

**PRENEED CEMETERY MERCHANDISE AND SERVICES
TRUST AGREEMENT**

This revocable Preneed Cemetery Merchandise and Services Trust Agreement (the “Trust Agreement”) is made and entered into this _____ day of _____ 20_____, by and between the “Cemetery Authority” and “Trustee” executing the signature pages.

WITNESSETH:

WHEREAS, it is a common practice for consumers (“Preneed Purchasers”) to contract with cemetery authorities for Preneed Merchandise and Services prior to the time when death is imminent;

WHEREAS, the Cemetery is engaged in the business of selling Cemetery Merchandise and Services under Preneed Contracts subject to the provisions (Insert statutory citation), as amended, and related rules and regulations of the (Insert state/province name), as amended;

WHEREAS, certain amounts received for Pre-Need Contracts are required to be placed in trust pursuant to (Insert statutory citation) and deposited with a trustee meeting the requirements of (Insert statutory citation) as amended;

WHEREAS, Trustee is qualified to serve as a trustee of these funds; and

WHEREAS, CEMETERY wishes to contract with Trustee; and

WHEREAS, Cemetery and Trustee wish to set forth the terms and conditions whereby all accumulated deposits hereafter deposited under this Trust Agreement and all accumulated appreciation and income thereon, (such accumulated deposits and accumulated appreciation and income shall hereafter be referred to as “Preneed Funds”) shall be administered in accordance with (Insert statutory citation);

NOW THEREFORE, in consideration of the declarations of trust and the mutual covenants of the Cemetery and Trustee, the parties agree as follows:

**ARTICLE I
TRUST PURPOSE**

1.1 **Creation of the Trust.** The purpose of this Trust Agreement and the trust created pursuant hereto (the “Preneed Trust Fund”) is to provide for the administration and investment, pursuant to (Insert statutory citation), of all Preneed Funds received by Trustee from the Cemetery.

1.2 **Appointment of Trustee.** The Cemetery hereby appoints Trustee and Trustee hereby accepts the appointment as Trustee of the Pre-Need Trust Fund in accordance with the terms and conditions of this Trust Agreement and applicable law.

1.3 **Bond.** The Trustee is specifically exempt from posting bond hereunder.

ARTICLE II PRENEED DEPOSITS

2.1 **Deposits Into Trust.** Cemetery may at any time this Trust Agreement is in effect, and in any amount, pay or direct that moneys constituting Preneed Funds be paid to Trustee for deposit into the Preneed Trust Fund established hereunder by Trustee for Cemetery. Trustee shall not be responsible for any Preneed Funds that shall be deposited pursuant to this Trust Agreement until such Preneed Funds shall have been actually delivered to Trustee for deposit into Cemetery's Preneed Trust Fund.

2.2 **Investment Accounts.** Cemetery may establish one or more separate and distinct investment accounts within the Preneed Trust Fund, provided that all statutes, rules and regulations of the (Insert state/province name), as well as all terms and conditions under this Trust Agreement, are complied with separately for each investment account.

2.3 **Accounts.** Trustee agrees to accept all Preneed Funds paid on behalf of Cemetery and to maintain such accounts and records as are necessary to carry out its obligations as Trustee. Cemetery, or its agent, shall be responsible for maintaining records for the purpose of identifying those Preneed Funds which relate to specific Preneed Purchasers.

2.4 **Information.** It is understood and agreed that the Trustee shall rely upon the accuracy of the information and documentation furnished by Cemetery. Trustee shall have no duty whatever to investigate the activities of Cemetery or to determine or inquire as to Cemetery's operations or the accuracy of information provided by Cemetery. Cemetery agrees to indemnify and hold Trustee harmless against any and all loss, costs, damages or expenses incurred by Trustee resulting from such reliance, which is not attributable, in whole or in part, to Trustee's gross negligence or willful misconduct.

2.5 **Compliance.** Trustee shall not be responsible for determining whether Cemetery has complied with requirements under (Insert statutory citation) concerning the timing or amount of accumulated deposits to be deposited with Trustee.

ARTICLE III DUTIES OF THE TRUSTEE

3.1 **Title To Assets.** Trustee shall take title to any assets conveyed to it by Cemetery to be deposited into Cemetery's Preneed Trust Fund for the purpose of investing, protecting and conserving such assets for Cemetery, collecting income earned from such assets and distributing principal and income of such Preneed Trust Fund pursuant to the terms of this Trust Agreement, and applicable law.

3.2 **Previous Trustee(s).** Trustee shall have no obligation with respect to the

activities of Cemetery or any previous trustee, and shall not be required to examine the accounts, records or acts of Cemetery or any previous trustee; nor shall Trustee in any way or manner be responsible for any act or omission on the part of Cemetery or any previous trustee.

ARTICLE IV POWERS OF THE TRUSTEE

Except as otherwise provided under (Insert statutory citation), Trustee shall have the powers normally granted to trustees under (Insert state/province name) law, specifically including, but not by way of limitation, the power to:

4.1 Collect, receive and provide receipt(s) for any and all items of income and principal that may be derived from the assets placed under the terms of this Trust Agreement and to allocate same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.

4.2 Invest and reinvest the assets of the Preneed Trust Fund pursuant to the provisions of this Trust Agreement and applicable law.

4.3 Treat stock dividends, stock splits and dividends payable in the securities of another company, extraordinary cash or non-cash dividends, liquidating dividends, stock purchase rights, warrants and options of all kinds, and all similar property and the right to property, as income or as principal, or partly one and partly the other, in accordance with usual and customary accounting practices of Trustee.

4.4 Acquire and hold any stock, securities, real estate or any other property, real or personal, in the name of Trustee without disclosing its capacity, or in the name of any other nominee without disclosing its capacity.

4.5 Vote all shares of stock in the Preneed Trust Fund howsoever the certificates therefore may be issued, on all matters, and to give special or general proxies to any person, or persons, with or without the power of substitution.

4.6 Execute, acknowledge, deliver and accept any and all deeds, deeds of trust, releases, mortgages, certificates, documents, affidavits, declarations and any and all other papers and instruments whatsoever deemed by Trustee necessary or appropriate to carrying out the powers and authority herein granted.

4.7 Exercise any option or privilege to buy, sell, exchange, or convert bonds, notes, stock or real, personal or mixed property, of any kind.

4.8 Pay from income of the Preneed Trust Fund, the trustee fees as provided for herein and any other expenses which may from time to time be permitted under (Insert statutory citation).

**ARTICLE V
INVESTMENT OF TRUST FUNDS**

5.1 **Permitted Investments.** Trustee shall invest and reinvest the assets of the Preneed Trust Fund only in such manner and in such investments as are permitted under (Insert statutory citation), as amended, and any related rules which may now exist or which may be promulgated hereafter.

Subject to the foregoing limitation, Trustee is authorized to invest and reinvest and keep the Preneed Funds of the Preneed Trust Fund invested in any kind of property; real, personal or mixed; and any kind of investment, including, but not limited to; cash and other liquid assets; common and preferred stocks; any interest in a common trust fund, mutual fund or other such investment maintained by Trustee; voting trust certificates; bonds; notes; debentures; mortgages; trust deeds; mortgage participations; and shares or interests in investment funds.

**ARTICLE VI
INVESTMENT ADVISOR**

6.1 **Employment of Third Parties.** Notwithstanding anything to the contrary contained herein, authority is hereby reserved by Cemetery Authority, subject to any applicable restrictions under (Insert statutory citation), to select an investment advisor (“Investment Advisor”), if Cemetery so chooses, to advise Trustee in the making or retention of any investment. Trustee shall use commercially reasonable efforts to follow such advice received from such Investment Advisor, Cemetery shall designate in writing the name of the Investment Advisor, if any, selected and shall submit the name to Trustee in writing. Such notice shall be effective until revoked by Cemetery upon ten (10) days prior written notice thereof to Trustee.

6.2 **Investment Standards of the Investment Advisor.** The Investment Advisor, in advising Trustee to manage, administer, invest, reinvest and dispose of assets of the Preneed Trust Fund, shall conform with the investment standards required of Trustee by (Insert statutory citation). Provided, that Trustee shall not be required to follow the advice received from such Investment Advisor should Trustee be of the opinion that the actions being advised by the Investment Advisor would violate requirements under (Insert statutory citation) or Trustee’s fiduciary obligations.

**ARTICLE VII
DISTRIBUTION OF TRUST FUNDS**

7.1 **Withdrawal of Preneed Funds.** Preneed Funds held in the Preneed Trust Fund which are related to Preneed Contracts shall be retained in the Preneed Trust Fund by Trustee until Trustee receives from Cemetery a written request for withdrawal from the Preneed Trust Fund of requested amounts relating to the Preneed Contract, including, in the case of the death of the “Beneficiary” (as the term is used in (Insert statutory citation) of the Preneed Contract, proper documentation as required under (Insert statutory citation).

7.2 **Procedures for Withdrawals.** Subject to Section 7.1 above, Cemetery reserves

the right to establish specific forms and procedures to be used and followed by Trustee in the handling of deposits to and withdrawals from Cemetery's Preneed Trust Fund. Such forms and procedures, and any changes thereto, shall be communicated to Trustee by Cemetery in writing, and Trustee shall use commercially reasonable efforts to make use of and comply with such forms and procedures after receipt thereof.

7.3 **Payment of Distributions.** After Trustee's receipt from Cemetery of Cemetery Authority's request for withdrawal and related documentation as set forth above, Trustee shall pay the amount requested to Cemetery. Trustee shall utilize commercially reasonable efforts to make such payment as soon as possible after such receipt, subject to availability of funds. The amount requested by Cemetery shall be based upon records maintained by Cemetery or its agents. Trustee shall have no responsibility for determining the accuracy of any amounts specified or statements made within Cemetery's withdrawal request and related documentation. Trustee may rely conclusively on the amounts specified and statements made in Cemetery's withdrawal request and related documentation. The Cemetery shall indemnify, release and hold Trustee harmless from any liability resulting from such reliance. The Trustee's only responsibility with regard to such request shall be to verify that the form and manner by which such request is submitted comply with the requirements of this Article, and, where such request does comply with such requirements, to issue payment to Cemetery as directed in the request.

7.4 **Trust Records.** Trustee shall maintain such records for the Preneed Trust Fund as will evidence the amounts received for deposit, the amounts disbursed and withdrawn, the total amount of Preneed Funds held and the location, description, and character of the investments of the Preneed Trust Fund. Such books and records shall be open for inspection and audit by any party so designated by the Cemetery.

7.5 **Cemetery Authority Records.** Cemetery, or its agent, shall be responsible for maintaining individual records by Preneed Purchaser.

7.6 **Custodian.** The Trustee shall serve as custodian of the funds, securities, and other properties constituting the Preneed Trust Fund.

ARTICLE VIII REPORTS

8.1 **Statements.** Trustee shall furnish Cemetery, or its agent, a statement detailing the activity of Cemetery's Preneed Trust Fund for the period covered by the statement, including but not limited to the readily ascertainable market value of Cemetery's Preneed Trust Fund as of the last day of the period covered by the statement.

8.2 **Additional Reports.** Trustee will furnish such additional reports or information related to Cemetery's Preneed Trust Fund as may be required of Trustee under (Insert statutory citation), as may be requested of Trustee by the (Insert state/province name) or as Cemetery, at its expense, or its agent may reasonably request.

8.3 **Filing of Notices And/Or Reports.** Cemetery shall be solely responsible for

filing any notices and/or reports that may now or hereafter be required to be filed with the (Insert state/province name), except as may be set forth hereinabove, regarding establishment of Cemetery's Preneed Trust Fund and the management, investment and disposition of the funds thereunder.

ARTICLE IX TRUSTEE'S FEES

9.1 **Trustee Fees.** The Trustee shall be entitled to reasonable compensation for the services rendered pursuant to this Trust Agreement. Such compensation shall be mutually agreed to by the parties, or if no such agreement is reached, then in such amounts as shall from time to time be set forth in Trustee's published fee schedule in effect at the time related services are rendered.

9.2 **Withholding Trustee Fees.** Trustee is hereby authorized to withhold such compensation from income of the Preneed Trust Fund to the extent permitted under (Insert statutory citation). In the event the Preneed Trust Fund is insufficient to cover payment of such compensation, or to the extent such compensation cannot be fully paid from income to the Preneed Trust Fund due to limitations imposed under (Insert statutory citation), Cemetery shall pay that portion of such compensation which is not paid from such income upon receipt of written notice by Trustee.

ARTICLE X RELIANCE

10.1 **Reliance.** In no event shall Trustee incur any liability to any person when acting upon any notice, direction, or request as set forth in an instrument reasonably believed by Trustee to be genuine and reasonably believed by Trustee to have been executed by the persons authorized by Cemetery to provide Trustee with such notices, directions and requests.

Further, Trustee shall not be liable to anyone whomsoever or accountable before any court for any act or omission taken or made in accordance with any direction of an Investment Advisor as to the investment and/or reinvestment of the Preneed Funds.

10.2 **Liability.** The Trustee shall not be liable for any action taken or omitted hereunder by Trustee except in the case of bad faith, gross negligence or willful misconduct.

ARTICLE XI RESIGNATION OR REMOVAL OF TRUSTEE

11.1 **Trustee Resignation.** Trustee shall have the right, upon thirty (30) days prior written notice delivered to Cemetery or its agent, to resign as trustee of Cemetery's Preneed Trust Fund.

11.2 **Removal of Trustee.** Cemetery shall have the right, upon thirty (30) days prior written notice delivered to Trustee and upon payment of the accrued and unpaid Trustee's fees as provided herein, to remove Trustee as Trustee of Cemetery's Preneed Trust Fund.

11.3 **Successor Trustee.** Upon such resignation or removal, Cemetery shall appoint a successor trustee, subject to compliance with (Insert statutory citation). Should Cemetery fail to appoint a successor trustee within ten (10) days prior to the expiration of the thirty (30) day notice period, Trustee may secure the appointment of a successor trustee for Cemetery's Preneed Trust Fund in any manner permitted by law.

11.4 **Transfer of Records.** Upon the appointment, and timely notification to Trustee, of a successor trustee as provided herein, Trustee shall transfer and convey to the successor trustee all trust assets held by Trustee in Cemetery's Preneed Trust Fund within _____ days. When said transfer and conveyance are completed, Trustee shall be released and discharged from all liability relating to further administration and investment of Cemetery's Preneed Trust Fund.

ARTICLE XII MISCELLANEOUS

12.1 **Amendment or Modification of the Trust.** Trustee and Cemetery may from time to time amend and modify the provisions of this Trust Agreement, in any manner consistent with (Insert statutory citation), by written instrument, provided that any changes affecting the responsibilities of Trustee must be approved in writing by Trustee.

Trustee and Cemetery shall amend this Trust Agreement when necessary to conform to any applicable statutes, rules or regulations. Any amendments to this Trust Agreement shall be subject to approval by the (Insert state/province name).

12.2 **Governing Law.** This Trust Agreement shall be governed by the laws of the (Insert state/province name).

12.3 **Severability.** Should any provision of this Trust Agreement be held to be unlawful, invalid or unenforceable for any reason, such provision shall not affect the remaining provisions of this Trust Agreement, but shall be fully severable, and the Trust Agreement shall be construed as if such unlawful, invalid or unenforceable provision had never been included herein.

12.4 **Parties In Interest.** This Trust Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12.5 **Notices To Parties.** All communications provided for hereunder shall be in writing and shall be deemed to be given when delivered in person or deposited in the United States Mail, first class, postage prepaid and properly addressed as described below.

12.6 **Counterparts.** This Trust Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed

and delivered shall be an original and all of which when taken together shall constitute one and the same instrument.

12.7 **Headings.** The headings, subheadings, and numbering of the different paragraphs of this Trust Agreement are inserted for convenience of reference only and are not to be taken as part of this Trust Agreement or to control or affect the meaning, construction or effect of the same.

12.8 **Effective Date.** This Trust Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, each of the undersigned have executed this Trust Agreement on the date first hereinabove written.

“Cemetery:”

Legal Name _____

Street _____

P.O. Box _____

City, State, Zip _____

By: _____

Printed Name: _____

Title: _____

“Trustee”

Legal Name _____

Street _____

P.O. Box _____

City, State, Zip _____

By: _____

Printed Name: _____

Title: _____

