



PREPAID FUNERAL AND ESCROW AGREEMENT

THIS AGREEMENT IS ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

BY AND BETWEEN \_\_\_\_\_ AND \_\_\_\_\_

(THE "FUNERAL DIRECTOR") (THE "BUYER")

FOR THE PURPOSE OF PROVIDING FUNERAL MERCHANDISE AND SERVICES FOR THE FUNERAL AND UPON THE DEATH OF \_\_\_\_\_ (THE "BENEFICIARY")

**WE AGREE AS FOLLOWS:**

DESCRIPTION OF MERCHANDISE AND SERVICES SELECTED: The Buyer wishes to purchase from the Funeral Director the following merchandise and services which, upon the Buyer's satisfaction of all conditions in this Agreement, shall be provided by the Funeral Director at its place of business in \_\_\_\_\_, Michigan, upon the death of the Beneficiary:

☐ The merchandise and services are those described in the Statement of Goods and Services Selected which is attached to this Agreement, or

☐ The merchandise and services described below:

**PURCHASE PRICE:** The purchase price of the merchandise and services to be furnished by the Funeral Director shall be the retail price for which those merchandise and services are customarily offered by the Funeral Director at the time of the Beneficiary's death.

**DEPOSIT:** Upon the execution of this Agreement, the Buyer shall pay the Funeral Director a deposit \$\_\_\_\_\_ (the "Deposit"). In addition, the Buyer shall pay a deposit for potential sales tax ("sales tax deposit") of \$\_\_\_\_\_ which shall be credited toward anticipated sales tax liability due the State of Michigan at the time the merchandise and services are provided.

**SELLER'S SET UP FEE:** In addition to the Deposit paid to the Funeral Director as specified above, the Buyer shall also pay the Funeral Director a set up fee of \$\_\_\_\_\_ (the "Set Up Fee"), which shall in no event exceed 10% of the Deposit paid to the Funeral Director. The Set Up Fee is a one time fee which is intended to offset certain of the Funeral Director's administrative, sales and overhead costs. The Set Up Fee will not be placed in the escrow account described below, and will not be considered in determining whether or to what extent the amount of principal and income in the escrow account is sufficient to pay for the merchandise and services selected at the price customarily charged by the Funeral Director for those merchandise and services at the time of the Beneficiary's death, or whether or to what extent there is a surplus in the escrow account.

**ESCROW AND INVESTMENT REQUIREMENTS:** With the exception of the Set Up Fee, if any, or late payment penalties, all funds paid by the Buyer to the Funeral Director before the death of the Beneficiary shall be placed in one or more interest bearing accounts in a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of the State of Michigan or the United States, or the trust department of any of the foregoing types of entities. The Funeral Director may serve as the escrow agent or may appoint as the escrow agent a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of the State of Michigan or the United States, or the trust department of any of the foregoing types of entities, or a Michigan nonprofit corporation or association in which the majority interest is held by 250 or more funeral establishments. The escrow account shall be maintained until (a) the merchandise and services are provided for the Beneficiary's funeral, or (b) this Agreement is cancelled.

**SELECTION OF ESCROW AGENT:** By initialing this paragraph, the Buyer authorizes the Funeral Director, in its discretion to select as an escrow agent a Michigan nonprofit corporation or association in which the majority interest is held by 250 or more funeral establishments. The Buyer acknowledges that he or she has the right to elect that a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the united States government under the laws of the State of Michigan or the United States, or the trust department of any of the foregoing types of entities be designated as the Escrow agent.

Buyer's initials

**INCOME:** Income in the form of interest on the funds placed in the escrow account shall remain in the escrow account except that certain administrative costs and fees may be paid from the income as provided in the Terms and Conditions on the back of this page.

**APPLICATION OF PRINCIPAL AND INCOME IN THE ESCROW ACCOUNT TO THE PRICE OF THE MERCHANDISE AND SERVICES:** Upon the death of the Beneficiary and the performance by the Funeral Director of its obligation to provide the merchandise and services originally selected and/or such other merchandise and services as may be selected after the death of the Beneficiary by the Buyer or the person or persons legally entitled to make funeral arrangements for the Beneficiary, the funds originally placed in the escrow account (the "principal") and the income remaining in the escrow account after payment of administrative costs and fees, if any, shall be disbursed to the Funeral Director who shall apply such amounts to the purchase price of the merchandise and services provided and to sales tax due thereon.

**SURPLUS FUNDS IN THE ESCROW ACCOUNT:** If the principal and income in the escrow account at the time of the Beneficiary's death exceed the price of the merchandise and services customarily charged by the Funeral Director at the time they are provided, plus sales tax due thereon, a percentage of the surplus of principal and income in the escrow account shall be disbursed to the Buyer or to the person designated by the Buyer to receive such percentage, and the remainder of the principal and income in the escrow account shall be paid to the Funeral Director as compensation for its services. The percentage of the surplus which shall be paid to the Buyer or the person designated by the Buyer to receive that part of the surplus to which the Funeral Director is not entitled shall be the same percentage as that to which the Buyer is entitled in the event of cancellation (except cancellations governed by paragraph 12 on the back of this page). The person designated by the Buyer to receive that part of the surplus to which the Funeral Director is not entitled is:

Name (May be the Buyer, the Beneficiary's estate, or any other person)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

It shall be the duty of the Buyer to advise the Funeral Director of any change of address of the person entitled to receive that part of the surplus to which the Funeral Director is not entitled.

DEFICIENCY IN ESCROW ACCOUNT: This is a NON-GUARANTEED PRICE AGREEMENT. This means that the actual purchase price of the merchandise and services provided at the time of death may be greater or less than the amount of principal and income in the escrow account at the time of death. IF, AT THE TIME OF DEATH, THE ACTUAL PRICE CUSTOMARILY CHARGED BY THE FUNERAL DIRECTOR FOR THE MERCHANDISE AND SERVICES, PLUS SALES TAX DUE THEREON, IS GREATER THAN THE AMOUNT OF PRINCIPAL AND INCOME IN THE ESCROW ACCOUNT, THE BUYER, THE BUYER'S ESTATE OR THE PERSON OR PERSONS LEGALLY ENTITLED TO MAKE FUNERAL ARRANGEMENTS FOR THE BENEFICIARY WILL BE REQUIRED TO PAY THE DIFFERENCE BETWEEN THE AMOUNT IN THE ESCROW ACCOUNT AND THE ACTUAL PURCHASE PRICE OF THE MERCHANDISE AND SERVICES, PLUS SALES TAX DUE THEREON, TO THE FUNERAL DIRECTOR BEFORE THE FUNERAL DIRECTOR SHALL BE OBLIGATED TO PROVIDE THE MERCHANDISE AND SERVICES ORIGINALLY SELECTED. Nothing in this Agreement, however, shall obligate the Buyer, the Beneficiary's estate or the person or persons legally entitled to make funeral arrangements to purchase the specific merchandise or services which were originally selected or to expend a specific amount for the beneficiary's funeral. Under no circumstances shall the Funeral Director be obligated to provide any merchandise or services at prices less than those customarily charged by the Funeral Director at the time of the Beneficiary's death.

**LIABILITY FOR CERTAIN TAXES:** Since the Buyer has the right to control the extent to which the principal and income in the escrow account is utilized for the Beneficiary's funeral expenses and to cancel this Agreement and receive a partial or a full refund of the principal and income in the escrow account, certain state, federal and local tax laws may require that the Buyer pay income taxes on the income earned by the escrow account. The depository where the escrow account is opened will furnish the buyer each year with information about income which may be subject to taxation.

**CANCELLATION OF THE AGREEMENT:** This agreement may be cancelled by the Buyer before the death of the Beneficiary. The Buyer or if the Buyer is also the Beneficiary and has died, the Beneficiary's estate, may also cancel this Agreement after the death of the Beneficiary but only in the circumstances set forth in paragraph 10 under "Terms and Conditions" on the back of this page. If this Agreement is cancelled, the buyer or, if the Buyer is also the Beneficiary and has died, the Beneficiary's estate, shall be entitled to receive a refund of \_\_\_\_\_% of the principal and income in the escrow account which remains after payment of administrative or escrow fees, as required by law. If the principal and income in the escrow account was commingled with the principal and income of other prepaid funeral contract escrow accounts held by the escrow agent, the amount of principal and income in the escrow account shall be calculated as of the last day of the month preceding the effective date of the cancellation. Any amounts remaining in the escrow account after the refund is made to the Buyer or if the Buyer is also the Beneficiary and has died, the Beneficiary's estate, shall be paid to the Funeral Director.

The Funeral Director may also cancel this Agreement but only if the Buyer is in breach of this Agreement first or is otherwise in default as to any obligation under this Agreement. The Funeral Director's cancellation rights are described in the Terms and Conditions on the back of this page.

**TERMS AND CONDITIONS:** This Agreement is subject to all of the terms and conditions contained on the back of this page and they are a part of this Agreement and binding on the parties. The Buyer specifically and expressly consents to each and all of these Terms and Conditions.

**BUYER'S RIGHT TO REVOKE WITHIN 10 BUSINESS DAYS:** Within 10 business days after the execution of this Agreement, the Buyer may revoke this Agreement and receive a full refund of all amounts paid to the Funeral Director.

X \_\_\_\_\_

Funeral Director

\_\_\_\_\_

Date

X \_\_\_\_\_

Buyer

\_\_\_\_\_

Address

\_\_\_\_\_

City, State, Zip

\_\_\_\_\_

Date

Buyer acknowledges by signing this agreement that he or she has read, understands and agrees to be bound by all the Terms and Conditions, and requirements herein, including those set forth on the back of this page.

## TERMS AND CONDITIONS

1. **Definitions:** When used anywhere in this Agreement, the following terms shall have the meanings ascribed to them in this paragraph.

**"Beneficiary"** means the person for whom the funeral merchandise or services will be furnished upon death. A Buyer may provide that the Beneficiary shall be the first of two or more persons to die.

**"Buyer"** means the person who purchases funeral merchandise and services which will be delivered or performed after the death of the Beneficiary. As used in this Agreement, "Buyer" includes any successor to the Buyer's interests under this Agreement. If a Buyer is purchasing funeral merchandise or services for his or her own funeral, the Buyer is also the Beneficiary.

**"Funds"** means the money received by the Funeral Director from or on behalf of the Buyer as consideration for this Agreement, excluding the Set Up Fee, if any, or any amounts received for late payment charges, taxes or other payments required to be made to a government agency at the time the Agreement is entered into.

**"Escrow Account"** means the total amount of principal and retained income held by the escrow agent for the Beneficiary in one or more federally insured interest bearing accounts.

**"Income"** means the money earned on the principal and prior retained income in the escrow account.

**"Merchandise and Services"** means the funeral merchandise and funeral services the Funeral Director is obligated to provide under this Agreement upon the death of the Beneficiary upon full payment of the purchase price customarily charged by the Funeral Director at the time of the Beneficiary's death.

**"Purchase Price"** means the amount customarily charged by the Funeral Director at the time of the Beneficiary's death for the merchandise and services selected.

**"Principal"** means the money received from the Buyer and deposited and held in an escrow account.

2. **Escrow Account:** If the Funeral Director serves as the escrow agent, the Funeral Director shall, within 30 days of receipt of the Deposit by the Funeral Director, deposit all funds paid by the Buyer, with the exception of the Set Up Fee, if any, in one or more interest bearing accounts in a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of the State of Michigan or the United States, or the trust department of any of the foregoing types of entities. If the Funeral Director designates another person to serve as the escrow agent, the Funeral Director shall, within 30 days, deposit all funds paid by the Buyer, with the exception of the Set Up Fee, if any, in one or more interest bearing accounts in a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of the State of Michigan or the United States, or the trust department of any of the foregoing types of entities. Funds placed in an escrow account by an escrow agent who is a person other than the Funeral Director may be commingled with the Principal and Income of other prepaid funeral contract escrow accounts held by the escrow agent, in which event the Income from such deposits shall be attributed to the Beneficiary's escrow account beginning on the first day of the month after the month in which the Beneficiary's escrow account is established.

3. **Calculation of Amounts in Escrow Account:** If the escrow agent is a person other than the Funeral Director and the Principal and Income in the escrow account have been commingled with the Principal and Income of other prepaid funeral contract escrow accounts held by the escrow agent, the amount of Principal and Income attributable to the Beneficiary upon disbursement shall be calculated as of the last day of the month preceding the date when the Funeral Director completes performance of its obligations under this Agreement or, if the Agreement is cancelled, the last day of the month preceding the effective date of the cancellation.

4. **Fees and Expenses of the Escrow Agent:** The escrow agent may charge a fee for its services and expenses as escrow agent of not more than 1% per year of the aggregate balance of principal and income in the escrow account. The fee shall be paid to the escrow agent monthly, quarterly or as otherwise determined by the Escrow Agent from the income.

5. **Waiver of Statement of Account:** The Buyer acknowledges that no periodic statement indicating the current balance in the escrow account, the income earned, the fees and expenses charged, the amount of refund in the event this Agreement is cancelled, or the name and address of the escrow agent from whom additional information relative to the escrow account, or similar information shall be furnished by the Funeral Director, and the Buyer specifically and expressly waives the right to any such statement. However, the Buyer or the Beneficiary may inspect and copy records maintained by the Funeral Director, acting in its capacity as the escrow agent, which pertains to the escrow account established pursuant to this Agreement.

6. **Disbursements of Funds to Funeral Director:** Upon the death of the Beneficiary and the performance by the Funeral Director of its obligation to provide the merchandise and services originally selected and/or such other funeral merchandise and services as may be selected after the death of the Beneficiary by the Buyer or the person or persons legally entitled to make funeral arrangements for the Beneficiary, the Funeral Director shall be entitled to apply the principal and income in the escrow account to the purchase price of the merchandise and services provided and sales tax due thereon. If the amount of principal and income in the escrow account is equal to or less than the purchase price of the merchandise and services provided plus the sales tax due thereon, the Funeral Director shall be entitled to retain the entire amount of principal and income from the escrow account.

7. **Additional Charges:** In the event that the principal and income in the escrow account are not sufficient to pay the entire purchase price of the merchandise and services plus sales tax due thereon, the Buyer, the Buyer's estate or the person or persons legally entitled to make funeral arrangements shall pay the difference between the purchase price, plus the sales tax due thereon, and the amount of principal and income in the escrow account to the Funeral Director. The Funeral Director may require payment of any such difference in advance of providing the merchandise and services.

8. **Surplus Principal and Income:** If the principal and income in the escrow account at the time of the Beneficiary's death exceeds the purchase price of the merchandise and services that is customarily charged by the Funeral Director at the time they are provided, plus sales tax due thereon, the surplus shall be disbursed to the Funeral Director and the Buyer, or the person designated by the Buyer to receive any such surplus, as provided on the signature page of this Agreement.

9. **Disputes Affecting Disbursement of Funds in Escrow Account:** In the event of a dispute between the Buyer or the Buyer's successor and the Funeral Director as to whether the Funeral Director has performed its obligations under this Agreement, the escrow agent shall obtain an order from a court of competent jurisdiction directing the manner in which funds in the escrow account shall be disbursed or shall submit the question as to the manner in which the funds shall be disbursed to an arbitrator. If the escrow agent is a person other than the Funeral Director, this requirement shall be incorporated into the escrow agreement between the Funeral Director and the escrow agent. In the event that the question is submitted to an arbitrator, the arbitrator's decision shall be binding only insofar as it directs the initial disbursement of funds in the escrow account and either the Funeral Director or the Buyer may pursue any other remedies to which either may be entitled by law after the funds in the escrow account are disbursed in accordance with the arbitrator's ruling. Costs of arbitration shall be shared equally by the Buyer and the Funeral Director unless otherwise ordered by the arbitrator.

10. **Cancellation Before the Death of the Beneficiary:** This Agreement may be cancelled by the Buyer before the death of the Beneficiary by providing a written notice of the cancellation to the Funeral Director 30 days before the effective date of the cancellation. Upon the effective date of the cancellation, the Funeral Director shall pay or cause to be paid the amount to be refunded, as provided on the signature page of this Agreement in the "CANCELLATION OF THE AGREEMENT" paragraph, from the escrow account to the Buyer. Any amounts remaining in the escrow account after refund is made to Buyer shall be retained by the Funeral Director as compensation for its services.

11. **Cancellation After the Death of the Beneficiary:** After the death of the Beneficiary and before the Funeral Director has furnished any part of the merchandise or services specified in this Agreement, the Buyer or if the Buyer is also the Beneficiary and has died, the Buyer's estate, may cancel this Agreement only in the following circumstances: (a) where there are no remains of the Beneficiary, (b) the remains of the Beneficiary cannot be recovered, or (c) where this Agreement was not utilized due to the lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of this Agreement. The notice of cancellation shall be in writing and become effective upon its receipt by the Funeral Director. Within 30 days after the receipt of the notice of cancellation, the amount to be refunded, as provided on the signature page of this Agreement in the "CANCELLATION OF THE AGREEMENT" paragraph, from the escrow account shall be paid to the Buyer or, if the Buyer was also the Beneficiary and has died, to the Beneficiary's estate. Any remaining amounts in the escrow account shall be retained by or paid to the Funeral Director as compensation for its services. Before the funds in the escrow account are disbursed, the Funeral Director may require the person or persons who have provided the notice of cancellation pursuant to this paragraph to furnish satisfactory proof of the death of the Beneficiary.

12. **Cancellation by the Funeral Director:** The Funeral Director may cancel this Agreement only if the Buyer is in breach of this Agreement first or is otherwise in default as to any obligation under this Agreement. If the Funeral Director cancels this Agreement, the Buyer shall be entitled to receive the same refund, as provided on the signature page of this Agreement in the "CANCELLATION OF THE AGREEMENT" paragraph. After the Funeral Director has paid or caused to be paid the amount to be refunded from the escrow account to the Buyer, any remaining amounts in the escrow account shall be retained by or paid to the Funeral Director as compensation for its services.

13. **Assignment of Rights and Obligations of Funeral Director:** The Funeral Director may assign its rights and/or obligations under this Agreement without the consent of the Buyer. However, if the Funeral Director assigns its obligation to furnish merchandise and services to any other funeral director or other provider of such merchandise and services, other than in connection with a sale of the Funeral Director's business, the Funeral Director shall notify the Buyer of the assignment in writing. If the Buyer or the Buyer's successor cancels this Agreement within 30 days after such notification is provided (and only in such instance), the Buyer shall be entitled to receive a refund equal to 100% of the principal and income in the escrow account plus any Set Up Fee which has been charged.

14. **Limitation of Funeral Director's Liability:** The Funeral Director shall not be liable to the Buyer or any other person in connection with its selection of an escrow agent or a depository or for any loss or diminution in value of the assets in the escrow account except and only to the extent that the Funeral Director caused such loss or diminution in value. Furthermore, disbursements of principal and income in the escrow account by the Funeral Director made in good faith and in accordance with law and with the terms of this Agreement shall relieve the Funeral Director of any further liability for that principal or income.

15. **Limitation of Escrow Agent's Liability:** Disbursements of Principal and Income by the escrow agent in good faith, in accordance with law, and pursuant to the terms of this Agreement and the escrow agreement between the Funeral Director and the escrow agent shall relieve the escrow agent of any further liability for the Principal and Income. Except as prohibited by law, no officer, director or employee of the escrow agent shall be personally liable for acts or omissions in connection with the discharge of the escrow agent's responsibilities, or for the making, retention or sale of any investment or reinvestment in accordance with this Agreement, or for the failure to invest or reinvest the principal and income in the escrow account, or for any loss or diminution in value of the Principal and Income in the escrow account.

16. **Change of Beneficiary:** At any time before the death of the Beneficiary, the Buyer or the Buyer's successor may designate a new Beneficiary for whom the merchandise and services described in this Agreement shall be provided. The new Beneficiary may be a person who is living at the time he or she is designated or may be the estate of a person who has died.

17. **Substitution of Substantially Similar Merchandise or Services by the Funeral Director:** If any of the merchandise or services are no longer available or offered by the Funeral Director at the time the Beneficiary's death occurs, the Funeral Director, at its option, may furnish similar merchandise or services, the value of which is substantially equal to or greater than that of the merchandise and services originally specified that are no longer available or offered.

18. **Substitution by the Buyer:** This Agreement does not obligate the Buyer, the Beneficiary's estate or the person or persons legally entitled to make funeral arrangements for the Beneficiary to purchase the specific merchandise or services which were originally selected or to spend a specific amount for the Beneficiary's funeral. The Buyer or the person legally entitled to make funeral arrangements for the Beneficiary may purchase any other merchandise or services offered by the Funeral Director for the price which those merchandise and services are customarily offered by the Funeral Director at the time of the Beneficiary's death and the principal and income in the escrow account shall be applied as full or partial payment for those merchandise and services.

19. **Entire Agreement:** This Agreement represents the entire agreement between the Funeral Director and the Buyer.

20. **Construed under Michigan Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to Michigan's choice of law provisions.

21. **Limitation of Action:** An action for breach of this Agreement and/or breach of any duties imposed by the Prepaid Funeral Contract Funding Act of 1986 (Act No. 255, P.A. 1986, as amended by Act No. 21, P.A. 2004) including but not limited to an action by or against the escrow agent, shall be commenced within one year after the cause of action has accrued.

22. The section and paragraph headings in this Agreement have been inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.