

PREPAID FUNERAL BENEFITS TRUST AGREEMENT

Permit Holder

(TEXAS)

THIS PREPAID FUNERAL BENEFITS TRUST AGREEMENT (the "Trust Agreement") is made and entered into the _____ day of _____ 20____, by and between _____ (hereinafter referred to as "Trustor") and _____, Texas, a Texas corporation with trust powers (hereinafter referred to as "Trustee"). This agreement shall be controlled by Chapter 154 of the Texas Finance Code (hereinafter referred to as "the Finance Code"), and is regulated by the Texas Department of Banking (hereinafter referred to as "the Department").

WITNESSETH

WHEREAS, trustor is or has been engaged in the business of selling benefits under prepaid funeral contracts (hereinafter referred to as "Prepaid Contract" or "Prepaid Contracts") subject to the provisions of Chapter 154 of the Finance Code and related rules and regulations of the State of Texas, as amended, (such code sections, rules and regulations hereinafter collectively referred to as "the Finance Code"); and

WHEREAS, those amounts required to be deposited in trust under the Finance Code (such amounts being hereinafter referred to as "Accumulated Deposits") paid or to be paid to Trustor by the purchasers of benefits under such Prepaid Contracts (hereinafter referred to as "Prepaid Purchaser" or "Prepaid Purchasers") are required under the Finance Code to be deposited with a trustee meeting the requirements of the Finance Code; and

WHEREAS, Trustee is qualified to serve as a trustee of such Accumulated Deposits pursuant to the requirements of the Finance Code, and Trustor desires to deposit such Accumulated Deposits with Trustee and to appoint Trustee as trustee of such Accumulated Deposits; and

WHEREAS, Trustor and Trustee desire that his Trust Agreement govern all Accumulated Deposits deposited by Trustor with Trustee and Earnings (as defined in the Finance Code) on such Accumulated Deposits;

NOW, THEREFORE, Trustor and Trustee do hereby enter into this Trust Agreement, and agree that all Accumulated Deposits hereafter deposited with Trustee by Trustor pursuant to this Trust Agreement, and Earnings thereon, (such Accumulated Deposits and Earnings being hereinafter referred to collectively as "Prepaid Funds") shall be administered in accordance with the Finance Code and the following term and conditions:

ARTICLE I TRUST PURPOSE

The purpose of this Trust Agreement and the trust created pursuant hereto (hereinafter referred to as the "Prepaid Fund Trust") is to provide for the administration and investment, pursuant to the Finance Code, of all Prepaid Funds received by Trustee from Trustor.

ARTICLE II PREPAID DEPOSITS

Trustor may at any time, and in any amount, pay or direct that moneys constituting Prepaid funds be paid to Trustee for deposit into the Prepaid Fund Trust established hereunder for Trustor. Trustee shall not be responsible for any prepaid funds that shall be deposited pursuant to this Trust Agreement until such Prepaid Funds shall have been actually delivered to Trustee for deposit into Trustor's Prepaid Fund Trust. It is further agreed that inasmuch as Trustee shall rely upon the accuracy of the information and documentation furnished by Trustor, Trustor agrees to indemnify and hold Trustee harmless against any and all loss, cost or expenses incurred by Trustee resulting from such reliance, which is not attributable, in whole or in part, to Trustee's

negligence or willful misconduct. Trustee agrees to accept all Prepaid Funds paid in on behalf of Trustor and to maintain such accounts and records as are necessary to carry out its obligations as trustee. Trustor, or its agent, shall be responsible for maintaining records for the purpose of identifying those portions of Prepaid Funds which relate to specific Prepaid Purchasers.

Trustee shall have no duty whatever to investigate the activities of Trustor or to determine or inquire as to Trustor's operations or the accuracy of information provided by Trustor.

Trustee shall not be responsible for determining whether Trustor has complied with requirements under the Finance Code concerning the timing or amount of Accumulated Deposits to be deposited with Trustee.

ARTICLE III POWERS OF THE TRUSTEE

Except as otherwise provided under the Finance Code, Trustee shall have the powers normally granted to trustees under Texas law, specifically including, but not by way of limitation, the power:

- (1) To collect, receive and receipt for any and all items of income and principal that may be derived from the assets placed under the terms hereof, and to allocate the same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.
- (2) To invest and reinvest the assets of the Prepaid Funeral Trust pursuant to the provisions of this Trust Agreement.
- (3) To treat stock dividends, stock splits and dividends, liquidating dividends, stock purchase rights, warrants and options of all kinds, and all similar property and the right to property, as income or as principal, or partly one and partly the other, in accordance with usual and customary accounting practices of Trustee.
- (4) To acquire and hold any stock, securities, real estate or any other property, real or personal, in the name of Trustee without disclosing its capacity, or in the name of any other nominee without disclosing its capacity.
- (5) To vote all shares of stock in the Prepaid Fund Trust howsoever the certificates therefore may be issued, on all matters, and to give special or general proxies to any person, or persons, with or without the power of substitution.
- (6) To execute, acknowledge, deliver and accept any and all deeds, deeds of trust, releases, mortgages, certificates, documents, affidavits, declarations and any and all other papers and instruments whatsoever deemed by Trustee necessary or appropriate to carrying out the powers and authority herein granted.
- (7) To exercise any option or privilege to buy, sell, exchange, or convert bonds, notes, stock or real, personal or mixed property, of any kind.
- (8) To pay from Earnings of the Prepaid Fund Trust, subject to prior approval of the Department where required; trustee fees as provided for herein; taxes caused or created by reason of the existence of such Prepaid Fund Trust; assessments under Section 154.352 of the Finance Code; and any examination fees for one examination by the Department each calendar year.

ARTICLE IV DUTIES OF THE TRUSTEE

Trustee hereby accepts its appointment as trustee of the Prepaid Fund Trust established hereunder. Trustee shall take title to any assets conveyed to it by Trustor to be deposited into Trustor's Prepaid Fund Trust pursuant to the terms of this Trust Agreement for the purpose of investing, protecting and conserving such assets for Trustor, collecting income earned from such assets and distributing principal and income of such Prepaid Fund Trust pursuant to the terms of this Trust Agreement. Trustee shall have no obligation with respect to the activities

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

ARTICLE V INVESTMENT OF TRUST FUNDS

Trustee shall invest and reinvest the assets of the Prepaid Fund Trust only in such manner and in such investments as are permitted under Section 154.258 of the Finance Code. Subject to the foregoing limitation, Trustee is authorized to invest and reinvest and keep the Accumulated Deposits and Earnings of the Prepaid Fund Trust invested in any kind of property; real, personal or mixed; and any kind of investment, including, but not limited to; cash and other liquid assets; common and preferred stocks; any interest in a common trust fund, mutual fund or other such investment maintained by Trustee; voting trust certificates; bonds; notes; debentures; mortgages; trust deeds; mortgage participations; and shares or interest in investment funds.

Trustor reserves the right to establish investment guidelines to be considered by Trustee, subject to the investment requirements set forth in this Trust Agreement and the Finance Code, and Trustee, consistent with its obligations under this Trust Agreement, shall use its best efforts to adhere to said investment guidelines, but shall remain with the provisions of Section 154.258 of the Finance Code. Any and all such guidelines established by Trustor, as well as changes thereto, shall be communicated to Trustee in writing.

Trustor shall provide the Department with a true and correct copy of the investment guideline, which is being used and considered by the Trustee, no less than annually and said guideline shall be filed with the Trustor's Renewal and Annual Report to the Department.

ARTICLE VI INVESTMENT ADVISOR

Notwithstanding Article V hereof, authority is hereby reserved by Trustor to select an investment advisor ("Investment Advisor"), if Trustor so chooses, to direct Trustee, in writing, in the making or retention of any investment. Trustee shall follow such written directions received from such Investment Advisor unless Trustee is of the opinion that the actions being directed by the Investment Advisor would violate the requirements under the Finance Code or Trustee's fiduciary obligations. Said Investment Advisor, in directing Trustee to manage, administer, invest, reinvest and dispose of assets of the Prepaid Fund Trust, shall conform to the investment standards required by Trustee by the Finance Code and the Administrative Code. Trustor shall designate in writing the name of the Investment Advisor, if any, selected and shall submit the name to Trustee in writing. Such notice shall be effective until revoked by Trustor upon ten (10) days prior written notice thereof to Trustee.

ARTICLE VII DISTRIBUTION OF TRUST FUNDS

Prepaid funds held in the Prepaid Fund Trust which are related to each Prepaid Contract shall be retained in the Prepaid Fund Trust by Trustee until Trustee receives from Trustor a written request for withdrawal from the Prepaid fund Trust of requested amounts relating to the Prepaid Contract, including:

- (1) in the case of the death of the "beneficiary" (as that term is used in the Finance Code) of the Prepaid contract, proper affidavits signed and sworn to by an officer or authorized agent of Trustor on forms prescribed by the Department, a certified copy of the death certificate and a copy of the Prepaid Contract;
- (2) in the case of cancellation of a Prepaid contract, properly executed forms as prescribed by the Department for such cancellations and a copy of the Prepaid Contract;
- (3) additional documentation, which Trustee deems necessary in order to comply with the Finance code and the Administrative Code or with Trustee's legal or fiduciary obligations.

After Trustee's receipt from Trustor or Trustor's request for withdrawal and related documentation as set forth above, Trustee shall pay the amount requested to Trustor, and shall make payment within thirty (30) days after such receipt. The amount requested by Trustor shall be based upon records maintained by Trustor or its agents, and Trustee shall have no responsibility for determining the accuracy of any amounts specified or statements made within Trustor's withdrawal request and related documentation. Trustee may rely conclusively on the amounts specified and statements made in Trustor's withdrawal request and related documentation and Trustor shall indemnify, release and hold Trustee harmless from any liability resulting from such reliance. Trustee's only responsibility with regard to such request shall be to verify that the form and manner by which such request is submitted comply with the requirements of this Article, and the Finance Code, where such request does comply with such requirements, to issue payment to Trustor as directed in the request.

ARTICLE VIII TRUST RECORDS

Trustee shall maintain such records for each Prepaid Fund Trust as will evidence the amounts received for deposit, the amounts disbursed and withdrawn, the total amount of Prepaid Funds held and the location, description, and character of the investments of the Prepaid Fund Trust. Trustor, or its agent, shall be responsible for maintaining individual records by Prepaid Purchaser.

ARTICLE IX REPORTS

Trustee shall furnish Trustor, or its agent, a periodic statement at least quarterly showing the activity of Trustor's Prepaid Fund Trust for the period covered by the statement; and the readily ascertainable market value of Trustor's Prepaid Fund Trust as of the last day of the period covered by the statement.

Trustee will furnish such additional reports or information related to Trustor's Prepaid Fund Trust as may be required of Trustee by the Finance Code, as may be requested of Trustee by the Department or as Trustor or its agent may reasonably request.

Trustee shall timely and accurately file all Federal Income Tax Returns and relevant forms promulgated for reporting payment of wages, interest, dividends, and other associated disbursements generally associated with the duties of Trustees under the Finance Code, Federal Enactment, or similar State Statute.

ARTICLE X TRUSTEE'S FEES

Trustee shall be entitled to reasonable compensation for services rendered by it pursuant to this Trust Agreement in such amounts as are mutually agreed to by and between the parties hereto, or if no such agreement is reached, then in such amounts as shall from time to time be set forth in Trustee's published fee schedule which is in effect at the time related services are rendered. Trustee shall be entitled to pay such compensation from Earnings of the Prepaid Fund Trust to the extent permitted under the Finance Code. To the extent that Earnings of the Prepaid Fund Trust are insufficient to cover payment of such compensation, or to the extent such compensation cannot be fully paid from Earnings of the Prepaid Fund Trust due to limitations imposed under the Finance Code, Trustor shall pay that portion of such compensation which is not paid from such Earnings.

ARTICLE XI RELIANCE

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

ARTICLE XII RESIGNATION OR REMOVAL OF TRUSTEE

Trustee shall have the right, upon thirty (30) days prior written notice delivered to Trustor or its agent and to the Department, to resign as trustee of Trustor's Prepaid Fund Trust. Trustor shall have the right, upon thirty

(30) days prior written notice to Trustee and upon payment of the accrued and unpaid trustee's fees as provided herein, to remove trustee as Trustee of Trustor's Prepaid Fund Trust.

Upon such resignation or removal, Trustor shall appoint a successor Trustee, subject to compliance with all related requirements of the Finance Code and the Department. Should Trustor fail to appoint a successor trustee within ten (10) days prior to the expiration of the thirty (30) day notice period, Trustee may secure the appointment of a successor trustee for trustor's Prepaid Fund Trust in any manner permitted by law upon approval of the Department.

Upon the appointment, and immediate notification to Trustee and to the Department, of a successor trustee as provided herein, Trustee shall, transfer and convey to the successor trustee, after prior approval of the Department, all trust assets held by Trustee in Trustor's Prepaid Fund Trust. When said transfer and conveyance are completed, Trustee shall be released and discharged from all liability relating to further administration and investment of Trustor's Prepaid Fund Trust.

**ARTICLE XIII
AMENDMENT OR MODIFICATION OF THE TRUST**

Trustee and Trustor may from time to time amend and modify the provisions of this Trust Agreement, in any manner consistent with the Finance Code, by written instrument, provided that any changes affecting the responsibilities of Trustee must be approved in writing by Trustee.

Trustee and Trustor shall amend this Trust Agreement when necessary to conform to any applicable statutes, rules or regulations and shall notify the Department of such changes.

**ARTICLE XIV
APPLICABLE LAW**

This Trust Agreement shall be governed by the laws of the State of Texas.

**ARTICLE XV
SEVERABILITY**

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

**ARTICLE XVI
PARTIES IN INTEREST**

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

**ARTICLE XVII
FILING OF NOTICES AND/OR REPORTS**

Trustor shall be solely responsible for filing any notices and/or reports that may now or hereafter be required to be filed with the State of Texas, except as may be set forth hereinabove, regarding establishment of Trustor's Prepaid Fund Trust and the management, investment and disposition of the funds thereunder.

All communications provided for hereunder shall be in writing and shall be deemed to be given when delivered in person or deposited in the United States mail, first class, postage prepaid and properly addressed as follows:

Trustor: Name, Address, and Phone Number

Trustee: Name, Address, and Phone Number

**ARTICLE XIX
COUNTERPARTS**

This Trust Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be an original and all of which when taken together shall constitute one and the same instrument.

**ARTICLE XX
HEADINGS**

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

IN WITNESS WHEREOF, each of the undersigned has executed this Trust Agreement on this the _____ day of _____, 20_____.

"Trustor"

By: _____

Printed Name: _____

Title: _____

"Trustee"

By: _____

Printed Name: _____

Title: _____