
LIVINGWATERS COLUMBARIUM

in St Gianna Beretta Molla Roman Catholic Church

15 COLUMBIA DRIVE
Winnipeg, Manitoba
R3Y 0R5
204 488-3977

www.livingwaterswpg.ca

LivingWaters Columbarium Terms and agreements

Schedule A

Revised January 2019

1. **“Niche”** means a perpetual license to have cremated remains kept in a concrete, pre-constructed, closed front Niche of approximately 12 x 12 in size situate in the Columbarium and to the rights afforded to such license by this Agreement, all in accordance with the terms and conditions of this Agreement. All references in this agreement to the purchase or sale of a Niche shall be deemed to mean the payment for, or granting of, the above referenced perpetual license and the rights associated therewith, as herein provided.

Notwithstanding the location, the Parish shall have the right, without recourse by the Purchaser, to allocate a different Niche to the Purchaser, including to move the cremated remains from the Niche selected by the Purchaser to another niche within the Columbarium, either on a permanent or temporary basis, in the event the Parish deems it necessary or desirable, acting reasonably, having regard to any required repairs or modifications to the Church or the Columbarium or otherwise for the efficient operations of the Columbarium. The Parish shall have the right to move the cremated remains from the Niche selected by the Purchaser to another Catholic cemetery/columbarium, in the event that Living Waters Columbarium experiences a disruption in its ability to house cremated remains.

2. Default in Payment. In the event that a payment required pursuant to section 2 hereof is not paid to the Parish as and when due, the Parish has the option, exercisable at any time while such required payment remains unpaid:
 - (a) if the conditions in section 10 have not yet been satisfied or waived by the Parish, to cancel this agreement and to return to the Purchaser the amount paid by him/her hereunder, without interest, whereupon the Purchaser’s rights hereunder shall immediately come to an end; or

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- (b) if the conditions in section 10 have been satisfied or waived by the Parish, to cancel this agreement and to return to the Purchaser the amount actually paid by him/her to the Parish hereunder, without interest, minus an administrative fee equal to 25% of the Niche Price, whereupon the Purchaser's rights hereunder shall immediately come to an end.

If the above option (as applicable) is not exercised by the Parish, the Parish shall be entitled to recover from the Purchaser the amount owing as a debt owing by the Purchaser to the Parish, and to take all legal steps and proceedings to that end and may refuse entombment in the Niche or access to Visitors (as defined in this Agreement) until all amounts owing hereunder are paid. No urn, Niche Plaque or other item purchased by the Purchaser hereunder will be delivered until the Total Purchase Price has been paid in full.

3. Grain of Wheat Fund. The Parish agrees to designate from each purchase of niche, an amount equal to 1 % of the purchase price paid by such respective purchasers and leaseholders for his/her/ their niche(s), for the Grain of Wheat Annual Award in support of apostolic initiatives within the greater community. The cash award amount will be based on total niche sales of a twelve month basis, October 30th to October 30th.
4. Rules Governing Niches and Niche markers. The Purchaser acknowledges and agrees to the rules set out in Schedule "A" hereto pertaining to the Niche and that those rules form an integral part of this Agreement. The Parish may establish other rules of general application from time to time governing the use, rights and obligations pertaining to the niches and niche markers. Such rules, when provided to the Purchaser or displayed for viewing at the Columbarium for a period of 10 consecutive days, shall be binding on the Purchaser.
5. Rules Governing Columbarium and Access thereto. The Purchaser acknowledged and agrees to the rules set out in Schedule "A" hereto pertaining to the Columbarium and that those rules form an integral part of this Agreement. The Parish may establish other rules of general application from time to time governing the use, rights and obligations pertaining to the Columbarium. Such rules, when provided to the Purchaser or displayed for viewing at the Columbarium for a period of 10 consecutive days, shall be binding on the Purchaser and the Purchaser's visitors or invitees.
6. Obligations of the Parish / Release of Liability. The Parish covenants and agrees to keep the Columbarium in a state of good repair and cleanliness, reasonable wear and tear excepted. The Parish shall keep the Columbarium reasonably heated and air

conditioned to the standard that a reasonable and prudent columbarium owner would observe, and will use reasonable efforts to ensure that the doors to the Columbarium are locked when not open to visitors. The Purchaser agrees that the Parish will not be liable, and the Purchaser and his/her heirs and personal representatives shall not have any recourse against the Parish and hereby release the Parish, for and from any error or loss or damage caused by the Parish or those from whom it is responsible, unless such error or loss or damage has been caused by the wilful misconduct of the Parish.

7. Information Requirements – The Purchaser represents and warrants that the information provided on the last page of this Agreement is complete and accurate as of the date of execution of this agreement. The Purchaser, or in the event of the death of the Purchaser, his/her/their administrators or heirs as the case may be, covenant and agree to maintain the accuracy of such information and update the same as necessary, which is it acknowledged will be a condition to the entombment of any person in the purchased Niche.
8. Transfers. – No sale or other transfer of ownership of a Niche may occur except through the Parish in the manner set out in this section 9. No person other than the Parish or its agents may advertise the sale or transfer of any niche. No Niche may be transferred following the entombment of any person therein. Prior to an entombment in the Niche, if the Purchaser desires to transfer his/her Niche, the Purchaser may give notice to the Parish of his/her/their intention to transfer by way of an irrevocable direction in writing and, if a replacement purchaser/transferee of the Niche has been identified by the Purchaser, the name and contact particulars of such proposed transferee. Upon such notice being received, the Parish will add the Niche to the list of available niches for sale and, if a proposed purchaser thereof has been identified by the Purchaser, it shall make a reasonable attempt at contacting such proposed purchaser to offer the Niche to him/her. Upon the Parish securing a new Purchaser for the Niche who has paid the purchase price therefore, it shall advise the Purchaser who shall thereupon transfer his/her rights in the Niche to the Parish in consideration of the refund by the Parish of the actual amount which was paid by the Purchaser hereunder for the Niche (regardless of whether the new purchaser of the Niche pays a greater amount to the Parish therefore) minus an administrative fee equal to 10% of such price which may be retained by the Parish. The Purchaser is prohibited from profiting in any way from the transfer or sale (through the Parish) of the Niche, including that the Purchaser may not enter into any collateral agreements with a person it identifies to the Parish as a potential purchaser, or any person other than the Parish in connection with the transfer or resale of the Niche. The Parish

shall be under no obligation to actively market the Niche, beyond simply advising potential purchasers that the Niche is available for selection from among the then available stock of niches in the Columbarium, and the Parish shall have no obligation whatsoever to repurchase the Niche from the Purchaser or to return any amount paid by the Purchaser in connection therewith, until the Niche has been resold to a new purchaser with the purchase price therefore having been received by the Parish.

9. Unpaid Balance on Death In the event of an unpaid balance of this contract at the time of the Purchaser's death or, if the Niche is being purchased for the entombment of any other person, in the event of such other person's death, the outstanding balance hereunder, if any, becomes the responsibility of a person designated by the Purchaser to assume that the balance is fully paid upon entombment.
10. Refunds and Timing. In the event that the Purchaser or anyone claiming through the Purchaser becomes entitled to a refund pursuant to the terms hereof, such refund shall be limited to the actual cash received by the Parish from the Purchaser on the sale to the Purchaser of the Niche herein (or less pursuant to sections 3 or 9), all without interest. It is also acknowledged that, should the Purchaser or any person claiming through the Purchaser become entitled to a refund hereunder, the payment of such refund may be delayed in order to allow the Parish to re-sell the cancelled Niche and/or other niches to generate the funds (over and above the funds earmarked by the Parish for the construction of the Church and Columbarium) to be refunded to the Purchaser. It is acknowledged to this end that the amounts received by the Parish from pre-sales of niches shall be used to fund the construction of the Church and the Columbarium therein. For greater certainty, other than a cancellation of this Agreement pursuant to the provisions of section 9 hereof, the Purchaser may not terminate this agreement or become entitled to a refund of all or any part of the purchase price paid or payable by him/her/it herein.

For greater certainty, in the event the Purchaser applied a certificate in partial payment of the Total Cash Price herein and thereafter becomes entitled to a refund, the Purchaser will not be entitled to any refund or cash on account of the certificate amount, it being acknowledged that such certificates have no cash value.

11. Entire Agreement This Agreement constitutes the entire agreement between the Parish and the Purchaser and supersedes all prior undertakings and agreements between the parties. It is agreed that there are no representations, warranties, conditions, collateral agreements or undertakings, whether express, implied or statutory,

between the parties other than as expressly mentioned in this Agreement.

12. Discretion The Parish shall have the discretion to deny entombment of the cremated remains of any person not eligible for the public rites of Christian burial within the norms of Canon Law 1184-1185. In all matters not specifically covered herein the Parish may undertake any action, make such decision and do such things which, in its judgment, is considers reasonable, and such determination shall be binding upon the Purchaser and all parties concerned. The Parish shall not be liable for any decision or step taken or made by it in good faith. The Parish shall not in any way be liable to the Purchaser or those acting through the Purchaser except in the event of the gross negligence or wilful misconduct of the Parish.
13. Enurement This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective heirs, personal representatives, successors and permitted assigns.