the default, including but not limited to an action for specific performance, an action for money damages caused by the default, and an action for injunctive relief. The remedies herein provided for shall be cumulative and not exclusive of one another.

(6) Attorney fees and costs. In the event there is a default under this agreement and it thereby becomes necessary for the party not in default to employ the services of an attorney to enforce the agreement against the party in default, the party not in default shall be entitled to recover from the party in default their reasonable attorney fees and litigation costs (including court costs and other litigation costs including litigation discovery expenses and expert witness fees) and the same may be made part of any judgment entered by a court of competent jurisdiction in the action brought to enforce the agreement.

(7) Law and Jurisdiction. The parties acknowledge that this agreement was made and entered into in the State of Illinois and Illinois Law shall apply in the interpretation and enforcement of this agreement. Further, the parties stipulate and agree that the Monroe County, Illinois Circuit Court, in and for the Twentieth 20th Judicial Circuit of Illinois, in Waterloo, Illinois, shall have the sole and exclusive jurisdiction (and shall be the venue) for the interpretation and enforcement of this agreement.

(8) Severability. In the event a court of competent jurisdiction determines any of the provisions of this agreement are invalid and unenforceable the remaining provision hereof shall remain and be in full force and effect and the agreement shall be read and enforced as if the invalid provisions had been struck from the agreement.

(9) Assignment. Notwithstanding anything contained in this agreement to the contrary, the City shall have the right to transfer the maintenance and operation of the Warderman Cemetery to Monroe County, Illinois or to another governmental, public or nonprofit tax-exempt charitable organization that will be required to maintain, operate and

preserve the cemetery for its intended use and purpose should the City hereafter find and determine the cemetery can be as well or better operated and maintained by that governmental or public or charitable organization. In the event of such a transfer the City may transfer and assign the burial trust and the City's responsibilities for the operation and management of the burial trust to that organization and that organization shall be subject to, bound by and obligated to comply with and perform the City's obligations under this agreement to the same extent and with the same force and effect as the City was required to do under this agreement.

Notwithstanding anything contained in this agreement to the contrary, the City Council of the City shall have the right to delegate to the Columbia Historic Preservation Commission or another or other agency of the City the responsibility for the operation and maintenance of the cemetery and/or the burial trust (or for the rendering of advise and assistance to the City with regard to the maintenance and operation of the cemetery and/or the burial trust), as the City shall decide and determine.

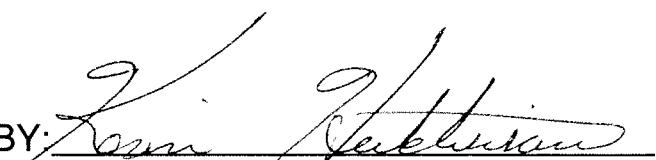
This agreement shall not be otherwise assignable by either party hereto without the prior written consent of the other party hereto.

(10) Binding Effect. This agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their successors and assigns, and in the case of Charles, successors to include his estate legal representative(s) and/or heirs.

IN WITNESS WHEREOF, the parties hereto have made executed and delivered the above and foregoing agreement for the uses and purposes set forth above on the dates set forth below to take effect on the date set forth above.

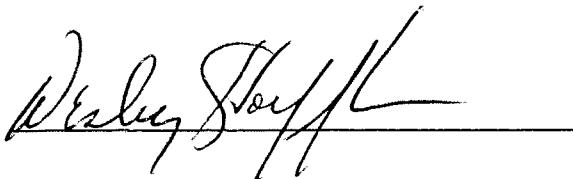
City of Columbia, Illinois, the Party

of the First Part:

BY: 

KEVIN B. HUTCHINSON, Mayor

ATTEST:



Wesley J. Hoeffken, City Clerk

COUNTY OF MONROE)

) SS

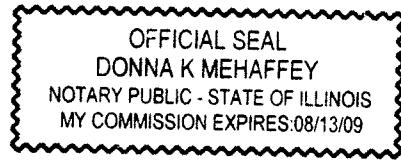
STATE OF ILLINOIS)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that KEVIN B. HUTCHINSON and WESLEY J. HOEFFKEN, personally known to me and known to me to be the Mayor and City Clerk, respectively, of the City of Columbia, Illinois appeared before me in person this date and acknowledged that they signed and delivered the above and foregoing document as their free and voluntary act and deed and as the fee and voluntary act and deed of the City of Columbia, Illinois, a municipal corporation, for the uses and purposes therein set forth, pursuant to an enabling ordinance of said city duly enacted.

Given under my hand and Notary Seal this 15th day of December,
2008.

Donna K. Mehaffey

Notary Public



Charles Todd, Jr.

Charles Todd, Jr., the Party of the
Second Part

STATE OF ILLINOIS)

) SS

COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that CHARLES TODD, JR., personally known to me and known to me to be the same person whose name appears in the above and foregoing agreement as the Party of the Second Part, appeared before in person this date and acknowledged he signed and delivered said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 8th day of December, 2008.



Notary Public



THIS DOCUMENT PREPARED BY:

TOM D. ADAMS #13439
ADAMS AND HUETSCH
Attorneys-at-Law
321 Wedgewood Square
P. O. Box 647
Columbia, Illinois 62236
Telephone (618) 281-5185/5186
Fax (618) 281-5553
E-mail address: tdadams@htc.net