

MERCHANDISE TRUST AGREEMENT

BETWEEN _____

_____, *SETTLOR*

AND _____

_____, *TRUSTEE*

UNITED STATE OF AMERICA

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of the month of _____, in the year _____, before me, the undersigned Notary Public, duly commissioned, and qualified and sworn in and for State and Parish aforesaid, personally came and appeared:

_____,
a Louisiana corporation, domiciled in the Parish of _____, herein represented by its undersigned Officer, duly authorized by a resolution of the Board of Directors, annexed hereto; hereinafter referred to as *SETTLOR*, and _____ herein represented by _____, its undersigned Officer, hereunto duly authorized; a federally insured financial institution or trust company located in Louisiana and authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States in accordance with Louisiana Revised Statutes, Title 8, Section 454B, hereinafter referred to as *TRUSTEE*.

Who declared that they do by these presents create the _____ Merchandise Trust Fund for the uses and purposes and on the terms and conditions hereinafter set forth (hereinafter sometimes called the "*TRUST FUND*").

1. PURPOSE OF TRUST

One or more cemetery space owners (hereinafter called "*PURCHASERS*") in the _____ (the "*CEMETERY*") have entered or will enter into contracts of sale whereby *SETTLOR* sells to purchasers personal property and services which are to be used in connection with the disposing of or commemorating the memory of a deceased person at an uncertain date such as death or more than one hundred twenty (120) days after receipt of final payment for the personal property or service. Such contracts of sale are hereinafter referred to as "*PRE-NEED AGREEMENTS*". The items subject to pre-need agreements include but are not limited to bronze memorials, scrolls, vaults, grave liners, urns, vases, foundations, and similar merchandise and related services sold or used in cemeteries.

Therefore, pursuant to R.S. 8:501, et seq., *SETTLOR* hereby establishes a Merchandise Trust Fund (the "*TRUST FUND*") with the Trustee in order to protect the interests of the purchasers of personal property and services sold by *SETTLOR*.

2. PAYMENTS TO TRUST

2.1 With respect to all orders which it does not complete by purchasing and delivering the merchandise or by performing the service purchased within one hundred twenty (120) days after receipt of final payment under a pre-need agreement, *SETTLOR* shall deposit into the Trust Fund 70% of the gross receipts, less sales taxes from the sales of such personal property or services. [R.S. 8:502(A)]

2.2 The deposit required by Section 2.1 shall be made within twenty (20) days after the close of the month of receipt from the purchaser by *SETTLOR* except that the entire amount required to be deposited less sales tax, shall be deposited within seven (7) years from the date of the original sale whether or not the full purchase price therefor shall have actually been paid. [R.S. 8:502(C)]

2.3 Trustee hereby agrees to accept all amounts so deposited and hold them in trust in accordance with the provisions of this trust agreement and the provisions of Title 8, and particularly but without limitation, R.S. 8:501, et seq.

2.4 Each deposit into the Trust Fund shall be identified by *SETTLOR* by furnishing Trustee and purchaser with the name of the purchaser, the amount of the retail sales price, and the amount of money required to be deposited together with a copy of the pre-need agreement. [R.S. 8:502(D)]

2.5 Each deposit and the earning thereon shall constitute a separate account subject to the terms and provisions hereof but may be commingled with other deposits for the purpose of investment and reinvestment, provided the Trustee keeps such records and accounts as may be necessary in order to ascertain at all times the amount of each deposit and accumulated earnings thereon. *SETTLOR* shall allocate to each separate account its share of the total income earned in each calendar year, based on the proportion that the principal balance in each account bears to the total principal balances of all accounts. [R.S. 8:502(D)]

2.6 At least annually the Trustee will advise *SETTLOR* of the amount of income received by the whole fund for that calendar year. [R.S. 8:502(D)]

3. Withdrawals from Trust

3.1 The funds deposited shall be held in trust both as to principal and income thereon, and shall remain intact, except the cost of operation of the trust may be deducted from the income earned thereon until delivery of the personal property is made or the services are performed by *SETTLOR* or until the death of the person for whose benefit the said contract was made. [R.S. 8:503(A)]

3.2 Upon delivery of the personal property or performance of the service by *SETTLOR*, *SETTLOR* shall certify such delivery or performance to the Trustee, which certification shall designate the purchaser, the pre-need agreement, and the total amount plus income on deposit. Upon such certification, or in the case of death prior to such certification, and upon submission of a certified copy of the death certificate, the amount of money on deposit to the credit of each pre-

need agreement, including principal and income earned thereon, shall be forthwith paid to *SETTLOR*. The Trustee may rely upon all such certifications herein required to be made, and shall not be liable to anyone for such reliance. [R.S. 8:503(A)]

3.3 If for any reason *SETTLOR* cannot or does not provide the personal property or perform the service called for by the pre-need agreement within a reasonable time after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall have the right to provide such personal property or services, and, having done so, shall be entitled to receive the deposit, and the accumulated earnings thereon, to the credit of that particular pre-need agreement.

Written instructions to the Trustee by *SETTLOR* to refund the amount of money on deposit including earnings, or an affidavit by either the purchaser or one of his heirs or assigns or duly authorized representative, stating that the personal property or services were not provided shall be sufficient authority for the Trustee to make refund of the funds on deposit to the person submitting the affidavit. The Trustee shall not be held responsible for any such refunds made on account of *SETTLOR* written direction or an affidavit submitted in accord with this section. Nothing, herein contained shall relieve *SETTLOR* from any liability for nonperformance or the pre-need agreement terms. [R.S. 8:503(B)]

3.4 If *SETTLOR* cannot deliver the personal property or services sold because of a national emergency, the provisions of Section 3.3 shall be suspended for the duration of the emergency and for fifteen (15) days following the termination thereof. [R.S. 8:503(C)]

3.5 If the purchaser defaults in making payment, *SETTLOR* shall have the right to cancel the pre-need agreement and to withdraw from the trust fund the entire balance including earnings, to the credit of the defaulting purchaser's account as liquidating damages. In such event, the Trustee shall deliver the balance including earnings to *SETTLOR* upon its certification and upon receiving the certification the Trustee may rely thereon and shall not be liable to anyone for such reliance. [R.S. 8:503(D)]

3.6 If after final payment a purchaser moves his domicile to a point that makes delivery of the personal property or services impossible or impractical, the Trustee shall refund to the purchaser the principal amount of money on deposit to the credit of that account, less the income earned thereon, which shall be paid to *SETTLOR*. (R.S. 8:504)

4. Trustee's Duties

4.1 Each year within ninety (90) days after the end of the calendar year, the Trustee shall file with the Louisiana Cemetery Board, a financial report of this Merchandise Trust Fund, setting forth the principal thereof, the investments and payments made therefrom, and the income earned and disbursed. The Trustee shall also file additional financial reports deemed reasonably advisable by the Louisiana Cemetery Board. (R.S. 8:505)

4.2 The Trustee shall administer this Merchandise Trust Fund with such skill and care as a man of ordinary prudence, discretion, and intelligence would exercise in the management of his own affairs, not in regard to speculation, but in regard to the permanent disposition of his funds, considering the probable income as well as the probable safety of his capital (R.S. 8:509), and in

accordance with the terms of this Agreement, applicable law, and the Rules and Regulations of the Louisiana Cemetery Board.

4.3 The Trustee shall be entitled to reasonable compensation for its services hereunder. Such compensation, and reasonable attorney's fees, court costs, accounting fees, and similar expenses incurred by the Trustee in connection with this Trust shall be paid only out of the income of the Trust, and no part of the income of the Trust shall ever be paid to, for or on account of the Trustee for any loss, damage, liability, cost, fee, or expense, including attorney's or accountant's fees, incurred or sustained by virtue of the failure of the Trustee to administer the Trust in accordance with applicable law, and particularly, but without limitation, R.S. 8:1 through 906, inclusive and the Rules and Regulations of the Louisiana Cemetery Board.

5. Termination of Trust Resignation or Removal of Trustee

5.1 On not less than thirty (30) days prior written notice from Trustee to *SETTLOR*, Trustee may resign as Trustee hereunder, and on not less than thirty (30) days prior written notice by *SETTLOR* to Trustee, Trustee may be removed as Trustee hereunder at any time, with or without cause. In case of the resignation or removal of Trustee, a successor Trustee shall be appointed by *SETTLOR* by written instrument appointing and designating such successor Trustee. A copy of any such instrument shall be delivered to the successor and former Trustees. Any successor Trustee appointed hereunder shall execute and deliver to *SETTLOR* an instrument accepting such appointment, and thereupon such successor Trustee shall without further act or deed forthwith become vested with all the estate and title of Trustee in and to all of the trust property and shall thereupon succeed to all the rights, interests, powers, privileges, remedies, immunities, and duties hereby conferred upon Trustee; but the Trustee so resigning or removed shall at the request of *SETTLOR* or of the successor Trustee, and upon payment of the charges and disbursements of the Trustee so resigning or removed then unpaid, execute and deliver to such successor Trustee all such instruments of assignment and transfer and other instruments as may be reasonably required for full vesting in such successor all the Trustee's estate, right, title, and interest in the trust property, and shall pay over and deliver to such successor Trustee all monies, securities, and other property then in its possession hereunder. One such appointment of a successor Trustee shall not exhaust the right to appoint a successor Trustee hereunder but such right may be exercised from time to time.

If no successor trustee shall have been appointed and have accepted such appointment within thirty (30) days after a vacancy shall have occurred in the office of the Trustee, then upon application of the retiring Trustee a successor Trustee shall be appointed by any court of competent jurisdiction.

Any corporation into which the Trustee acting hereunder may at any time be merged, or which may at any time be formed by any consolidation to which Trustee shall be a party, shall succeed to such trusteeship and such duties, powers, authorities and rights hereunder without the execution or filing of any instrument or any further agreement on the part of any of the parties hereto, anything herein contained to the contrary notwithstanding.

6. Miscellaneous

6.1 _____, as Trustee, joins in the execution of this Trust Agreement and signifies its acceptances of this Trust and receipt of the Trust Fund.

6.2 *SETTLOR* and Trustee reserve the right to amend this Trust Agreement should the same be necessary or desirable under the provisions of Louisiana Revised Statutes, Title 8, Section 1 through 906, inclusive, as they may be hereafter amended or may be required by the Rules and Regulations of the Louisiana Cemetery Board.

6.3 This Trust Agreement shall be governed by and construed in accordance with the Laws of the State of Louisiana.

THUS DONE AND PASSED in multiple originals in my office in the City of _____, State of Louisiana, on the _____ day of _____, _____, in the presence of the undersigned competent witnesses who hereunto affix their signatures with the said appears and me, Notary, after due reading of the whole.

WITNESSES:

_____ By: _____
Duly Authorized

_____ By: _____
Trust Officer

Notary Public

CORPORATE RESOLUTION

A special meeting of the Board of Directors of _____
(the "Corporation") was held at the office of the Corporation of the _____ day of _____,
_____, pursuant to notice.

PRESENT: A Full Board

The President advised the Board of the purpose of the meeting, and after full discussion,
and on motion duly made, seconded, and unanimously carried, it was

RESOLVED: That this Corporation create the _____
Merchandise Trust Fund.

RESOLVED FURTHER: That _____, the
_____ of this Corporation, be and he is hereby authorized and empowered
on behalf of the Corporation to execute a Merchandise Trust Agreement with
_____, as Trustee, in the form and substance, and on the terms and conditions
set forth in the Agreement attached to and made part of these minutes, and the said Officer is
further authorized and empowered to execute, sign, and deliver any and all instruments and
documents, and to do any and all things necessary, to give full force and effect to these
resolutions.

There being no further business to come before the Board, the meeting was adjourned.

Secretary

Attest:

President

CERTIFICATE

I, the undersigned secretary of _____
(the "Corporation"), do hereby certify that the above and foregoing is a true and correct copy of the
minutes of a special meeting of the Board of Directors of the Corporation held on the _____ day
of _____, _____ at which meeting all members were present and voting
throughout, and that the resolutions adopted at said meeting are still in full force and effect and
have not been revoked.

This certificate dated this _____ day of _____, _____.

Secretary