

THIS IS AN IMPORTANT LEGAL DOCUMENT.

The Acceptance form (see reverse) must be signed by an authorized party in accordance with Article 18.1. Authorized parties include the following:

- A sole proprietor who is a funeral director
- A general partner in a partnership who is a funeral director
- A stakeholder in an L.L.C. who is a funeral director
- An officer of a corporation who is a funeral director
- Where there is no owner, officer or stakeholder who is a funeral director, then by a licensed funeral home manager who is authorized by the funeral home's owner, general partners, L.L.C. member or board of directors.

Dear Member:

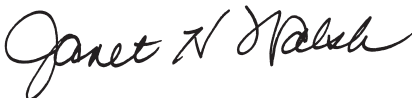
The booklet attached is the New Jersey Prepaid Funeral Trust Fund™ Underlying Trust Agreement first executed in September 1981, amended and restated on September 25, 1990 and amended and restated again September 22, 2004 and ratified by the participating funeral homes. The agreement establishes the legal framework through which the New Jersey Prepaid Funeral Trust Fund™ operates.

In order to ratify your participation or continued partnership in the New Jersey Prepaid Funeral Trust Fund™ it is necessary for your firm to read the enclosed document and then to accept the terms and conditions by signing the Acceptance Form on the reverse of this letter. You should keep the Trust Agreement and only return the completed Acceptance Form to us.

Should you have any questions, please do not hesitate to call (800) 286-3628.

Sincerely,

FOR THE TRUSTEES



Janet H. Walsh
Chief Financial Officer



ACCEPTANCE OF AMENDED AND RESTATED PREPAID FUNERAL TRUST FUND AGREEMENT

If the name and address information above does not reflect exactly what appears on your mortuary registration, please make the appropriate corrections below.

RECITALS:

1. The New Jersey Prepaid Funeral Trust Fund™ (the “Trust”) was established on September 14, 1981, pursuant to an Agreement entered into by certain members of the New Jersey State Funeral Directors Association, Inc., as Grantors, and the then Trustees of the New Jersey State Funeral Directors Association, Inc., as Trustees (the “1981 Agreement”).
2. On September 25, 1990, the 1981 Agreement was amended and restated in its entirety (the “1990 Agreement”).
3. On September 22, 2004, pursuant to Article 12 of the 1990 Agreement, the 1990 Agreement was amended and restated in its entirety as the Amended and Restated Prepaid Funeral Trust Fund Agreement (the “2004 Agreement”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the funeral home identified below (the “Funeral Home”) enters into this Participating Funeral Home Agreement and confirms the following:

1. The Funeral Home has received a copy of the 2004 Agreement and understands all of its provisions.
2. The Funeral Home meets the definition of a “Funeral Home” in Article 1.8 of the 2004 Agreement.
3. This Participating Funeral Home Agreement has been duly approved by the Funeral Home and executed on its behalf by an authorized signatory pursuant to the requirements set forth in Article 18.1 of the 2004 Agreement.
4. By executing this Participating Funeral Home Agreement, the Funeral Home acknowledges that it has become a party to the 2004 Agreement, it accepts all of the provisions of the 2004 Agreement, and it agrees to be bound by all of those provisions, including, without limitation, the indemnification provisions of Article 11.7 of the 2004 Agreement.
5. Article 18.2 of the 2004 Agreement specifically provides that the 2004 Agreement may be executed in counterparts, all of which together will constitute one agreement binding on all parties thereto. The Funeral Home understands that the execution of this Participating Funeral Home Agreement shall be deemed the execution of the original 2004 Agreement.
6. The Funeral Home agrees to execute and deliver such further documents and to do such acts and things as may reasonably be requested by the Trustees of the Trust in order to effectuate more fully the provisions of the 2004 Agreement.

WITNESS:

Signature of Witness

Print Name of Witness

Dated: _____

Signature of Authorized Funeral Director

Print Name of Funeral Director

THE ABOVE NAMED FUNERAL DIRECTOR IS SIGNING AS: (CHECK ONLY ONE)

- A Sole Proprietor A General Partner An Officer of Corporation A Stakeholder in an L.L.C. Other (see below)

IF NONE OF THE ABOVE: INDICATE BELOW BY WHOM FUNERAL DIRECTOR HAS BEEN AUTHORIZED TO SIGN

Funeral Director has been authorized to sign by _____ who is

- A Sole Proprietor A General Partner An Officer of Corporation A Stakeholder in an L.L.C.

The Underlying Agreement of The New Jersey Prepaid Funeral Trust Fund™

NEW JERSEY PREPAID
FUNERAL TRUST FUND™
CHICES



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Amended and Restated New Jersey Pre-paid Funeral Trust Fund Agreement

This Amended and Restated Prepaid Funeral Trust Fund Agreement is made this 22nd day of September, 2004, by and among certain persons, whose names are set forth on the attached Schedule A, as grantors (the “Grantors”), and Frank Galante, Howard W. Creran, Jr., J. Nolan Higgins, Tyree P. Jones, and James R. Tomasello, trustees of the New Jersey State Funeral Directors Association, Inc., a New Jersey non-profit corporation, as trustees (the “Trustees”):

Recitals:

- A. The “Funeral Homes” (as defined in Article 1.8) are in possession or may come into possession of certain “Advance Funeral Payments” (as defined in Article 1.2 and hereinafter referred to as “AFPs”).
- B. The Grantors have established a trust known as “The New Jersey Pre-Paid Funeral Trust Fund” (hereinafter referred to as “The New Jersey Prepaid Funeral Trust” or the “Trust”) on behalf of the “Purchasers” (as defined in Article 1.12) for the safekeeping and administration of AFPs.
- C. Pursuant to Article 12 of the Amended and Restated Pre-paid Funeral Trust Fund Agreement dated September 25, 1990 (the “1990 Trust Agreement”), the provisions of the 1990 Trust Agreement may be amended at any time by majority vote of the participating members of the New Jersey State Funeral Directors Association, Inc. present and voting at the annual meeting of the New Jersey State Funeral Directors Association, Inc., provided that any amendment that would affect the Trustees will be effective only with the consent of the Trustees.
- D. The Grantors desire to amend and restate the 1990 Trust Agreement in its entirety pursuant to the procedure set forth in Article 12 of the 1990 Trust Agreement.
- E. The Grantors desire to have the Trustees hold and administer the AFPs, and the Trustees are willing to do so, on the terms set forth in this amended and restated trust agreement (this “Agreement”).

NOW, THEREFORE, in reliance upon the foregoing facts and premises, it is agreed that the Trustees will hold all AFPs transferred to them under this Agreement in trust, will manage, administer, invest and reinvest the principal of the Trust, will collect and receive the income thereof, and will distribute such income and principal subject to the following terms and conditions:

ARTICLE 1. Definitions.

The following capitalized terms shall have the meanings indicated below:

- 1.1 **Account:** The AFPs made by a Purchaser to provide funeral or burial goods or services for an Intended Funeral Recipient, plus (i) any interest earned on such AFPs and minus (ii) any distributions or deductions made from or allocated to such AFPs.
- 1.2 **Advance Funeral Payments or AFPs:** Any and all funds of a Purchaser payable to The New Jersey Prepaid Funeral Trust Fund or to a Funeral Home and delivered in connection with an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services of such Funeral Home, wherein the personal property is not to be delivered or the personal services are not to be rendered until the occurrence of the death of the Intended Funeral Recipient, as such funds are described in N.J.S.A. 2A:102-13.
- 1.3 **Applicable Date:** With respect to an Intended Funeral Recipient, the first date on or after the date of death of such Intended Funeral Recipient on which funeral goods or services for the benefit of such Intended Funeral Recipient have been delivered or rendered by, or on behalf of, a Funeral Home or an Unenrolled Funeral Home, in whole or in part.
- 1.4 **Claim:** The notice provided by a Funeral Home or an Unenrolled Funeral Home to the Trustees with respect to an Intended Funeral Recipient who has died that includes all of the information required pursuant to Article 4.
- 1.5 **Claim Amount:** The total amount for which a Funeral Home or an Unenrolled Funeral Home seeks payment from the Trust in connection with the funeral goods or services provided for the benefit of an Intended Funeral Recipient.
- 1.6 **Excess Proceeds:** With respect to an Intended Funeral Recipient, an amount equal to the excess, if any, of (i) the Account or Accounts for the benefit of that Intended Funeral Recipient prior to the payment of the Claim Amount minus (ii) the Claim Amount and applicable commissions.
- 1.7 **Funeral Agreement:** The written agreement between a Funeral Home and a Purchaser made before the death of an Intended Funeral Recipient with respect to funeral arrangements and the use of AFPs for the benefit of that Intended Funeral Recipient.
- 1.8 **Funeral Home:** A sole proprietorship, partnership, limited liability company, corporation or other entity that (i) is duly licensed and

registered pursuant to the “Mortuary Science Act,” P.L. 1952, c. 340 (N.J.S.A. 45:7-32 et seq.); (ii) has entered into a Funeral Agreement with a Purchaser and has entered into a Participating Funeral Home Agreement with the Trustees; and (iii) with respect to each registration under the Mortuary Science Act, has one or more owners or employees that are members of the New Jersey State Funeral Directors Association, Inc.

- 1.9 **Intended Funeral Recipient:** The person for whose benefit AFPs have been made and for whose benefit a Funeral Agreement has been entered into by a Purchaser and a Funeral Home.
- 1.10 **NJFDS:** New Jersey Funeral Directors Services, Inc., an affiliate of the New Jersey State Funeral Directors Association, Inc.
- 1.11 **Participating Funeral Home Agreement:** A written agreement executed on behalf of the Funeral Home specifying, among other things, the Funeral Home’s acceptance of all of the terms of this Agreement.
- 1.12 **Purchaser:** The person who has made AFPs to provide funeral or burial goods or services to an Intended Funeral Recipient.
- 1.13 **Trust:** The New Jersey Prepaid Funeral Trust Fund established pursuant to this Agreement.
- 1.14 **Trustees:** The trustees of the Trust designated in or pursuant to this Agreement then in office. “Trustee” means any one of the Trustees.
- 1.15 **Unenrolled Funeral Home:** A sole proprietorship, partnership, limited liability company, corporation or other entity that (i) provides at-need funeral goods or services for an Intended Funeral Recipient; (ii) is licensed and registered to engage in the business and practice of funeral directing or mortuary science under the laws of the state in which it does business, or, in the case of a state that does not have a system of licensing and registration, qualifies pursuant to the standards set by the Trustees; (iii) does not meet the definition of a “Funeral Home” (as defined in Article 1.8); (iv) agrees in writing to follow procedures specified by the Trustees, including the requirements of N.J.S.A. 2A:102-20 and the Medicaid asset recovery rules; (v) agrees in writing to all of the terms of this Agreement; and (vi) agrees in writing to submit to New Jersey jurisdiction and New Jersey law in the event of any dispute concerning the Trust.

ARTICLE 2. Contributions to the Trust.

- 2.1 **Acceptance of Contributions:** Subject to Article 7, the Trustees, at

any time, may receive and accept from any Funeral Home: (i) AFPs from a Purchaser for the benefit of an Intended Funeral Recipient for whom the Purchaser has not previously established an Account; and (ii) additions to any existing Account if such additions are AFPs. Any such contributions will be administered as part of the Trust and will be subject to the terms and conditions of this Agreement. The Purchaser and the Intended Funeral Recipient may or may not be the same person. Additionally, there may be more than one Purchaser for any Intended Funeral Recipient, and a Purchaser may make AFPs for more than one Intended Funeral Recipient. A Purchaser shall have a separate Account for each Intended Funeral Recipient. If, for example, a Purchaser has made AFPs for each of two separate Intended Funeral Recipients, the Purchaser will have two Accounts, which will not necessarily be in equal amounts. The Trustees may, in their sole and absolute discretion, establish minimum deposit and balance requirements for the Accounts.

- 2.2 **Funeral Agreements:** Each Funeral Home agrees that in connection with establishing each new Account, the Funeral Home and the Purchaser will enter into a Funeral Agreement which shall (i) include the promise of the Funeral Home to furnish, make available or provide certain funeral goods or services for the benefit of that Intended Funeral Recipient; (ii) include the terms under which that Funeral Home will be paid from the Account or Accounts for that Intended Funeral Recipient in connection with the provision of such funeral goods or services; (iii) provide for the execution of such other documents as shall be necessary or appropriate; and (iv) include any additional provisions required by N.J.S.A. 45:7-85.
- 2.3 **Information from Funeral Home Upon Contribution:** Upon making any contribution to the Trust, a Funeral Home shall provide the Trustees, or such other person the Trustees designate, with the following information and documents, and any other information or documents that may be required by this Agreement or the Trustees:
- 2.3.1 The name and address of: (i) the Purchaser; (ii) the Intended Funeral Recipient; and (iii) the Funeral Home.
 - 2.3.2 The Social Security number of the person responsible for reporting any income earned on the Account, which may or may not be the Purchaser.
 - 2.3.3 The account number of the Funeral Home.
 - 2.3.4 The dollar amount that is being deposited.
 - 2.3.5 A copy of the document signed by the Purchaser

acknowledging that the Purchaser has entered into a Funeral Agreement.

- 2.4 **Updating Contact Information:** If a Funeral Home becomes aware of a change in address of a Purchaser or an Intended Funeral Recipient after a Funeral Agreement is made, the Funeral Home shall promptly notify the Trustees of that change.

ARTICLE 3. Purchaser's Right of Withdrawal.

- 3.1 **Revocable Accounts:** Subject to Article 3.2, the Purchaser or the Purchaser's legal representative will have the absolute right, upon written and notarized demand delivered to the Trustees or upon written demand delivered to the Funeral Home, to make a withdrawal from the Purchaser's Account at any time prior to the Applicable Date; provided, however, that the Trustees may, in their sole and absolute discretion, from time to time establish minimum amounts that must be withdrawn, which will apply unless the entire balance of the Account is withdrawn. Any such demand received by a Funeral Home shall be promptly forwarded to the Trustees. Subject to Article 3.2, a Funeral Home may, at the request and on behalf of a Purchaser, make a withdrawal from the Purchaser's Account pursuant to this Article 3.1, on such forms and containing such additional information as the Trustees request; provided, however, that any funds withdrawn from the Trust prior to the Applicable Date (other than in payment of commissions) will be payable to the Purchaser and not to the Funeral Home or any other person.
- 3.2 **Irrevocable Accounts:** Notwithstanding the provisions of Article 3.1, a Purchaser may elect irrevocably to waive the withdrawal rights specified in Article 3.1 with respect to that Purchaser's Account if: (i) either the Purchaser or the Intended Funeral Recipient is, at that time, eligible for benefits ("Benefits") from any local, state or federal government, or any agency or instrumentality thereof, or from private agencies, including the Supplementary Security Income Program, N.J.S.A. 44:7-85 et seq. ("SSI"), or any Medicaid Program, N.J.S.A. 30:4D-1 et seq. ("Medicaid"), in which case the waiver of withdrawal rights will continue to be irrevocable until the Purchaser or the Intended Funeral Recipient, as the case may be, ceases to be so eligible; or (ii) either the Purchaser or the Intended Funeral Recipient reasonably intends, at that time, to become an applicant for or recipient of Benefits within the next six months, in which case the waiver of withdrawal rights will continue to be irrevocable until the expiration of such six-month period if the Purchaser or the Intended Funeral Recipient, as the case may be, has not yet become an applicant for or recipient of Benefits. If the Purchaser or the Intended Funeral Recipient has become an applicant for or recipient of Benefits during such six-month period, such waiver of

withdrawal rights will continue to be irrevocable until the Purchaser or the Intended Funeral Recipient, as the case may be, ceases to be eligible for Benefits. When the waiver of withdrawal rights is no longer irrevocable, the Account will be subject to withdrawal by the Purchaser as provided in Article 3.1.

ARTICLE 4. Submission of Claims and Distribution of Funds.

Following the death of an Intended Funeral Recipient, the procedure set forth in this Article 4 shall apply to the submission of Claims and the distribution of the Account or Accounts for the benefit of that Intended Funeral Recipient.

- 4.1 **Submission of Claim:** After the occurrence of the Applicable Date with respect to an Intended Funeral Recipient, a Funeral Home or an Unenrolled Funeral Home that has provided funeral or burial goods or services will have the right to submit to the Trustees, or to such other person the Trustees designate, a Claim with respect to that Intended Funeral Recipient. The Claim shall (i) state the name and address of the Funeral Home or Unenrolled Funeral Home submitting the Claim; (ii) in the case of a Funeral Home submitting the Claim, state the account number for each Account for the benefit of that Intended Funeral Recipient; (iii) state the Social Security number of the person responsible for reporting any income earned on each such Account, which may or may not be the Purchaser; (iv) state that the Applicable Date has occurred; (v) state, and provide certification of, the Claim Amount; (vi) be accompanied by a certified copy of the death certificate for that Intended Funeral Recipient or such other verification of death as determined by the Trustees; and (vii) include such other information or documents as required by this Agreement or the Trustees.
- 4.2 **Additional Information from Unenrolled Funeral Home Upon Submitting Claim:** Upon submitting a Claim, an Unenrolled Funeral Home shall provide the Trustees, or such other person the Trustees designate, with the following additional information:
- 4.2.1 The name and address of the Purchaser.
- 4.2.2 The taxpayer identification number of the Unenrolled Funeral Home.
- 4.3 **Timing to Submit Claim:** The Trustees expect that all Claims will be submitted within sixty days after the Applicable Date.
- 4.4 **Payment to Funeral Home or Unenrolled Funeral Home:** Except as otherwise provided in this Article 4.4 and in Article 4.6, payment of

an amount equal to the Account or Accounts for that Intended Funeral Recipient will be made to the Funeral Home or the Unenrolled Funeral Home that submitted the Claim. Such payment will be made within ten business days after the receipt by the Trustees of a Claim with respect to that Intended Funeral Recipient. If an Unenrolled Funeral Home submits a Claim with respect to an Intended Funeral Recipient and the Trustees have not already received a Claim from a Funeral Home, the Trustees will be under no obligation to investigate whether the Funeral Home provided any funeral or burial goods or services, and the Trustees will have no liability to the Funeral Home as a result of payment to the Unenrolled Funeral Home pursuant to this Article 4.4. However, in the event that both a Funeral Home and an Unenrolled Funeral Home submit Claims with respect to the same Intended Funeral Recipient before either Claim has been paid, the Trustees shall make payments in the following order: (i) first, the Funeral Home shall be paid an amount equal to the lesser of its Claim Amount and the Account; (ii) second, the Unenrolled Funeral Home shall be paid an amount equal to the lesser of its Claim Amount and the remaining balance in the Account after payment to the Funeral Home; and (iii) third, any Excess Proceeds shall be paid to the Funeral Home (subject to Article 4.6).

4.5 **Protection of Trustees in Making Payments:** The Trustees will have no liability to the Funeral Home or the Unenrolled Funeral Home in the event that the Account for the Intended Funeral Recipient is insufficient to pay the entire Claim Amount submitted by the Funeral Home and the Unenrolled Funeral Home. The Trustees will have no obligation to investigate the quality or value of the funeral goods and services provided by any Funeral Home or Unenrolled Funeral Home or the propriety of any Claim Amount, and they may rely completely upon the certification of the Claim Amount provided by the Funeral Home or the Unenrolled Funeral Home, as the case may be.

4.6 **Distribution of Excess Proceeds:**

4.6.1 Except as provided in Article 4.6.2, any Excess Proceeds received by a Funeral Home or an Unenrolled Funeral Home shall be paid to the Purchaser, if alive, and, if not, to the personal representatives of the estate of the Purchaser, as required by N.J.S.A. 45:7-85(g)(2). If neither the Purchaser nor the personal representatives of the estate of the Purchaser have been located, the Excess Proceeds will be treated as unclaimed funds subject to the Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 et. seq.

4.6.2 Notwithstanding anything to the contrary provided herein, in the case of any Account with respect to which the Purchaser

or the Intended Funeral Recipient was receiving Benefits (as defined in Article 3.2), the amount payable to the Funeral Home or the Unenrolled Funeral Home pursuant to this Article 4 shall be limited to the Claim Amount, and any Excess Proceeds shall be paid by the Trustees to “Treasurer - State of New Jersey” pursuant to N.J.S.A. 2A:102-20. If, for any reason, the Funeral Home or the Unenrolled Funeral Home receives any Excess Proceeds with respect to any Account subject to this Article 4.6.2, the recipient shall promptly return the Excess Proceeds to the Trustees or pay the Excess Proceeds to “Treasurer - State of New Jersey”, as the Trustees shall direct.

4.6.3 Each Funeral Home and Unenrolled Funeral Home expressly acknowledges that it has a fiduciary duty to deal with any Excess Proceeds that come into the hands of that Funeral Home or Unenrolled Funeral Home in accordance with the terms of this Agreement.

4.7 **Prompt Negotiation of Checks:** The Trustees expect that all checks issued to Funeral Homes and Unenrolled Funeral Homes pursuant to this Agreement will be deposited within sixty days after receipt. Uncashed checks will be subject to the Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 et seq. If a Funeral Home or an Unenrolled Funeral Home repeatedly fails to deposit checks within sixty days after receipt, the Trustees may, in their sole and absolute discretion, make future payments by direct deposit to the recipient’s bank account as a condition of continued participation as a contributor to the Trust.

4.8 **Notice to Funeral Home:** In the event the Trustees pay a Claim Amount to an Unenrolled Funeral Home with respect to an Intended Funeral Recipient, the Trustees shall provide notice of such payment to the Funeral Home that contributed AFPs to the Trust for the benefit of that Intended Funeral Recipient; provided, however, that such notice need not be given prior to the payment of the Claim Amount to the Unenrolled Funeral Home.

ARTICLE 5. Use of Software and Documentation.

Each Funeral Home will be permitted to use the forms developed by NJFDS for use in connection with the Trust, which forms may be supplied in hard copy or electronically (the “Plan Forms”) and may purchase and use any software and web-based applications authorized by NJFDS to produce and print the Plan Forms, access information about the Trust, and submit Claims (the “Software”), subject to the following conditions:

- 5.1 **Standards:** The Trustees may, from time to time, establish standards for the licensing and use of the name and logo of The New Jersey Prepaid Funeral Trust Fund.
- 5.2 **Restricted Use:** The Funeral Home may use the Software only on the Funeral Home's own business computer or (if applicable) internal computer network, in accordance with the directions provided.
- 5.3 **No Sharing:** The Funeral Home shall not make copies of the Software (except for a single archival copy for back-up purposes), or share copies of the Software or the Plan Forms with anyone else, or permit anyone else to use the Software or the Plan Forms, or share any passwords for access to any online Plan Forms.
- 5.4 **No Modifications:** The Funeral Home has no right to amend or modify the Plan Forms or use them in any manner contrary to the terms of this Agreement.
- 5.5 **Limited Rights as Licensee:** The Funeral Home acknowledges that it is a licensee only without any rights in or to the underlying Plan Forms, all of which rights are expressly reserved and retained by the licensor and copyright holder.
- 5.6 **Discontinuation of Use:** Upon the termination or suspension of the Funeral Home's right to make additional contributions to the Trust, the Funeral Home (i) will immediately cease all use of the Plan Forms and will return to the Trustees all unused printed copies of the Plan Forms; (ii) will immediately cease all online access to the Plan Forms and use of the Software; and (iii) will immediately cease all use of the logo of The New Jersey Prepaid Funeral Trust Fund and all references to participation in the Trust, except with respect to existing Accounts; provided, however, that the restrictions of this Article 5.6 shall no longer apply if and when the Funeral Home is again permitted by the Trustees to make contributions to the Trust.

ARTICLE 6. Changes in Procedures.

The Trustees may, from time to time, specify the procedures for making contributions to the Trust and withdrawing funds from the Trust, including the procedures for submitting and processing Claims and the procedures for the electronic transmission of information and funds. The Trustees will make available to the Funeral Homes the procedures in effect from time to time.

ARTICLE 7. Termination or Suspension of Right to Make Contributions to the Trust.

- 7.1 **Termination of Status as Funeral Home:** If a sole proprietorship, partnership, limited liability company, corporation or other entity that previously qualified as a Funeral Home (as defined in Article 1.8) ceases to be qualified as a Funeral Home, it shall no longer be entitled to make additional contributions to the Trust, without any right to a hearing and without any further action by the Trustees, until such time, if any, that it qualifies again as a Funeral Home.
- 7.2 **Termination for Cause:** If (i) a Funeral Home has persistently failed to abide by any of the terms of this Agreement or any of the procedures established pursuant to this Agreement or (ii) any owner or employee of a Funeral Home has otherwise acted in a manner that is not in the best interests of the Trust (“Cause”), the Trustees may, in their sole and absolute discretion, refuse to accept additional contributions to the Trust from that Funeral Home, provided that the following procedure is followed before such determination of Cause is made:
- 7.2.1 The Funeral Home is given advance notice from the Trustees that action may be taken pursuant to this Article 7.2.
- 7.2.2 The Trustees provide at least thirty days prior written or electronic notice to the Funeral Home of the date and time that a hearing will be held at the offices of the New Jersey State Funeral Directors Association, Inc. for the purpose of considering action pursuant to this Article 7.2 (the “Hearing”).
- 7.2.3 One or more owners of the Funeral Home have the right to be present at the Hearing, and the Funeral Home has the right to have counsel present at the Hearing, provided that (i) failure of the Funeral Home to appear at the Hearing, either through its owner or its counsel, will constitute a waiver of its right to a Hearing; and (ii) appearance at the Hearing by an owner of the Funeral Home without counsel or by counsel without an owner will constitute a waiver of the right of the other party to be present.
- 7.2.4 After the Hearing or the date set for the Hearing in the event the Funeral Home waives its right to a Hearing, the Trustees provide written notification to the Funeral Home of the determination that is made by the Trustees pursuant to this Article 7.2, which determination shall be binding. If the

Trustees determine that there is Cause, the notification will state whether the loss of the Funeral Home's right to make additional contributions to the Trust is (i) for a specified period of time or (ii) permanent, unless and until the Trustees, in their sole and absolute discretion, determine that permitting the Funeral Home to make additional contributions to the Trust is advisable.

ARTICLE 8. Trustees' Investment Powers.

The Trustees will have the following powers, to be exercised, in their sole and absolute discretion, as they deem advisable:

- 8.1 **Authority to Make Investments:** Subject to the other provisions of this Agreement, the Trustees will invest and reinvest the principal and income of the Trust and will have the exclusive authority to manage and control the assets of the Trust.
- 8.2 **Purchase of Authorized Investments:** With respect to any cash at any time held by the Trust, the Trustees may purchase or subscribe for any "Authorized Investment" (as defined in Article 8.7), and may retain such Authorized Investment in trust.
- 8.3 **Accumulation of Income:** The Trustees will accumulate all net income attributable to each Account, and such net income will periodically be added to that Account and treated as principal for investment purposes. Although the Trustees will make no distinction between principal and income for investment purposes, a distinction will be made for record-keeping purposes.
- 8.4 **Right to Commingle:** The Trustees may commingle any contributions and additions to the Trust by any and all Funeral Homes for one or more Purchasers and may invest all such contributions and additions in lump sums or otherwise without segregation.
- 8.5 **Disposition of Authorized Investments:** The Trustees may sell for cash, convert, redeem, or exchange for another Authorized Investment, any Authorized Investment at any time held by the Trust.
- 8.6 **Premium or Discount:** The Trustees may purchase any Authorized Investment at a premium or discount.
- 8.7 **Authorized Investment:** "Authorized investment" as used in this Article 8 means: deposits in a banking institution as defined in the Banking Act of 1948, whether such deposits are in regular passbook savings accounts, regular non-passbook savings accounts, interest-

bearing checking accounts, certificates of deposit, or any other deposit with such a banking institution. Such deposits must be insured by the Federal Deposit Insurance Corporation to the maximum extent permitted by law. The Trustees shall not be required to ascertain whether any Purchaser or Intended Funeral Recipient maintains investments or deposit accounts at any depository of funds of the Trust that may affect the amount of insurance available to the Trust. All investments made pursuant to this Article 8 shall be made in accordance with N.J.S.A. 2A:102-13. If such statute, or any successor statute, is ever amended or otherwise interpreted to include investments other than those herein enumerated, then, with respect to future contributions to the Trust, "Authorized Investment" as used in this Article 8 shall be expanded to include any and all such investments to the extent the Trustees deem advisable.

- 8.8 **Selection of Depository and Record-Keeper:** The Trustees may utilize such entities as depository for the funds of the Trust and as record-keeper for the various Accounts as the Trustees may, from time to time, select.

ARTICLE 9. Records.

- 9.1 **Information Required:** The Trustees will keep or cause to be kept written or electronic records of each Account in the Trust, including records of principal amounts, interest, receipts and disbursements.
- 9.2 **Tax Reporting:** For each Purchaser, the Trustees will provide or cause to be provided such tax records and information, if any, with respect to the Purchaser's interest in the Trust as may be required by law.
- 9.3 **Records for Purchasers:** The Trustees will provide or cause to be provided to each Purchaser a written or electronic statement, setting forth the information required by Article 9.1 with respect to each Account, at the following times:
- 9.3.1 Upon the establishment of an Account by that Purchaser;
 - 9.3.2 Upon any addition to the Account;
 - 9.3.3 Upon any withdrawal from the Account; and
 - 9.3.4 Within thirty days after the end of each calendar year.
- 9.4 **Records for Funeral Homes:** The Trustees will provide or cause to be provided to each Funeral Home, on a monthly basis, a written or electronic statement, setting forth the information required by Article 9.1, for each Account generated by that Funeral Home.

ARTICLE 10. Trustees' Additional Administrative Powers.

In addition to the powers set forth above and any other powers granted to the Trustees by operation of law, the Trustees will have the following powers, to be exercised, in their sole and absolute discretion, as they deem advisable:

- 10.1 **Settle Claims:** To adjust, compromise or arbitrate claims or demands of, or against, the Trust or any Account, whether such claims are due or will become due in the future.
- 10.2 **Allocate to Income or Principal:** In any case where the applicable law is unclear or uncertain, to allocate to income or to principal, or to apportion between income and principal, receipts and disbursements in such manner as they deem proper.
- 10.3 **Execute and Deliver Documents:** To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of any trust established hereunder, including, but not limited to, an agreement with NJFDS for the administration and operation of the Trust, subject to the supervision of the Trustees.
- 10.4 **Engage Third Parties:** To engage attorneys, accountants and such other agents (including an executive director), upon such terms and conditions as the Trustees deem advisable.
- 10.5 **Separate Trust Provision:** To establish one or more separate trusts, with identical terms, to hold the property received in trust hereunder.
- 10.6 **Additional Authority:** To do all acts that the Trustees deem necessary or proper and to exercise any and all powers of the Trustees under this Agreement upon such terms and conditions as the Trustees deem advisable.

ARTICLE 11. Protection of Trustees.

In the administration of the Trust, it is agreed that:

- 11.1 **No Liability for Exercise of Discretion:** The Trustees will not be accountable for any loss that may occur to the Trust or any Account as a result of the exercise of, or the refusal to exercise, any of the powers or discretion vested in them, unless such losses result from bad faith or fraud on the part of the Trustees.
- 11.2 **Advice of Counsel:** The Trustees may consult with counsel and will

be fully protected in any course of conduct taken in good faith in accordance with the advice of counsel.

- 11.3 **Limitation of Trustees' Liability to Funeral Homes and Unenrolled Funeral Homes:** The Trustees will not be liable to any Funeral Home or Unenrolled Funeral Home for any action taken pursuant to a direction, request or approval given by a Funeral Home, an Unenrolled Funeral Home, a Purchaser or the legal representative of a Purchaser. The Trustees will not be liable to any Funeral Home or Unenrolled Funeral Home for any action taken because of a failure of that Funeral Home or Unenrolled Funeral Home to submit a Claim within sixty days after the Applicable Date.
- 11.4 **Reliance on Written or Electronic Documents:** The Trustees will not be liable for any action taken pursuant to any direction, consent, request or other document, whether written or delivered electronically, on the belief that the same is genuine and signed by the proper person or sent electronically by the proper person, if such direction, consent, request or other document relates to a matter with respect to which the purported signatory or initiator has authority under this Agreement or otherwise. It is the responsibility of each Funeral Home and Unenrolled Funeral Home to safeguard its passwords for any online access and to otherwise protect against the unauthorized transmission of information on its behalf relating to the Trust.
- 11.5 **Authorization to Deal with Related Parties:** The Trustees are authorized, notwithstanding any provision of law to the contrary, in acting on behalf of the Trust, or on behalf of any corporation, estate, trust, partnership, joint venture, limited liability company, association, sole proprietorship, or other entity in which the Trust has an interest, to deal and have transactions of every kind or nature, either with themselves or any of them or with any corporation, estate, trust, partnership, joint venture, limited liability company, association, sole proprietorship, or other entity in which they or any of them has an interest, either personally or as fiduciary, and either directly or indirectly, upon such terms and conditions as they, in their discretion, deem advisable, and any and all such transactions or dealings will be proper and valid if made in good faith, and will be fully binding upon the Trust notwithstanding any such interest on their part, and under no circumstances will there arise any presumption of fraud or other impropriety on the part of the Trustees in relation to any such transactions or dealings.
- 11.6 **No Bond Required:** No bond or other security will be required of the Trustees in any jurisdiction in which they may be called upon to act. If, notwithstanding this express direction, any such bond is required by any law, statute or rule of court, no sureties will be required thereon.

- 11.7 **Indemnification:** Each Funeral Home and Unenrolled Funeral Home agrees that it shall indemnify the Trustees, and any agent engaged by the Trustees to assist in the administration or management of the Trust, against all costs, expenses, and liabilities (including attorneys' fees and settlement costs) incurred in connection with any litigation or threatened litigation relating to the Trust, to the extent such litigation arises out of an event occurring by reason of (i) the Trustees having followed instructions of that Funeral Home or Unenrolled Funeral Home (including any instructions that appeared to be genuine as provided in Article 11.4); or (ii) the failure of that Funeral Home or Unenrolled Funeral Home to fully discharge its obligations under this Agreement, including the obligation to distribute any Excess Proceeds as provided in this Agreement.

ARTICLE 12. Succession of Trustees.

- 12.1 **Assumption of Trust:** The Trustees who have signed this Agreement expressly undertake and assume any trust established under this Agreement and agree to carry out the terms of such trust as provided in this Agreement.
- 12.2 **Qualification:** Any successor Trustee will qualify by executing an instrument in writing, duly acknowledged, by which he or she expressly agrees to assume any trust established under this Agreement and to carry out the terms thereof. Any such instrument will be appended to this Agreement.
- 12.3 **Voluntary Resignation:** Any Trustee is authorized to resign as Trustee of the Trust without leave of any court. Any such resignation will be effective upon delivery of a written instrument of resignation, duly signed and acknowledged by such Trustee, to the other Trustees, or if no other Trustee is then so acting, to the New Jersey State Funeral Directors Association, Inc.
- 12.4 **Mandatory Resignation:** It is understood that the Trustees hold office by virtue of their also being trustees of the New Jersey State Funeral Directors Association, Inc. If any such Trustee herein designated resigns or is removed from his or her trusteeship with the New Jersey State Funeral Directors Association, Inc., for any reason whatsoever, such Trustee will immediately cease to act as a Trustee hereunder. In such case, the person elected or designated to replace the outgoing trustee of the New Jersey State Funeral Directors Association, Inc., will act as a Trustee in his or her stead, and will so qualify as a Trustee hereunder in accordance with this Article 12.

ARTICLE 13. Commissions.

The Trustees shall not receive any compensation for their services under this Agreement; however, the Trustees are authorized to charge to the Accounts such commissions as are permitted by law and to pay such amounts to any agent appointed by the Trustees to assist in the administration and management of the Trust.

ARTICLE 14. Action by Trustees

The approval of the majority of the Trustees is necessary to make any determination by the Trustees and to take any action pursuant to this Agreement, unless a greater number of affirmative votes is expressly required by law, under this Agreement, or under the procedures adopted by the Trustees. The Trustees may authorize any one Trustee to sign any approved document on their behalf.

ARTICLE 15. Amendment.

- 15.1 **General Procedure:** The terms of this Agreement may be amended, at any time and from time to time, by the affirmative vote of a majority of the Trustees; provided, however, that no such amendment will be effective before (i) publication of notice of the amendment in the trade journal published by the New Jersey State Funeral Directors Association, Inc. or distribution of such notice to the Funeral Homes electronically; and (ii) expiration of a sixty-day period following the first date of such publication or electronic notification, during which the Trustees will consider comments about the amendment from the Funeral Homes.
- 15.2 **Limitations:** Notwithstanding the provisions of Article 15.1, (i) no amendment shall operate to deprive a Purchaser of any rights or benefits to which the Purchaser is entitled under N.J.S.A. 2A:102-13 et seq. or N.J.S.A. 45:7-82 et. seq.; and (ii) no amendment shall operate to deprive a Funeral Home of any rights or benefits to which the Funeral Home is entitled under this Agreement with respect to existing Accounts, without the consent of a majority of the Funeral Homes present and voting at the annual meeting of the New Jersey State Funeral Directors Association, Inc. For purposes of this Article 15.2, if two or more Funeral Homes are under “common control” they shall be entitled to only one vote collectively. Funeral Homes shall be considered under common control if they have overlapping ownership of more than fifty percent by related parties, as determined by the Trustees in their sole and absolute discretion.

ARTICLE 16. Continuation Upon Termination of Agreement.

In the event of termination of this Agreement, the Trustees will continue to hold the existing Accounts in trust, to be applied and distributed in accordance with the agreements under which each Purchaser made AFPs.

ARTICLE 17. Miscellaneous Provisions.

- 17.1 **New Jersey Law:** This Agreement and any trust established hereunder will be governed by and interpreted according to the laws of New Jersey, but without giving effect to any New Jersey choice of law provisions which might otherwise make the laws of a different jurisdiction govern or apply.
- 17.2 **Captions:** Captions appearing in this Agreement are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to modify, limit or define the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.
- 17.3 **Article References:** Unless otherwise expressly provided, all references in this Agreement to “Article” shall be deemed to refer to an article or subarticle, as appropriate, of this Agreement.
- 17.4 **Interpretation:** All references made and all nouns and pronouns used in this Agreement shall be construed in the singular or plural and in such gender as the sense and circumstances require.
- 17.5 **References to “N.J.S.A.”:** All references to specific provisions of “N.J.S.A.” shall be deemed to refer to the statutory provisions cited or to the corresponding provisions of any successor statute.
- 17.6 **Reliance Upon Agreement:** Any person dealing with the Trustees may rely upon a copy of this Agreement and any amendments thereto, certified to be a true and correct copy by any Trustee.

ARTICLE 18. Signature by Funeral Homes; Counterparts.

- 18.1 **Authorized Signatory:** Each Funeral Home shall sign a Participating Funeral Home Agreement (i) in the case of a Funeral Home that is a sole proprietorship, by having the owner who is a licensee sign on behalf of the Funeral Home; or (ii) in the case of a Funeral Home that is a partnership, by having a general partner who is a licensee sign on behalf of the Funeral Home; or (iii) in the case of a Funeral Home that is a limited liability company, by having a manager or, in the case of a member managed limited liability company, a member (an “LLC

Authorized Party”) who is a licensee sign on behalf of the Funeral Home; or (iv) in the case of a Funeral Home that is a corporation or other entity, by having an officer who is a licensee sign on behalf of the Funeral Home; or (v) in any case where no owner, general partner, LLC Authorized Party, or officer is a licensee, by having a funeral director “licensed manager”, as described in N.J.A.C. 13:36-4.8, who is not an owner, general partner, LLC Authorized Party, or officer sign on behalf of the Funeral Home, provided that the funeral director licensed manager has been authorized to do so by the Funeral Home’s owner, general partners, LLC Authorized Parties, or Board of Directors, as the case may be, and the funeral director licensed manager provides written evidence of such authorization.

- 18.2 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy, and all of which together will constitute one agreement binding on all parties hereto, notwithstanding that the parties have not signed the same counterpart. Execution of a Participating Funeral Home Agreement pursuant to Article 18.1 by each Funeral Home that is a Grantor shall be deemed to be execution of this Agreement.

IN WITNESS WHEREOF, the Trustees have hereunto set their hands and seals as of the day and year first written above, and the Grantors have each signed a Participating Funeral Home Agreement accepting all of the terms of this Agreement.

Signed, Sealed and Delivered in the Presence of:

- (L.S.) Frank Galante, Trustee
- (L.S.) Howard W. Creran, Jr., Trustee
- (L.S.) J. Nolan Higgins, Trustee
- (L.S.) Tyree P. Jones, Trustee
- (L.S.) James R. Tomasello, Trustee

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