



PRE-NEED AGREEMENT

A Date _____, 20____

Beneficiary _____ Social Security Number _____
 Address _____ City _____ State _____ Zip Code _____
 Date of Birth _____ Male _____ Female _____

Purchaser _____ Social Security Number _____
 (If different from Beneficiary)
 Address _____ City _____ State _____ Zip Code _____
 Date of Birth _____ Male _____ Female _____

Funeral Director
 Funeral Home _____ Phone # _____
 Address _____ City _____ State _____ Zip Code _____

B Subject to the terms and conditions set forth herein and the reverse side hereof, Funeral Director agrees to sell and provide and purchaser agrees to buy, the funeral services and merchandise as described on the Statement of Funeral Services and Merchandise set forth on Schedule A hereto at the purchase price set forth in Paragraph C hereof.

The funeral services and merchandise shall be provided to the person designated above as the Beneficiary upon the death of the beneficiary. Promptly following provision of the funeral services and merchandise set forth herein, a Representative of the Beneficiary shall sign an affidavit attesting to the provision of such services and merchandise.

C The total purchase price of the services and merchandise set forth on Schedule A including an amount attributable to taxes payable thereon is \$ _____. The amount to be placed in the Trust Account is \$ _____.

Purchaser has made an initial payment of \$ _____. The remaining balance of \$ _____ will be paid in equal payments of \$ _____ commencing on the ____ day of ____ 20__ and on the ____ day of each month thereafter until and including the final due date of ____ 20__.

- D** Upon payment in full of the purchase price, the funeral services and merchandise set forth on Schedule A:
- will be priced guaranteed in the amount of \$ _____ by Funeral Director as to:
 - all services, merchandise and cash advances will be price guaranteed; or
 - all services and merchandise will be guaranteed, but cash advances will not be guaranteed; or
 - only services will be price guaranteed.
 - will NOT be price guaranteed.

EXCLUSION OF WARRANTIES. The Funeral Director extends no warranties, implied or expressed, as to the merchantability or fitness of purpose for said goods or services. Purchaser shall be limited to the express written warranty, if any, granted by the manufacturer for the goods delivered.

E The Purchaser hereby acknowledges Wachovia Bank, N.A. a national banking institution, as the entity designated by Funeral Director as Trustee to maintain the Trust Account. In the event Wachovia Bank resigns as Trustee, Funeral Director, as Representative, will designate a successor Trustee.

- F** Purchaser hereby designates this agreement to be:
- IRREVOCABLE**
 If the purchaser has elected that this agreement be irrevocable, the Trust Account is fully funded, and the ten (10) day right to rescind time has elapsed, then purchaser may not alter, amend, or revoke this agreement. All powers to invest and manage funds are vested with Funeral Director and Trustee.
 - REVOCABLE**
 If the purchaser has elected that this Agreement be revocable, or if the Trust Account is not fully funded, then either party may terminate this Agreement upon written notice to the other at any time prior to the death of the beneficiary.

The Purchaser herein acknowledges that he has read the terms and conditions of this Agreement, including the terms and conditions on the reverse side of this Agreement.

PURCHASER HAS UNTIL MIDNIGHT OF THE TENTH DAY AFTER SIGNING THIS AGREEMENT TO REVIEW AND REVOKE THIS AGREEMENT.

IN WITNESS WHEREOF, the Funeral Director and the Purchaser have executed this Agreement, intending to be legally bound, the day and the year first above written.

FUNERAL DIRECTOR _____ License Number _____ PURCHASER _____
 (see reverse side for terms and conditions) _____
 ©2004



TERMS AND CONDITIONS

1. **Funding.** In accordance with 239 CMR 4.09 sub section 2a, all Payments made by Purchaser hereunder will be deposited in the Trust Account within fifteen (15) days of its receipt by Funeral Director. All funds received by Funeral Director from Purchaser and deposited in the Trust Account will be invested in accordance with Massachusetts General Law c 112,S 82-86, as amended Massachusetts Statutes, Chapter 203A, Uniform Common Trust Fund Act, Trust Law, and 239 CMR sec 4.09 as amended. The Purchaser acknowledges that the Trust Funds may be commingled with other funds held pursuant to Pre-Need Agreements similar in form and substance to this Agreement. The Trust Account shall be invested in (1) Government Securities, Corporate Bonds ("A" rated or better), Money Market Funds, Certificates of Deposit, and Insurance Annuity Contracts. The Trust Account shall be maintained by Trustee. Funeral Director shall appoint an Investment Advisor to perform certain administrative, and advisory duties. Trustee and Investment Advisor are entitled to compensation as set forth in Funeral Services Agreement, Articles 1.7 & 2.4 and reimbursement for all expenses incurred by them in performing their duties. Such compensation and reimbursement shall be payable from the escrow funds. Currently such fees are 1.25% per annum of the escrow account. In no event shall these fees exceed 1.75% per annum of the Trust Account.

2. **Default.** If the Purchaser fails to make any installment payment hereunder within fifteen (15) days of its due date, Funeral Director may terminate this Agreement. Failure by Funeral Director to terminate this Agreement as a result of a payment default shall not be deemed a waiver by Funeral Director of its right to terminate this Agreement in the event of a subsequent payment default.

3. **Cancellation.** In the event of cancellation of this Agreement by Funeral Director as a result of (i) failure of Purchaser to make the payment specified herein when due or (ii) failure by Purchaser or the person responsible for making funeral arrangements for Beneficiary to request the services and merchandise provided herein, Purchaser will receive a refund of the Purchase Price plus all accrued interest thereon. If cancellation occurs prior to the expiration of the "Right to Recind" time period;(10 days), Purchaser will receive a refund of the purchase price, paid to date. A Revocable Agreement may be cancelled by Purchaser or, if Purchaser (if different than Beneficiary) has predeceased beneficiary, Representative of Beneficiary at any time prior to the death of Beneficiary. In the event of cancellation, the original deposits paid by Purchaser to Funeral Director plus all accrued interest thereon shall be returned to Purchaser within seven (7) days of receipt of written notification of said revocation.

An Irrevocable Agreement may not be modified, amended or terminated, and the Trust Funds held pursuant to an Irrevocable Agreement may only be released upon death of Beneficiary. Trust Funds held pursuant to an Irrevocable Agreement may be transferred to another Licensed Funeral Service Establishment upon written notification from Purchaser or his Representative to Funeral Director. In the event of such transfer, the original deposits paid by Purchaser to Funeral Director plus all accrued interest thereon shall be transferred to the designated and licensed funeral service establishment within seven (7) days of receipt of written notification of said transfer.

4. **Price and Services Guarantee.** If this is a Guaranteed Agreement, Director shall provide the funeral services and deliver the merchandise set forth on Schedule A regardless of the actual price at the time of furnishing such services and merchandise. Funeral Director may not seek additional payment from Purchaser, Beneficiary or their respective heirs or personal representatives in the event that the Trust Funds are less than actual costs incurred by Funeral Director in performing its obligations under a Guaranteed Agreement; provided, however, that if Schedule A provides for payments from additional sources, Purchaser shall be liable to Funeral Director for such amounts. If this is a Guaranteed Agreement interest accrued in the Trust Account is paid to Funeral Director to offset any cost increases Funeral Director may incur.

5. **Open Price and Service.** If this Agreement is not a Guaranteed Agreement, Funeral Director shall provide the funeral services and deliver the merchandise as set forth on Schedule A (or such other services or merchandise as selected by the family of the Beneficiary) at the then prevailing prices for such services and merchandise and shall credit the Trust Funds against the cost of providing such services and merchandise. Purchaser shall be liable for additional expenses, if any, incurred by Funeral Director in providing such services and merchandise. Funeral Director shall consult with Purchaser or Representative prior to incurring costs in excess of the Trust Funds.

6. **Excess Trust Funds.** If this agreement is guaranteed, in the event Funeral Director's actual costs of providing the funeral services and merchandise set forth on Schedule A are less than the Trust Funds, Funeral Director shall be entitled to amounts remaining in the Trust Account after provision for such funeral services and merchandise. If this Agreement is not Guaranteed, amounts remaining in the Trust Account after provision for such funeral services and merchandise shall be refunded to Purchaser (if different than Beneficiary) or to the estate of the Beneficiary. In such event, the amount refunded may be subject to claims of The Commonwealth of Massachusetts or The United States.

7. **Substitution of Merchandise.** If the merchandise enumerated in Schedule A is not reasonably available at the time of the Beneficiary's death, Funeral Director will, in accordance with its professional judgment, substitute merchandise of equal or superior quality and workmanship to that designated in Schedule A.

8. **Change of Beneficiary.** Purchaser may change the Beneficiary designated herein by written notice to Funeral Director only if this Agreement is a Revocable Agreement. If this Agreement is an Irrevocable Agreement, Purchaser cannot change the Beneficiary named herein.

9. **Income Tax.** Income earned on the Trust Funds shall be subject to federal income taxation. Each Purchaser shall be responsible for payment of taxes on the income earned on the Trust Funds. In the case of an Irrevocable Agreement, the investment advisor shall be responsible for applying for a tax identification number, and annually shall file a 1041 or similar IRS form. Purchaser shall receive an IRS informational form K1 providing information to be included on his or her tax return.

10. **Liability of Trustee and investment Advisor.** The Purchaser, for himself, the Beneficiary and their respective heirs and personal representatives, agrees that no claim or demand of any kind or nature whatsoever shall be made upon or asserted against the Trustee or Investment Advisor appointed to maintain and administer the Trust Account resulting from or arising out of, directly or indirectly, any act or failure of the Trustee or Investment Advisor to act or caused by the Trustee's or Investment Advisor's reliance on any affidavit, certificate, or statement delivered to the Trustee or Investment Advisor or any disbursement by the Trustee or Investment Advisor from the Trust Account provided however, that nothing herein shall be deemed to waive the rights of a Purchaser or Beneficiary in the event of the gross negligence or willful misconduct of the Trustee or Investment Advisor, or any rights of such Purchaser or Beneficiary pursuant to any applicable law.

11. **Change of Address.** Purchaser shall promptly notify the Funeral Director of any change of the Purchaser's or the Beneficiary's address.

12. **Notices.** All notices shall be in writing and shall be deemed to have been made if delivered in person or by mail, first class, postage prepaid, at the address set forth herein or to such other address as any person may subsequently designate in writing, and deliver as provided herein.

13. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application or such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Fiscal Year.** The fiscal year of the Trust Account shall end on December 31.

15. **Law.** This Agreement is made in the Commonwealth of Massachusetts and shall be construed in accordance with its laws and regulations.

16. Definitions.

"Beneficiary" means the individual for whom pre-arrangements are made.

"Trust Account" means the trust account established pursuant to this Agreement.

"Trustee" means that institution designated as Trustee in Section E on the reverse side of this Agreement and any successor thereto, whether by partial or total sale to or acquisition by another institution or entity, merger survival, change of name or the like, all of which successions are hereby consented to by the parties to this Agreement.

"Trust Funds" means the aggregate of the Purchase Price and all income earned thereon pursuant to this Agreement, less fees and expenses of the Trustee and investment advisor.

"Funeral Director" means party named in this Agreement as Funeral Director and who must be duly licensed in the Commonwealth of Massachusetts in accordance with 239 CMR

"Guaranteed Agreement" means this Agreement if Purchaser has designated that clause (i) if Paragraph D applies.

"Irrevocable Agreement" means this Agreement if (1) Purchaser designated that such Agreement is irrevocable pursuant to clause (i) of Paragraph F. (2) the Purchase Price has been paid in full and (10) the Waiting Period has expired.

"Purchaser" means the person designated in Paragraph A, including, upon death of Purchaser, the Representatives of such person.

"Purchase Price" means the price specified in Paragraph C.

"Representative" means a family member, next of kin or legal representative of a Purchaser or Beneficiary, as the context requires.

"Revocable Agreement" means this Agreement if Purchaser designated that such Agreement is revocable pursuant to clause (ii) of Paragraph F

"Schedule A" means statement of funeral services and merchandise.

"Waiting Period" means the period ending on midnight of the tenth full day following the date of this Agreement.

I HAVE RECEIVED A COPY OF THE FUNERAL PLANNING BUYERS GUIDE

Purchaser's Initials