MILTON FIELDS CEMETERY

1150 Birmingham Rd. – Milton Georgia 30004- Phone 770-751-1445 – Fax 770-754-0298

ADVANCE PURCHASE AGREEMENT OF CEMETERY INTERMENT RIGHTS, MERCHANDISE & SERVICES

Date:_____ Contract #_____

The undersigned ("Purchaser") hereby agrees to purchase the Interment Rights, Merchandise and Services described herein, subject to acceptance and approval of Milton Conservation Burial Partners, LLC d/b/a Milton Fields Cemetery ("Seller"). Interment funeral services occur at the above address.

Purchaser_____**Telephone**_____

Address_____
Street **City** **State** **Zip Code**

Email _____

Description of Interment Rights:_____

INTERMENT RIGHTS, MERCHANDISE AND SERVICES

_____Interment Rights (Including Endowment Care of $_____)…… $_____
Space Number _____
_____Interment Fees (Opening/Closing Grave) **NOT SOLD PRENEED** (see 3 below) $__n/a_____
_____Grave Marker: **NOT SOLD PRENEED**
Material_____ Color_____
Manufacturer: _____ Design:_____ $__n/a _____

ALL MARKERS MUST BE APPROVED BY MILTON FIELDS PRIOR TO PURCHASE / INSTALLATION

_____Recording Fee…… $_____
_____Processing Fee……$_____
_____Tax:_____ $_____
_____Other:_____ $_____

Total Cash Price..... **$_____**
Less: Cash Down Payment……**$_____**
Other Credits…….. **$_____**

Purchase price ..... **$_____**

Remarks:_____
_____

NOTICE TO BUYER: (1) Do not sign this Agreement if any of the spaces intended for the agreed terms to the extent of the available information are left blank. (2) You are entitled to a copy of this Agreement at the time you sign it. (3) If this sale was solicited and your agreement to purchase was made at a place other than the Seller's Place of business, you, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. (4) Opening and closing of the grave is not sold preneed. Additional expenses will be incurred at the time of need, and our current prices for such expenses are included with this contract. Prices are expected to increase in the future.

Purchaser acknowledges that all essential provisions of this Agreement were completed before it was signed and that a copy was delivered to Purchaser at the time this Agreement was signed. Signed this_____day of_____, 20____ at _____ [ ] AM [ ] PM

Purchaser_____**[ ] Male [ ] Female**
Signature Date of Birth *Social Security Number

Purchaser_____**[ ] Male [ ] Female**
Signature Date of Birth *Social Security Number

***Under penalties of perjury, each Purchaser represents and warrants that the Social Security Number shown on this Agreement is his or her correct identification number and that he or she is not subject to federal backup withholding or any order from the Internal Revenue Service that would require special reporting to the IRS by Seller. (The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.) Income Tax Notice: Purchaser may be subject to income tax on income earned on any funds required to be trusted relating to merchandise and/or services purchased hereunder.**

Accepted By _____

Print Name/Title: _____, on behalf of Milton Conservation Burial Partners, LLC

IF YOU HAVE ANY COMPLAINTS ABOUT THIS CONTRACT OR THIS TRANSACTION OR HAVE QUESTIONS ABOUT THE LAW GOVERNING THIS TRANSACTION, YOU MAY CONTACT THE OFFICE OF THE GEORGIA SECRETARY OF STATE AT (404) 656-3920. SEE OTHER SIDE FOR ADDITIONAL TERMS AND CONDITIONS.

ADDITIONAL TERMS AND CONDITIONS

If accepted by Seller, the parties hereto agree to the following terms and conditions:

1.) **Agreement to Pay.** For value received, the undersigned Purchaser(s), jointly and severally, promise to pay to the order of Seller, at the address shown on this Agreement, the amount identified above as the purchase price in accordance with the payment schedule set out herein.

2.) **Title/Issuance of Certificate of Interment Rights.** Seller will retain title to said Interment Rights and Merchandise until the total Sale Price has been paid by Purchaser to Seller. Upon payment of the total Sale Price by the Purchaser, the Seller agrees to convey the above-described Interment Rights by issuance of a Certificate of Interment Rights to the person(s) designated below, and upon request of Purchaser, will deliver the within described Merchandise.

NAME_____ NAME_____

ADDRESS_____ ADDRESS_____

CITY, STATE, ZIP_____ CITY, STATE, ZIP_____

3.) **Interment and Recording Fee.** Unless otherwise specifically provided herein, a charge for opening and closing the interment space and applicable cemetery document recording, is **not** included in the Total Cash Price set forth herein, and there will be an added charge for this service at the time of need. If the Interment Fees **are** purchased hereunder, the price for said service set forth herein reflects normal work hour and weekday rates. There will be an additional charge if the service is provided on weekends, holidays, and/or after normal work hours.

4.) **Security Interest.** Seller will have a security interest in the Interment Rights and Merchandise being purchased as described above. Seller will retain title to said Interment Rights and Merchandise until the Total Cash Price, together with any delinquency charges thereon have been paid by Purchaser to Seller.

5.) **Cemetery Rules and Regulations.** Purchaser agrees that all rights conveyed under this Agreement are subject to the present (and as may hereinafter be adopted, amended or altered) Rules, Regulations and By-laws of the Seller, which Purchaser further agrees to comply with at all times.

6.) **Application of Payments.** In the event of the death of either Purchaser or Co-Purchaser prior to payment in full, all payments made by Purchaser shall be applied to the Interment Right being used in the following order: First, to the Endowment Care Fund next, to the Interment Right; then to the Processing Fee, if any; ; next to any items of Merchandise; and finally, to items of Service. All payments made by Purchaser shall be applied in the same order as stated above even where such a death has not occurred. All prepayments will be applied to the next installment then due.

7.) **Death Prior to Full Payment.** Should the need for interment occur before final payment of the Total Sale Price set forth herein, the Purchaser shall have the right to inter the deceased in the interment space selected, provided the remaining part of said Total Sale Price applicable to the Interment Right, Merchandise or Services to be used shall have first been paid.

8.) **Default or Cancellation.** Purchaser shall be in default, and Seller shall have the right to cancel all or any part of this Agreement as related to any unused Interment Rights, if (a) Seller does not receive any payment due from Purchaser within 30 days after its due date, (b) a proceeding in receivership or insolvency is instituted by or against Purchaser, (c) Purchaser fails to comply with any other provision of this Agreement, or (d) Seller receives Purchaser's written request to cancel this Agreement. Except as otherwise provided in this Agreement, Purchaser shall be entitled to a refund of the full sales price plus interest in connection with the preneed merchandise and services funds that are required to be deposited in a preneed escrow account – such funds shall be returned by the third business day after Purchaser or Purchaser's heirs or assigns requests a refund provided that such request is made before the earlier of (a) the delivery of the merchandise or services, or (b) the death of the person for whose interment the merchandise or services are intended to be used. In connection with the sale of monuments, Purchaser shall be entitled to a refund of the full sales price associated therewith without interest by the third business day after Purchaser or Purchaser's heirs or assigns requests a refund provided that such request is made before the earlier of (a) the delivery of the merchandise, or (b) the death of the person form whose interment the monument is intended to be used. If merchandise is not delivered as represented, Purchaser or Purchaser's heirs or assigns shall receive a refund. As to all other monies under this Agreement, no refunds will be made but shall be kept as liquidated damages as described below. Upon cancellation, all rights, title and interest of Purchaser under or by virtue of this Agreement shall terminate and, at Seller's discretion, Seller may cause a Certificate of Interment Rights to be issued for Interment Rights of the Seller's selection, provided the Purchaser's equity is equal to or greater than the selling price of said Interment Rights.

9.) **Liquidated Damages.** It is difficult or impossible to estimate accurately the actual injury that would be caused by Purchaser's breach of this Agreement or any error or mistake in connection therewith, and that in case of Purchaser's breach of this Agreement, or in case of any error or mistake in connection therewith, Seller shall retain all monies received from Purchaser under this Agreement as liquidated damages except to the extent of refundable amounts as described above. The parties intend to provide for damages rather than a penalty, and such sums are a reasonable preestimate of the probable losses.

10.) **Assignment.** Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Seller. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the Purchaser. Purchaser further agrees that Seller may assign its rights under this Agreement and that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Seller.

11.) **Substitution of Merchandise.** Purchaser and Seller acknowledge and agree that this Agreement does not call for the sale of any specific brand or make of, urn, or memorial marker and that the Seller is only obligated to furnish product which conforms to the general description listed in this Agreement and is of equivalent quality. If any particular item of merchandise is unavailable at the time of delivery, Seller will furnish comparable merchandise similar in style and quality of material equal in value or better.

12.) **Memorialization.** The Interment Rights being purchased hereunder do not necessarily possess a monument privilege. The Seller retains the right to prohibit upright monuments or to limit upright monuments to certain designated sections of the cemetery. A memorial tablet conforming to Seller's rules and regulations may be placed on any interment space covered by this agreement. However, no interment shall be made nor any memorial placed thereon until the total Cash Price and any delinquency charges are fully paid, except on written permission of Seller. Any interment made or memorial which may be placed before full payment of the total Cash Price and delinquency charges shall be only temporary, and no rights shall, by reason of said interment or installation of memorial, be acquired by Purchaser.

13.) **Sale for Personal/Family Use Only.** Purchaser agrees that the Interment Rights purchased hereunder are being purchased for personal or family interment purposes only and not for speculation, and neither Seller, its agents nor salespersons, in any way represent or guarantee a resale thereof.

14.) **Acceptance by Seller.** This Agreement will be of no force or effect until counter-signed by a duly authorized representative of Seller.

15.) **Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PARTIES' RELATIONSHIP (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY SELLER FROM PURCHASER UNDER THIS AGREEMENT.** Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall act to waive liability that would otherwise be void or unlawful under O.C.G.A. §§ 10-14-17(c)(7) or 10-14-25 or other applicable law.

16.) **Endowment Care Fund.** Seller hereby binds itself to maintain the interment spaces or other interment facilities described herein, and to deposit from payments received hereunder the amounts required by law to an Endowment Care Fund created for the continual maintenance of all developed cemetery property without further assessment to Purchaser. Such deposit to the Endowment Care Fund shall be in trust with an established State or National bank or savings and loan association licensed in this State as Trustee and in accordance with the applicable laws governing such Endowment Care Fund, and the net income from the Endowment Care Fund shall be used solely for the continuing care and maintenance of the developed cemetery and to pay such costs as may be reasonably necessary for the administration of the Endowment Care Fund.

17.) **Notice.** Notices to the Purchaser shall be sufficient if mailed to the Purchaser's last known address, as reflected in Seller's records.

18.) **Disclaimer of Seller's Warranties.** The only warranty on any goods sold in connection with this agreement is the express written warranty, if any, granted by the manufacturer. Seller makes no warranty, express or implied, including any implied warranties of merchantability, with respect to the goods so described.

19.) **Entire Agreement.** This agreement contains all terms which have been agreed upon by the purchaser and the seller relating to the goods and services listed on the other side. This contract replaces all other discussions and agreements, whether oral or written, relating to those goods and services. No subsequent discussion or agreement can change the terms of this contract unless it is written and is signed by both the purchaser and the Seller (or the Seller's Assignee).

20.) **Arbitration. ANY DISPUTE OR CONTROVERSY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE SUBMITTED TO NON-BINDING ARBITRATION IN FULTON COUNTY, GEORGIA, UPON THE DELIVERY BY ONE PARTY TO THE OTHER OF A NOTICE SPECIFYING THE NATURE OF THE DISPUTE OR CONTROVERSY AND DEMANDING THAT THE MATTER BE SENT TO ARBITRATION (THE "ARBITRATION NOTICE"). WITHIN TEN (10) DAYS AFTER THE DELIVERY OF THE ARBITRATION NOTICE, EACH PARTY TO THE DISPUTE WILL SUBMIT A LIST OF PROPOSED ARBITRATORS TO THE OTHER PARTY. THE ARBITRATOR SHALL BE SELECTED BY AGREEMENT OF THE PARTIES TO THE DISPUTE FROM THE LIST OF PROPOSED ARBITRATORS NO LATER THAN TWENTY (20) DAYS AFTER THE DELIVERY OF THE ARBITRATION NOTICE. IF THE PARTIES DO NOT AGREE ON AN ARBITRATOR WITHIN THE SPECIFIED TIME, THEN THE PARTIES WILL SUBMIT THE ARBITRATION TO THE AMERICAN ARBITRATION ASSOCIATION LOCATED IN ATLANTA, GEORGIA AND WILL CONDUCT THE ARBITRATION PURSUANT TO THE SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IN ANY EVENT, THE ARBITRATION WILL BE GOVERNED BY THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR SHALL BE DIRECTED TO IDENTIFY THE PREVAILING PARTY IN THE ARBITRATION, AND THE NON-PREVAILING PARTY SHALL BE RESPONSIBLE FOR THE COSTS AND EXPENSES INCURRED IN CONDUCTING THE ARBITRATION PROCEEDING, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES. THE ARBITRATOR'S AWARD SHALL BE ACCOMPANIED BY A REASONED, WRITTEN OPINION. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.**