

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY  
FLORIDA

CASE NO: 2005 CA 000709 AN EB

HERITAGE MANOR OF MEMORIAL PARK,  
INC.; MEMORIAL PARK OF BOCA RATON,  
INC.; KATHLEEN I. MICHAEL; ELISHKA E.  
MICHAEL TARNAWA REVOCABLE TRUST  
UNDER AGREEMENT DATED AUGUST 9,  
2002, GEORGE G. TARNAWA, TRUSTEE AND  
GEORGE G. TARNAWA, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ELISHKA E. MICHAEL TARNAWA,

Plaintiffs,

vs.

MICHAEL D. MASANOFF, MICHAEL D.  
KARSCH, AND SACHS SAX & KLEIN, P.A.,

Defendants.

PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT

Pursuant to Fla. R. Civ. 1.190(a) Plaintiff files this Unopposed Motion to File a Second Amended Complaint, and states as follows:

1. Plaintiff's First Amended Complaint was filed on February 1, 2005.
2. On July 5, 2005 Defendants moved to dismiss the First Amended Complaint on the ground that (a) it did not identify the citizenship of two Plaintiffs; and (b) did not attach a copy of a purchase and sale agreement relevant to the case.
3. In response to Defendants' Motion, Plaintiffs have agreed to identify the citizenship of the Plaintiffs in question, and to attach a copy of the purchase and sale agreement as an exhibit to the Second Amended Complaint.

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4. Defendants have agreed that these additions will moot their grounds for dismissing the First Amended Complaint.

5. Defendants therefore consent to this amendment and have agreed to answer Plaintiffs' Second Amended Complaint.

6. The Second Amended Complaint is attached hereto as Exhibit A. Plaintiffs request that this Complaint be deemed filed upon granting of this Motion and that Defendants be ordered to answer within ten days as required by Fla. R. Civ. P. 1.190(a).

WHEREFORE, Plaintiffs hereby request that this Motion for Leave to File to a Second Amended Complaint be granted.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 20<sup>th</sup> day of July, 2005 to Andrew Seiden, Esq., 2300 Glades Rd Ste 340 West, Boca Raton, FL 33431-8534; Richard Goodman, Esq., 1394 East Jefferson, Detroit, MI 48207-3194.

RICCI~LEOPOLD, P.A.  
2925 PGA Blvd., Suite 200  
Palm Beach Gardens, FL 33410  
Phone: 561-684-6500  
Fax: 561-697-2383

By:   
BENJAMIN SALZILLO, ESQ.  
Florida Bar No. 582751

**EXHIBIT A**

**NOT A CERTIFIED COPY**

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
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FLORIDA

HERITAGE MANOR OF MEMORIAL PARK,  
INC.; MEMORIAL PARK OF BOCA RATON,  
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MICHAEL TARNAWA REVOCABLE TRUST  
UNDER AGREEMENT DATED AUGUST 9,  
2002, GEORGE G. TARNAWA, TRUSTEE AND  
GEORGE G. TARNAWA, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ELISHKA E. MICHAEL TARNAWA,

CASE NO: 2005 CA 000709 AN EB

**Plaintiffs,**

vs.

MICHAEL D. MASANOFF, MICHAEL D.  
KARSCH, AND SACHS SAX & KLEIN, P.A.,

**Defendants.**

---

**SECOND AMENDED COMPLAINT**

Plaintiffs, HERITAGE MANOR OF MEMORIAL PARK, INC.; MEMORIAL PARK OF BOCA RATON, INC.; KATHLEEN I. MICHAEL; ELISHKA E. MICHAEL TARNAWA REVOCABLE TRUST UNDER AGREEMENT DATED AUGUST 9, 2002, GEORGE G. TARNAWA, Trustee and GEORGE G. TARNAWA, as Personal Representative of the Estate of ELISHKA E. MICHAEL TARNAWA, hereby sue Defendants, MICHAEL D. MASANOFF, MICHAEL D. KARSCH and SACHS SAX & KLEIN, PA., and allege:

1. This is an action seeking damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of costs, interest, and attorneys' fees.
2. At all times material hereto, Plaintiff HERITAGE MANOR OF MEMORIAL PARK, INC. ("Heritage Manor") was a Florida not-for-profit corporation organized under and

by virtue of the laws of the State of Florida, with its principal place of business in Palm Beach County, Florida.

3. At all times material hereto, Plaintiff MEMORIAL PARK OF BOCA RATON, INC. ("Memorial") was a Florida corporation organized under and by virtue of the laws of the State of Florida, with its principal place of business in Palm Beach County, Florida.

4. At all times material hereto, Plaintiff KATHLEEN I. MICHAEL ("K. Michael") was a citizen and resident of the State of Michigan.

5. Plaintiff ELISHKA E. MICHAEL TARNAWA REVOCABLE TRUST UNDER AGREEMENT DATED AUGUST 9, 2002 was formed in Palm Beach County, Florida on or about August 9, 2002. Additionally, at all times material hereto, Plaintiff ELISHKA E. MICHAEL TARNAWA REVOCABLE TRUST UNDER AGREEMENT DATED AUGUST 9, 2002 was domiciled in Palm Beach County, Florida.

6. At all times material hereto, GEORGE G. TARNAWA was a resident of Palm Beach County, Florida.

7. At the time of her death and at all times material hereto, ELISHKA E. MICHAEL TARNAWA was a resident of Palm Beach County, Florida.

8. Plaintiffs Heritage Manor, Memorial, K. Michael, Elishka Michael Tarnawa Revocable Trust under agreement dated August 9, 2002, George Tarnawa, Trustee and George Tarnawa, as personal representative of the Estate of Elishka Michael Tarnawa are referred to collectively herein as the "Plaintiffs."

9. At all times material hereto, Defendant MICHAEL D. MASANOFF, ("Masanoff") was an attorney duly licensed to practice law in the State of Florida, doing business in Palm Beach County, Florida.

10. At all times material hereto, Defendant MICHAEL D. KARSCH, (“Karsch”) was an attorney duly licensed to practice law in the State of Florida, doing business in Palm Beach County, Florida.

11. At all times material hereto, Defendant SACHS SAX & KLEIN, P.A. (“SSK”) was an active Florida professional association practicing law in Palm Beach County, Florida. Defendants Masanoff, Karsch and SSK are referred to collectively herein as the “Defendants.”

12. At all times material hereto, Defendant SSK held itself out to the public and to the Plaintiffs as a professional association of attorneys, practicing law in Palm Beach County, Florida.

13. At all times material hereto, Defendant SSK represented to Plaintiffs that it was qualified to act, and would act, as Plaintiffs’ attorneys and legal representatives in connection with the sale of Plaintiffs’ mausoleum cemetery business and associated land located in Boca Raton, Palm Beach County, Florida.

14. At all times material hereto, Defendant Masanoff, individually and on behalf of SSK, represented to the Plaintiffs that he was qualified to act, and would act, as Plaintiffs’ attorney and legal representative in connection with the sale of Plaintiffs’ mausoleum cemetery business and associated land located in Boca Raton, Palm Beach County, Florida.

15. At all times material hereto, Defendant Karsch, individually and on behalf of SSK, represented to the Plaintiffs that he was qualified to act, and would act, as Plaintiffs’ attorney and legal representative in connection with the sale of Plaintiffs’ mausoleum cemetery business and associated land located in Boca Raton, Palm Beach County, Florida.

16. The Defendants are jointly and severally liable for the damages sought by way of the allegations contained herein.

17. Each Defendant is vicariously liable for the actions of the other Defendants as alleged herein.

18. In calendar year 2002, in reliance on the representations, statements and advice of the Defendants, including those alleged herein, Plaintiffs retained the Defendants as attorneys to provide legal representation in connection with the sale of Plaintiffs' mausoleum cemetery business and associated land located in Boca Raton, Palm Beach County, Florida.

19. In connection with their representation of Plaintiffs, Defendants agreed, among other things: (1) to assist Plaintiffs in locating prospective purchasers of Plaintiffs' business and associated land; (2) to "vet" and/or perform due diligence on such prospective purchasers before allowing Plaintiffs to proceed with the sale of Plaintiffs' business and associated land; (3) to serve as Plaintiffs' agents and legal representatives, and Plaintiffs' agents and legal representatives alone, in connection with the sale of Plaintiffs' business and associated land; (4) to negotiate and draft on behalf of Plaintiffs, and Plaintiffs alone, all documents applicable to a sale of Plaintiffs' business and associated land; (5) not to proceed or act in a manner adverse to the interests of Plaintiffs; (6) not to enter into a business transaction with Plaintiffs or acquire an ownership, possessory, security, or other pecuniary interest adverse to Plaintiffs without first providing full disclosure to Plaintiffs and obtaining Plaintiffs' written consent; and (7) not to use information relating to their representation of Plaintiffs to the disadvantage of Plaintiffs without first consulting with Plaintiffs and obtaining their consent.

20. In connection with their representation of Plaintiffs, Defendants further agreed to keep information relating to Plaintiffs; Plaintiffs' business and associated land; Plaintiffs' financial positions and liquidity; Plaintiffs' level of interest in selling Plaintiffs' business and associated land; and Defendants' representation of Plaintiffs' confidential and to not disclose

such information to any other party, entity, person or prospective purchaser without the express consent of the Plaintiffs.

21. Beginning in 2002, Plaintiffs, by and through the Defendants, began negotiating and communicating with prospective purchasers, including but not limited to DFG Group LLC, a Florida limited liability company ("DFG Group"), regarding the sale of Plaintiffs' business and associated land.

22. On or about August 1, 2002, in reliance on the representations, statements and advice of the Defendants, including those alleged herein, Plaintiffs entered into a Purchase and Sale Agreement with DFG Group providing for the sale of Plaintiffs' mausoleum cemetery business and associated land.

23. In or about March 2003, in further reliance on the representations, statements and advice of the Defendants, including those contained herein, Plaintiffs closed the transaction with DFG Group and completed the sale of their mausoleum cemetery business and associated land for the sum of approximately \$6 Million. A true and correct copy of the Purchase and Sale Agreement relating to the transaction, together with a Second Amendment to the Purchase and Sale Agreement, is attached hereto as Exhibit A.

24. Thereafter, Plaintiffs discovered that Defendants had violated and breached various duties to Plaintiffs in connection with their legal representation.

25. On information and belief, Defendants, and each of them, in connection with their representation of Plaintiffs and the sale of Plaintiffs' business and associated land:

(A) served as agents and legal representative for the Plaintiffs and other parties adverse to Plaintiffs in connection with the sale of Plaintiffs' business and associated land and failed to adequately disclose this fact to Plaintiffs and obtain Plaintiffs consent;



(B) negotiated and drafted documents relating to the sale of Plaintiffs' business and associated land on behalf of Plaintiffs and other parties adverse to Plaintiffs and failed to adequately disclose this fact to Plaintiffs and obtain Plaintiffs' consent;

(C) proceeded and acted in a manner unquestionably adverse to the interests of Plaintiffs to the detriment of Plaintiffs and pecuniary benefit of the Defendants;

(D) entered into a business transaction with Plaintiffs and/or acquired an ownership, possessory, security, or other pecuniary interest adverse to Plaintiffs without first providing full disclosure to Plaintiffs and obtaining Plaintiffs' written consent;

(E) used information relating to their representation of Plaintiffs to their advantage and the disadvantage of Plaintiffs without first consulting with Plaintiffs and obtaining their consent; and

(F) disclosed confidential information relating to Plaintiffs; Plaintiffs' business and associated land; Plaintiffs' financial positions and liquidity; Plaintiffs' level of interest in selling Plaintiffs' business and associated land; and Defendants' representation of Plaintiffs to the detriment of Plaintiffs and benefit of Defendants without Plaintiffs' consent.

## COUNT I

### (Breach of Fiduciary Duty)

26. Plaintiffs repeat and re-allege as though fully set forth at length, and incorporate herein by reference, all of the allegations and statements contained in paragraphs 1 through 25 above.

27. Defendants, as Plaintiffs' attorneys and legal representatives, owed various fiduciary duties to Plaintiffs.

28. Through the conduct and actions described above, Defendants, and each of them, breached their fiduciary duties owed to Plaintiffs.

29. Each Defendant participated in each other Defendant's breach of trust and breaches of fiduciary duties owed to Plaintiffs and/or aided and abetted each other Defendant's breach of trust and breaches of fiduciary duties owed to Plaintiffs.

30. As a direct and proximate result of Defendants' breaches of fiduciary duties owed to Plaintiffs, participation in each other Defendant's breach of trust and breaches of fiduciary duties owed to Plaintiffs, and aiding and abetting each other Defendant's breach of trust and breaches of fiduciary duties owed to Plaintiffs, Defendants caused Plaintiffs to incur damages, including but not limited to compensatory damages, costs, interest, and attorneys' fees.

**WHEREFORE**, the Plaintiffs demand judgment for damages against the Defendants, post and pre-judgment interest, costs and such other relief as this Court deems proper.

## **COUNT II**

### **(Professional Negligence – Legal Malpractice)**

31. Plaintiffs repeat and re-allege as though fully set forth at length, and incorporate herein by reference, all of the allegations and statements contained in paragraphs 1 through 30 above.

32. Defendants, as Plaintiffs' attorneys and legal representatives, owed a duty of due care to Plaintiffs.

33. Through the conduct and actions described above, Defendants, and each of them, breached their duty of due care owed to Plaintiffs.

34. At all times material hereto, Defendants held themselves out as knowledgeable and skilled attorneys in handling legal matters, and expressly and or impliedly agreed to exercise

the degree of care, skill and knowledge as was required in connection with their representation of Plaintiffs.

35. Through the conduct and actions described above, Defendants, and each of them, were negligent and failed to meet the standard of care and skill required of attorneys handling legal matters in this or similar communities.

36. As a direct and proximate result of Defendants' negligence and breaches of due care owed to Plaintiffs, Defendants caused Plaintiffs to incur damages, including but not limited to compensatory damages, costs, interest, and attorneys' fees.

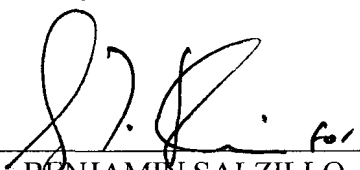
**WHEREFORE**, the Plaintiff demands judgment for damages against the Defendants, post and pre-judgment interest, costs and such other relief as this Court deems proper.

**DEMAND FOR JURY TRIAL**

The Plaintiffs demand a trial of all causes by jury.

RICCI-LEOPOLD, P.A.  
2925 PGA Blvd., Suite 200  
Palm Beach Gardens, FL 33410  
Phone: 561-684-6500  
Fax: 561-697-2383

By: \_\_\_\_\_

  
BENJAMIN SALZILLO, ESQ.  
Florida Bar No. 582751

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 21<sup>st</sup> day of July 2005 to Andrew Seiden, Esq., 2300 Glades Rd Ste 340 West, Boca Raton, FL 33431-8534; Richard Goodman, Esq., 1394 East Jefferson, Detroit, MI 48207-3194.

RICCI-LEOPOLD, P.A.  
2925 PGA Blvd., Suite 200  
Palm Beach Gardens, FL 33410  
Phone: 561-684-6500  
Fax: 561-697-2383

By:  for  
BENJAMIN SALZILLO, ESQ.  
Florida Bar No. 582751

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**EXHIBIT A**

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## PURCHASE AND SALE AGREEMENT

This **AGREEMENT FOR PURCHASE AND SALE** (the "Agreement") dated the 1st day of August, 2002, between **DFG GROUP, LLC**, a Florida limited liability company (the "Purchaser") and **HERITAGE MANOR OF MEMORIAL PARK, INC.**, a Florida not-for-profit corporation ("Heritage"), **ELISHKA E. MICHAEL**, an individual ("EM") and **KATHLEEN I. MICHAEL**, an individual ("KM"). Together, EM and KM are referred to as the "Michaels"; collectively, Heritage, EM and KM are referred to as the "Sellers"; and collectively, the Michaels, Heritage and the Purchaser are referred to as the "Parties". **MEMORIAL PARK OF BOCA RATON, INC.** is named in this Agreement for the purpose of agreement for waiver and release as provided for herein.

### RECITALS:

WHEREAS, the Michaels are owners in fee simple as tenants-in-common of approximately 3.18 acres having a street address of 4103 N. Military Trail, Boca Raton, Palm Beach County, Florida and a parcel number of 06-42-47-11-00-000-1020 and as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "3 Acres");

WHEREAS, Heritage is the owner in fee simple of approximately 15.51 acres having a street address of 4103 N. Military Trail, Boca Raton, Palm Beach County, Florida and a parcel number of 06-42-47-11-00-000-1100 and as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "15 Acres") (Collectively, the 3 Acres and the 15 Acres are referred to as the "Properties");

WHEREAS, Heritage operates a mausoleum cemetery and in connection with this business, has commenced, but not completed, construction of a mausoleum on the 15 Acres;

WHEREAS, in connection with the operation of the mausoleum cemetery business, Heritage has contracted with customers for the purchase of certain burial rights; a schedule of such contracts are set forth on Schedule "B" hereto (the "Customer Contracts");

WHEREAS, in connection with the collection of money pursuant to the Customer Contracts, Heritage established a care and maintenance trust account pursuant to Section 497.237 of the Florida Statutes and as more fully described on Schedule "C" hereto (the "CM Trust");

WHEREAS, in connection with the construction of the mausoleum buildings, Heritage established two pre-construction trust accounts pursuant to Section 497.257 of the Florida Statutes and as more fully described on Schedule "D" hereto (collectively, the two pre-construction trust accounts are referred to as the "Pre-Construction Trusts");

WHEREAS, the Michaels desire to sell to the Purchaser, and the Purchaser desires to acquire from the Michaels, the 3 Acres, all on the conditions hereinafter set forth; and

WHEREAS, Heritage desires to sell and assign to the Purchaser, and the Purchaser desires to acquire and assume from Heritage, the 15 Acres, the Customer Contracts, the Assumed

Liabilities (as defined below), the CM Trust, the Pre-Construction Trusts and the Miscellaneous Assets, all on the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by each of the Parties to the others, receipt whereof is hereby acknowledged, and the mutual covenants and agreements herein contained, and other good and valuable considerations, receipt and sufficiency of which is hereby acknowledged by the Parties hereto, it is hereby agreed as follows:

#### **I. SALE AND PURCHASE OF ASSETS; ASSUMPTION OF LIABILITIES**

Upon the terms and subject to the conditions set forth in this Agreement:

(a) Heritage agrees to sell, transfer, assign, convey and deliver to the Purchaser and the Purchaser agrees to purchase, acquire and accept from Heritage, at the Closing (as defined below), the following assets and property of Heritage: (all of which shall be hereinafter collectively referred to as the "Acquired Assets"):

- (i) the 15 Acres;
- (ii) the Customer Contracts (including Heritage's accounts receivable in connection with such Customer Contracts);
- (iii) the CM Trust;
- (iv) the Pre-Construction Trusts;
- (v) the telephone numbers (561) 733-4353 and (888) 778-7814;
- (vi) the records relating to parties to the Customer Contracts and entombment rights holders; and
- (vii) to the extent assignable, all licenses, permits, trademarks, construction plans and specifications.

(b) The Michaels agree to sell, transfer, assign, convey and deliver to the Purchaser and the Purchaser agrees to purchase, acquire and accept from the Michaels, at the Closing (as hereinafter defined), the 3 Acres.

(c) The Purchaser shall assume and pay, perform or discharge, as appropriate, the following liabilities and obligations of Heritage (the "Assumed Liabilities"): all of Heritage's liabilities and obligations under the Customer Contracts and all of Heritage's liabilities and obligations as they relate to the completion of the development of the Properties, including, but not limited to, development and construction as has occurred on the Properties up to and including the date of Closing. Heritage shall be and remain solely responsible for (i) all trade accounts payable; (ii) any tax liability or obligation relating to transactions or periods prior to and including the date of Closing (but excluding any sales, use, transfer or other tax obligation resulting from the transactions contemplated by this Agreement, which the Purchaser and the Seller hereby agree to be responsible for in the manner set forth herein); (iii) except with respect to Deborah L. Hotchkiss, any liability or obligation to Heritage's employees whatsoever, whether for

salaries and wages, sick pay, or any other employee benefit and whether relating to the termination of their employment or otherwise arising, relating to periods prior to the date of Closing; (iv) any lawsuit filed against Heritage prior to the date of Closing; (v) any sales commissions or consulting fees owed with respect to sales or activities which occurred prior to the date of Closing, except with respect to payments due to R.I.P. Enterprises, Inc. pursuant to that certain Termination Agreement dated March 14, 2002 by and between Heritage and R.I.P. Enterprises, Inc., which the Purchaser shall be responsible for pursuant to such Termination Agreement; and (vi) any legal or professional fees incurred by it prior to the date of Closing.

## II. PURCHASE PRICE, DEPOSIT AND PAYMENTS

Section 2.1: Purchase Price. The aggregate purchase price ("Purchase Price") to be paid by Purchaser to the Sellers shall be the sum total of SEVEN MILLION TWO HUNDRED THOUSAND DOLLARS (\$7,200,000).

Section 2.2: Allocation of Purchase Price: The Purchase Price shall be allocated as follows; provided, however, that the Sellers may revise such allocation prior to the date of Closing upon notice to the Purchaser depending on the amount of receivables at closing:

The 3 Acres:	\$ 318,000.00
The Acquired Assets:	
The 15 Acres and Mausoleum Business:	6,625,000.00
Customer Accounts Receivable:	257,000.00
<hr/>	
Total Purchase Price:	\$ 7,200,000.00

Section 2.3: Deposit. A deposit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) shall be paid by the Purchaser as follows (the "Deposit"): (1) simultaneously with the execution hereof by the Purchaser, the Purchaser shall deposit with Sachs Sax & Klein P.A. as escrow agent \$245,000 by cashier's check made payable to Sax Sachs & Klein P.A. Trust Account or wire transfer; and (2) the Purchaser shall instruct Sax Sachs & Klein P.A. as escrow agent to combine such \$245,000 with the \$5,000 previously deposited with it by the Purchaser and being held by it in escrow, all together to be held in escrow as the Deposit.

Section 2.4: Payment of Purchase Price: The Purchase Price shall be paid at Closing to the Sellers as follows: (i) Six Million Eight Hundred Eighty-two Thousand Dollars (\$6,882,000) shall be paid by the Purchaser by a cashier's check or wire transfer to Heritage; (ii) Sixty-eight Thousand Dollars (\$68,000) shall be paid by the Purchaser by a cashier's check or wire transfer to the Michaels; and (3) Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be released from escrow by Sax Sachs & Klein to the Michaels.



### III. CLOSING

Section 3.1: Closing Date. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the law offices of Sachs Sax & Klein, P.A., on the date which is no later than seventy-five (75) days from the date of execution of this Agreement by the Sellers; provided, however, that if the Cemetery Board has not approved the issuance of a Cemetery License to the Purchaser (or, to an entity affiliated with the Purchaser) during the period of time which is seventy-five (75) days from the date of execution of this Agreement, the Closing shall occur on such date which is three (3) days from the date the Cemetery Board approves the issuance of a Cemetery License; and provided further, that if the Cemetery Board has not rendered its decision regarding the issuance of a Cemetery License prior to the date which is one hundred twenty (120) days from the date of execution of this Agreement by the Sellers, the Sellers shall have the right to terminate this Agreement.

Section 3.2: Actions of Sellers at Closing. At the Closing, the Sellers shall deliver to the Purchaser the following items:

- (a) The Michaels shall deliver a duly executed and acknowledged Special Warranty Deed for the 3 Acres, in a form reasonably acceptable to the title company;
- (b) Heritage shall deliver a duly executed and acknowledged Special Warranty Deed for the 15 Acres, in a form reasonably acceptable to the title company;
- (c) Heritage shall deliver such bills of sale and assignment instruments as shall be appropriate to carry out the intent of this Agreement and sufficient to sell, convey, transfer, assign and deliver to Purchaser all right, title and interest of Heritage in and to the Acquired Assets free and clear of all liens, claims, charges, security interest and encumbrances of any kind, except as set forth on Schedule "E"; and
- (d) Heritage shall deliver such certificates, instruments, and documents as are required to be delivered by it pursuant to the terms of this Agreement, or as may be necessary or appropriate to transfer the assets as set forth herein, including certificate of good standing for Heritage as a corporation, and a resolution of the directors and members authorizing the transactions contemplated herein.
- (e) Memorial Park of Boca Raton, Inc. shall deliver a waiver and release of any and all rights to, or claims against, the property being transferred herein and releasing Purchaser from any claims it may have against Sellers. Such company further agrees to execute any and all documents which may be necessary to effectuate the transfer of assets herein.

Section 3.3: Actions of Purchaser at Closing. At the Closing, the Purchaser shall deliver to the Michaels and to Heritage, respectively

- (a) cash or cashier's checks in the amounts provided for in Section 2.4 above; and
- (b) such certificates, instruments and documents as required to be delivered by the Purchaser pursuant to the terms of this Agreement.

Section 3.4: Closing Costs. As the property is located in Palm Beach County, instead of providing for an abstract of title, the Purchaser shall obtain, and bear the cost of, an owner's title insurance policy for the value of the real properties as stated herein. The Purchaser shall pay fifty percent (50%) and the Sellers together shall pay fifty percent (50%) of the cost of state documentary stamps which are required to be affixed to the instruments of conveyance, intangible taxes on the transaction and the cost of recording any corrective instruments.

Section 3.5: Post-Closing Cooperation. At any time and from time to time after the Closing, any of the parties hereto will at the reasonable request of another party hereto, execute, acknowledge and deliver such instrument or instruments and other documents, and perform or cause to be performed such acts, as may reasonably be required to evidence or effectuate the sale, conveyance, transfer, assignment and delivery to the Purchaser of the Acquired Assets or the 3 Acres, or the performance by the Sellers or the Purchaser of any of their other respective obligations under this Agreement.

#### **IV. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION**

Section 4.1: Approval by FDBF. The obligation of the Purchaser to consummate the transactions contemplated herein is subject to and contingent upon receiving approval from the Cemetery Board for the issuance of a Cemetery License by the FDBF. The Deposit shall not be refundable except as follows: provided that the Purchaser has proceeded to Closing in good faith, if the Purchaser has not obtained approval from the Cemetery Board for the issuance of a Cemetery License by the FDBF, the Escrow Agent shall return to the Purchaser the Deposit.

Section 4.2: Title Insurance/Survey.

(a) Within ten (10) days following the date hereof, the Purchaser shall, at the Purchaser's sole expense, order an owner's title insurance commitment (the "Title Commitment") for each of the 3 Acres and the 15 Acres, from a title insurance company licensed to do business in the State of Florida and designated by the Purchaser, showing Heritage to be vested with fee simple title to the 15 Acres and the Michaels to be vested with fee simple title to the 3 Acres.

(b) The Michaels shall convey to the Purchaser marketable title to the 3 Acres and Heritage shall convey to the Purchaser marketable title to the 15 Acres, both subject only to: (i) the exceptions for recorded instruments which do not render title unmarketable; and (ii) those matters which shall be discharged by the Michaels and Heritage, respectively, on or before the date of Closing (collectively, (i) and (ii) shall be "Permitted Exceptions"). Marketable title shall be determined according to the Title Standards adopted by authority of The Florida Bar and in accordance with law. The Purchaser shall have ten (10) days from the date of receiving each Title Commitment to examine same. If the Title Commitment, or any update endorsement obtained prior to Closing reflects that title to the 3 Acres or the 15 Acres, respectively, is subject to any exceptions unacceptable to the Purchaser (other than Permitted Exceptions), Purchaser shall, within fifteen (15) days after receipt of the Title Commitments or update endorsements, notify the Michaels and/ or Heritage, respectively, in writing of the specific title defects. Any

exception not timely objected to by the Purchaser shall become a Permitted Exception. Each of the Michaels and Heritage shall use diligent best efforts to correct such defects within forty-five (45) days from its receipt of the notice from the Purchaser, provided that neither the Michaels nor Heritage shall be obligated to prosecute any legal action to cure any title defects. The Sellers may extend the time to cure any defects which arise after the Purchaser's initial examination of title and the date of Closing by a period of time equal to the period of time that is required to cure the title defects, in no event beyond the later of: (i) the date of Closing, as same may be extended, or (ii) ten (10) days beyond after said defect is cured. If the Michaels and/or Heritage, as the case may be, are not successful in removing the defects within said time, the Purchaser shall have the option of either accepting the title in its existing condition, or of terminating this Agreement by sending written notice of termination to both the Michaels and Heritage. Upon the termination of this Agreement, the Escrow Agent shall return the Deposit to the Purchaser, and, thereafter, neither the Purchaser nor the Sellers shall have any further rights or obligations hereunder except as otherwise provided in this Agreement.

(c) The Purchaser, during the period of time ending twenty (20) days from the date hereof, may have the 3 Acres and/or the 15 Acres surveyed at the Purchaser's sole expense by a Florida registered surveyor and shall deliver a copy of such survey to the Sellers. If the survey shows any encroachment on the Properties, or that any improvement on the Properties encroaches on the lands of others, the same shall be treated as a title defect hereunder if raised within the time and in the manner provided for title objections in this Section.

Section 4.3: Actions of Trustee: The Trustee, Keith Austin, shall execute any and all documents as are necessary to transfer the Acquired Assets as set forth in Paragraph I (a) above.

## V. REPRESENTATIONS AND WARRANTIES OF SELLERS

Heritage, EM and KM, jointly and severally with respect to (b) and (h) below only, represent and warrant to the Purchaser that, and Heritage, except for (b) below, represents and warrants that, except as specifically disclosed on Schedule "E" hereto:

(a) Heritage will have at the Closing, and the Purchaser will acquire at the Closing, good and marketable title to the 15 Acres;

(b) The Michaels will have at the Closing, and the Purchaser will acquire at the Closing, good and marketable title to the 3 Acres;

(c) Heritage is a Florida not-for-profit corporation, duly organized and validly existing in the State of Florida. Heritage has all requisite power and authority to execute, deliver and carry out the terms of this Agreement and the consummation of the transactions contemplated herein.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of Heritage. Upon the execution and delivery by the Parties to this Agreement, this Agreement shall constitute the legal, valid and binding obligations of Heritage,

enforceable against Heritage in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, liquidation, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the exercise of judicial discretion as to the application of principles of equity, regardless of whether such principles are applied by a court of law or equity.

(f) Heritage shall have entered into an agreement with the FDBF which such agreement resolves the Administrative Complaint, as amended, Administrative Proceeding Number 8300-F-2/01 as filed against it by the FDBF and cures all deficiencies in the CM Trust and the Construction Trusts as set forth in such agreement.

(g) Heritage shall have entered into a settlement agreement or have otherwise resolved the lawsuit styled *Gale et al v. Heritage Manor of Memorial Park, Inc.*, Case No. CA 3814 (AO), Palm Beach County, Florida, and will defend or otherwise resolve any other suit filed prior to the date of Closing against Heritage.

(h) The Sellers have not entered into any agreement, arrangement or understanding with any person which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated herein ("Broker Fees"). The Sellers hereby agree, jointly and severally, to indemnify and defend the Purchaser against and to hold the Purchaser harmless from any and all loss, cost, liability or expense (including but not limited to attorneys' fees and returned commissions) resulting from any claim for any Broker Fees by any person or entity based upon such acts or from payment of Broker Fees to any person by the Purchaser. This indemnification and defense obligation shall survive the Closing and/or the termination of this Agreement.

## VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser represents and warrants to each of the Sellers collectively and individually that:

(a) The Purchaser is a Florida limited liability company, duly organized and validly existing in the State of Florida. The Purchaser has all requisite power and authority to execute, deliver and carry out the terms of this Agreement and the consummation of the transactions contemplated herein.

(b) The Purchaser acknowledges and agrees that neither Heritage, EM or KM, nor any officer, employee, agent or representative of Heritage, EM or KM, has made and makes no representations or warranties whatsoever to the Purchaser, or any agent, representative or contractor of the Purchaser, with respect to the condition of the Properties, the Acquired Assets, and/or the Assumed Liabilities, except as specifically set forth herein. The Purchaser acknowledges and agrees that, except as specifically set forth herein, it shall purchase and acquire the Properties and the Acquired Assets pursuant to this Agreement in "as-is/where is" shape and condition, with any and all faults, if any, without representation or warranty, whether express or implied. Other than as expressly set forth herein, the Purchaser acknowledges and agrees that the Sellers disclaim the making of any representations or warranties, express or implied, regarding the 3 Acres

and/or the Acquired Assets (collectively, the "Assets") or matters affecting the Assets, including, without limitation, tax matters, the physical condition of the Properties, title to or the boundaries of the Properties, pest control matters, soil condition, the use, presence or release of hazardous materials, other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, structural and other engineering characteristics, traffic patterns and all other information pertaining to the Properties. The Purchaser acknowledges it has not and shall not rely on any of the studies, reports, maps or other documents, if any, made available by the Sellers to the Purchaser, or its representatives, and to the extent that the Sellers have delivered or made available to the Purchaser any such documents, they have done so strictly as an accommodation to the Purchaser and without any representation or warranty, express or implied, concerning the accuracy or completeness of the information contained in such documents. The Purchaser acknowledges and agrees that (i) it has entered into this Agreement with the intention of relying upon its own investigation of the physical, environmental, economic and legal condition of the Assets, and (ii) other than those representations and warranties expressly set forth herein or in any instrument delivered by the Sellers at the Closing, the Purchaser is not relying upon any representations or warranties made by the Sellers or anyone acting or claiming to act on the Sellers' behalf concerning the Assets.

(c) The Purchaser acknowledges and agrees that it has had sufficient access and opportunity to review information about the Assets and the Sellers and has had an opportunity to discuss the Assets and all related business, management and financial affairs with the Sellers.

(d) The Purchaser has not entered into any agreement, arrangement or understanding with any person which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated herein. The Purchaser hereby agrees to indemnify and defend each of the Sellers against and to hold each of the Sellers harmless from any and all loss, cost, liability or expense (including but not limited to attorneys' fees and returned commissions) resulting from any claim for any Broker Fees by any person or entity based upon such acts or from payment of Broker Fees to any person by the Purchaser. This indemnification and defense obligation shall survive the Closing and/or the termination of this Agreement.

(e) The Purchaser currently has available to it, and will have, at all times through the date of Closing, the ability to deliver the Purchase Price funds to the Sellers at the Closing pursuant to the terms of this Agreement.

## VII. COVENANTS OF SELLER AND PURCHASER

Section 7.1: Heritage's Covenants. Heritage hereby covenants and agrees with the Purchaser that from and after the date hereof until the Closing, Heritage will cooperate with the Purchaser in obtaining approval from the Cemetery Board for the issuance of a Cemetery License to the Purchaser from the FDBF and will cooperate in clearing any title problems that may arise. Further, except in the ordinary course of business and except with respect to an option agreement effective in the event no closing occurs pursuant to this Agreement, the Sellers will

not enter into any further agreements with respect to the assets being transferred, without written consent of the Purchaser.

Section 7.2: Purchaser's Covenants. Upon execution hereof, the Purchaser shall commence all reasonable actions to obtain all consents, approvals, permits and agreements of, to give all notices, and to make all filings as may be necessary to authorize, approve or permit the full and complete sale, conveyance, assignment or transfer of the Acquired Assets. Specifically, within fifteen (15) days from the date hereof, the Purchaser shall file with the FDBF an application for a Cemetery License. The Purchaser shall pay all costs required to obtain such consents, approvals, permits and agreements.

## VIII. SURVIVAL OF REPRESENTATIONS; INDEMNIFICATIONS

Section 8.1: Representations Made By the Parties. All representations, warranties and agreements made by the Parties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing.

Section 8.2: Indemnification of Sellers by the Purchaser. The Purchaser shall on demand, promptly indemnify and hold harmless each of the Sellers, their successors and assigns, employees, shareholders, members, officers, directors, trustees, representatives and agents, from, and reimburse them for, any losses, damages, liabilities, deficiencies and expenses (including reasonable attorneys' fees) incurred by them after the date of the Closing by reason of, in connection with or arising out of (1) a breach of this Agreement by the Purchaser; (2) any of the Acquired Assets, including, without limitation, the Customer Contracts and any claim arising out of or related to any Customer Contract; (3) any development of the Properties; (4) any construction on the Properties; (5) any failure by the Purchaser to pay and/or perform any of the Assumed Liabilities; (6) the Purchaser's operation of a business on or related to the Properties; (7) any deficiency in the CM Trust or the Pre-Construction Trusts other than that which is cured by Heritage pursuant to a settlement or other resolution of the Administrative Complaint, as amended, Administrative Proceeding Number 8300-F-2/01; and (8) that certain purported agreement dated January 8, 2001 entitled "Deborah L. Hotchkiss Employment Contract". In the event there is a claim brought against any or all of the Sellers, for which they are seeking indemnification under this Agreement, then they shall promptly notify the Purchaser in writing with the specifics of such claim(s), and the Purchaser shall thereafter, at its own expense, defend against, and/or satisfy, any such claim as is governed by this Agreement.

## IX. MISCELLANEOUS

Section 9.1: Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or mailing thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, and postage prepaid, as follows:

If to Sellers, to:

Kathleen Michael  
c/o Ted Michael, Jr.  
5830 Snowshoe Circle  
Bloomfield, Michigan 48301

and

Elishka Michael  
10460 Prestwick Road  
Boynton Beach, Florida 33436

with copy to:

Michael D. Karsch, Esq. and Rebecca Hamilton, Esq.  
Sachs, Sax & Klein, P.A.  
301 Yamato Road, Suite 4150  
Boca Raton, Florida 33431

and

David Blattner, Esq.  
Ruden, McClosky, Smith, Schuster & Russell, P.A.  
200 East Broward Boulevard  
Fort Lauderdale, Florida 33301

and

Michael Hainer, Esq.  
Hainer & Berman, P.C.  
24255 West Thirteen Mile Road  
Suite 270  
Bingham Farms, Michigan 48025

If to Purchaser, to:

David Goldstein  
6901 W. Cypress Head Drive  
Parkland, Florida 33067

with copy to:

Paul J. Lane, Esq.  
2755 E. Oakland Park Blvd., Ste. 300  
Ft. Lauderdale, Florida 33306

or to such other persons or addresses as any party hereto shall specify by notice in writing to the other Parties hereto pursuant to this Section.

Section 9.2: Entire Agreement. This Agreement sets forth the entire Agreement and understanding of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements and understandings relating to the subject matter hereof. No representations, promise or statement of intention has been made by any party hereto which is not embodied in this Agreement or the written statements, certificates, exhibits or other documents delivered and none of the Parties shall be bound by or liable for any alleged representation, promise or statement of intention not set forth herein or therein.

Section 9.3: Amendment; Waiver. Except as otherwise expressly provided herein, this Agreement may be amended, modified, superseded or cancelled, and any of the terms, representations, warranties, covenants or conditions hereto may be waived, only by written instrument executed by the Parties.

Section 9.4: Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of Florida, and venue for any litigation shall be in Palm Beach County, Florida.

Section 9.5: Captions. The articles and section headings contained in this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretations, construction or meaning of any provision or the scope or intent of this Agreement, nor in any way affect this Agreement

Section 9.6: Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall be construed as a single Agreement.

Section 9.7: Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.

Section 9.9: No Waiver. The failure of any party to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Agreement shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, provision or Agreement.

Section 9.10: Non-Compete. The Sellers and their respective immediate families agree that they will not, either individually or collectively, directly or indirectly, alone or as a member of a partnership, or as an officer, director, employee, consultant or shareholder of any other entity, open or operate or be employed by a business for the operation of a cemetery, mausoleum, chapel, funeral home, or similar service within Broward, Dade, St. Lucie, Martin Monroe or Palm Beach Counties in Florida, for a period of seven (7) years from the date of Closing.

Section 9.11: Parties Responsible for Their Own Expenses. Except as otherwise set forth herein, each of the Parties shall pay their own respective professional fees and expenses incurred in connection with the preparation, execution and delivery of this Agreement, and other related documentation.

Section 9.12: Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' and paralegals' fees, court costs and all expenses (including, without limitation, all such fees, costs and expenses incident to appellate, bankruptcy,



post-judgment and alternative dispute resolution proceedings), incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

Section 9.13: Assignment. Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Purchaser, except with the prior written consent of the Sellers, which such consent may be withheld in their sole discretion. However, the Purchaser may assign its rights under this Agreement to one or more entities in which David F. Goldstein is the principal, without such consent.

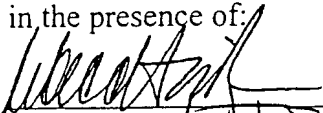
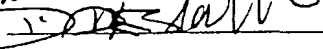
Section 9.14: Radon Gas: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

Section 9.15: Contact with Customers. Upon the execution of this Agreement, the Purchaser and the Sellers will jointly contact customers in writing and advise them of the scheduled acquisition. Any additional communications will be made only with the approval of the Sellers. The Sellers will cooperate with the Purchaser's reasonable requests with respect to such communications, which will include a meeting with those customers who request such a meeting, to which the Sellers shall be invited. The Sellers and the Purchaser agree that neither will communicate with any third party without the prior written consent of the other; provided, however, that "third party" shall not include any of Heritage's customers or any party to whom communication is necessary in order to perform hereunder.

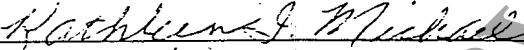
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date first set forth above.

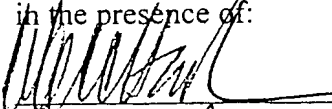
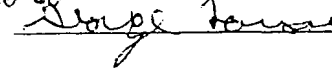
Signed and delivered  
in the presence of:

  
\_\_\_\_\_  
  
\_\_\_\_\_


HERITAGE MANOR OF MEMORIAL PARK, INC.

By:   
Print Name: KATHLEEN I. MICHAEL  
Dated: 7-30-02 Vice President

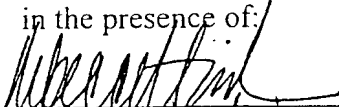
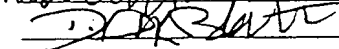
Signed and delivered  
in the presence of:

  
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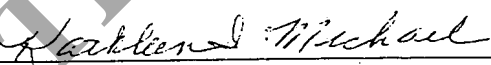
ELISHKA E. MICHAEL

  
\_\_\_\_\_  
Dated: July 30, 2002

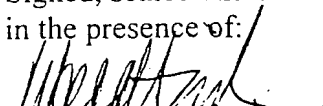
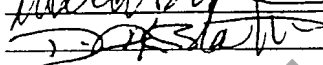
Signed and delivered  
in the presence of:

  
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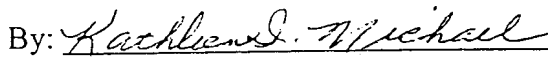
KATHLEEN I. MICHAEL

  
\_\_\_\_\_  
Dated: 7-30-02

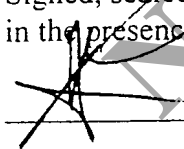
Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
  
\_\_\_\_\_


MEMORIAL PARK OF BOCA RATON, INC.

By:   
Print Name: KATHLEEN I. MICHAEL  
Dated: 7-30-02 Vice President

Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
\_\_\_\_\_

DFG GROUP, LLC

By:   
Print Name: DAVID F. GOLDSTEIN MGRM  
Dated: 8-01-02

SCHEDULE "A"  
THE PROPERTIES

The 3 Acres:

Parcel number of 06-42-47-11-00-000-1020 and legal description as follows: 11-47-42, NLY 234.7 FT OF SLY 1092.40 FT & NLY 234.7 FT OF SLY 753.19 FT OF WLY 300 FT OF ELY 350.02 FT OF NE 1/4.

The 15 Acres:

Parcel number of 06-42-47-11-00-000-1100 and a legal description as follows: 11-47-42, N 569.43 FT OF S 1092.43 FT OF W 1430.10 FT OF E 1480.12 FT (LESS N 234.70 FT & S 234.70 FT OF ELY 300 FT) OF NE 1/4 AS IN OR6829 P1947.

NOT A CERTIFIED COPY

Contracts - Pre-Need

101	CANCELLED		158	9,400 -	FRJEDA	S3B4	
102	12,300 -	PANKIN	NIC14&15	159	25,000 -	HENDELL	NIC4&5D4, 5&6
103	VOID		160	9,400 -	SCHILSKY	N3B4	
104	VOID		161	CANCELLED			
105	9,400 -	YEAGER	S5E1&2	162	VOID		
106	7,000 -	RANDALL, B	N1B20&21	163	8,200 -	PANZA	N3D8
107	7,500 -	WOLF	N1B1&2	164	9,900 -	LOMBARDO	S3C6
108	7,000 -	BAUM	NIC1&2	165	12,500 -	LITZENBERGER	S3B5
				166	CANCELLED		
110	7,800 -	COGEN	S1cE23&24	167	10,400 -	LITZENBERGER	S3C5
111	6,500 -	CARUSILLO	S3E1	168	VOID		
112	5,990 -	RANDALL, M	S3E18	169	2,300	MARAGNI	S5J1
113	7,000 -	THOROGOOD	S1cA23&24	170	15,000 -	FEIL	S9C14&15
				171	2,650 -	GORDON	N5C3
118	VOID		176	7,900 -	GANBERG	N3F5	
119	VOID		177	CANCELLED			
120	VOID		178	VOID			
121	VOID		179	10,400 -	KELLER	S3C1	
122	VOID		180	CANCELLED			
123	1,000 -	WRIGHT	S5J2	181	4,900 -	FRUCHTER	N1G12
124	-	MICHAEL, P	S5I1	182	VOID		
				183	9,700	BALABAN	N3D14
130	4,800 -	BROOKMYER	N1D16&17	184	18,100 -	MASON	S9B3&4
				185	9,400 -	REISMAN	N3C12
133	12,500 -	HECKMAN	S3B1	186	VOID		
134	4,600 -	GONZALEZ	N1bC20&21	187	CANCELLED		
135	VOID			188	VOID		
138	VOID		189	9,900 -	MEADOWS	N3C9	
139	17,300 -	GRAY	S9C9&10	190	VOID		
140	10,900 -	PEARL	N3C5	191	11,800 -	ZALEZNAK	N1B4&5
141	VOID		192	3,100 -	KLEIN, M	N5E6	
142	VOID		193	14,300 -	COLTMAN	N9C7&8	
143	VOID		194	10,400 -	LEVENSON	N3C18	
144	10,360 -	IPSARO	N3B1	195	VOID		
145	VOID			196	12,300 -	LYNN	N1B12&13
147	10,400 -	MERMAN	S3C17	197	11,300 -	KERNER	N1C6&7
				198	12,200 -	LIEBER	N1bD9&10
151	VOID		199	1,000 -	LISOGORSKY	N5I9	
152	9,900 -	LEVINE	N3B15	200	5,600 -	VICENTE	S1bD6
153	2,800 -	SISSelman	NIC12&13	201	15,000 -	KLINE	N9C12&13
154	CANCELLED			202	VOID		
156	9,400 -	STICCO	S3C18	203	6,500 -	PULIZZI	S1cB24
157	CANCELLED			204	2,900	POPELSKY	N5F44
				205	10,900 -	KATZ	S3B10
				206	CANCELLED		
				207	12,300 -	SCHECHTER	N1B8&9
				208	VOID		
				209	4,100 -	RICHMAN, D	N5D1
				210	3,100 -	TOFF	N5D4
				211	CANCELLED		
				212	28,500 -	DRAKE	N9C16,17&18
				213	12,300 -	CHERNICK	NIC16&17
				214	CANCELLED		

B-1

Subject to confirmation  
and revision prior to  
closing.

215	14,100 -	GLANTZ	N1B6&7	270	8,200 -	PAVIA	S46D1
216	3,000 -	WALSH	SSD29	271	16,700 -	GREENBERG	N9D13&14
217	14,900 -	SCHWARTZ	N1C18&19	272	1450 -	WHITE	S5C24
218		CANCELLED		273	12,200 -	MARCUS	N1Bd11&12
219	11,700 -	CORNFIELD	N1D7&8	274	12,900 -	BLISS	N3C14
220	2,900 -	SALAS	SSC44	275	18,500 -	FRESHMAN	N9A15&16
221	33,450 -	GARBER	N1A10,11&12 N1B10&11	276		VOID	
222		VOID		277	22,000 -	OGRODNIK	S9B10&11
223	14,100 -	OLSHANSKY	N1B14&15	278	16,700 -	GOTTLIEB	N9D11&12
224	2,700 -	CARLO	SSA44	279	11,000 -	OGRODNIK-LEEDS	S9B12
225	14,900 -	GEORGE	S1bC18&19	280	2,000 -	GILBERT	N3B14
226		VOID		281		VOID	
227		CANCELLED		282	23,100 -	SCHORR	N45C1,2&3
228	10,900 -	CASTORO	S3C4	283	20,000 -	CRAIG-GOLDMAN	S9B1&2
229	21,200 -	ROSE	S1B7,8&9	284	4,900 -	SMITH	S9C11
230		VOID		285		VOID	
231		VOID		286	22,500 -	COMIS	S3B11
232		VOID		287	4,700 -	WASSERSTROM	N3E16
233	7,900 -	CANE	N3G11	288	15,700 -	SWIDLER	N43B6&7
234	7,900 -	BERKE	S3F1	289	4,650 -	COHEN	N5E31,32,33&34
235	11,200 -	GOLDBERG	N3A15	290	4,990 -	WONG	S3F4
236	10,200 -	LEARNER	S3D6	291	14,100 -	OLSHAK	N43B8&9
237		VOID		292	7,350 -	GOLD	S1Bd7
238		VOID		293	3,490 -	CESTERO	S1bF17
239	9,200 -	LENCZICKI	N3D15	294	21,975 -	BUCHMAN	N9C14&15
240		VOID		295	11,600 -	KIMMELMAN, S	N1bA13&14
241	64,500 -	SARASOHN	N22B11,12,13, 14&A9,10,11 12,13,14	296	14,970 -	GREENE	N3F12,13&14
242	19,900 -	VOID		297	14,000 -	FREEMAN	N9C3&4
243	19,100 -	BAXTER	N9B16&17	298	15,950 -	BELLET	N1C8,9&10
244	18,900 -	SCHRIER	N9C5&6	299	15,100 -	BRUNI	S1Bb18&19
245		VOID		300	12,900 -	BABITT	N1bA20&21
246	10,500 -	KOHN	N9B9	301	2,000 -	MURRAY	N515&6
247	9,200 -	STICCA	S3D18	302	8,100 -	FRADKIN	N5D45&46
248	5,500 -	O'BRIEN (BERGER)	S1F8	303	4,100 -	KRALIK	N1dD1&2
249		CANCELLED		304	4,990 -	FINK, G	S2F3
250		CANCELLED		305		CANCELLED	
251		CANCELLED		306	5,100 -	FONTANA	SSD25&26
252	20,100 -	ROBBINS	N9B14&15	307	3,100 -	ANEMONE	SSD27&28
253	1,550 -	SCHORR, P	N5E16	308	4,990 -	SCALZO	S3F2
254	19,900 -	GILBERT	N9C10&11	309	5,100 -	CHAPPIE	S5E39&40
255	9,950 -	RICHMAN, S	N9C9	310	4,100 -	HOFFMAN	N1dE1&2
256	9,500 -	HOBSCHAIDT	S3F6	311		VOID	
257	4,100 -	LITZENBERGER	S1dD1	312	4,990 -	PAUL	N3F15
258		VOID		313	4,990 -	RUDA	N3F17
259		CANCELLED		314		VOID	
260	10,200 -	JAFFE	N3D18	315	2,050 -	BELMONT	S1dD3
261	2,900 -	SMALLINE	N3C17	316		VOID	
262	6,100 -	TUTTLE	N1D15	317		VOID	
263	19,900 -	ANASTASI	S9C7&8	318		VOID	
264		CANCELLED		319	11,500 -	PERRY	N9B8
265		VOID		320	2,000 -	JACOBS	N517&8
266	3,100 -	SHER	N5D12&13	321	10,400 -	HOFFMAN	N3B17
267	3,100 -	MAURER	SSD23&24	322	5,000 -	KRJCHEV	S1bF19
268		CANCELLED		323	22,400 -	SOKOL	N12C2
269	9,700 -	HARRIS	N3E17	324			
				325	2,000 -	MORRIS (BARRETT)	N5J5&6
				326	52,700 -	FINDLER	N3C1,2&3
				327	13,300 -	RUBIN	N43C6&7

328	VOID		386	2,000-	MARKMAN	N5J11&12	
329	4,990-	STETTIN	N3F16	387	CANCELLED		
330	4,990-	LALA	S2F2	388	3,100-	KAPLIN	N5D43&44
331	2,000-	ADDRESS/MARKOFF	N5J3&4	389	1,950-	GRIEFER	N1dC3
332	6,990-	GAMBALE	S1bF9&10	390	6,200-	CERRATO	S5D63&64
333	4,990-	SORBARO	S3F8	391	3,900-	SCHENK	N1dC9&10
334		CANCELLED		392		VOID	
335	10,300-	GRANITI	S1cD23&24	393	21,800-	JACOBS	N3B6&7
336	4,990-	CICERO	S3F3	394	4,990-	JACOBSEN	S48F17
337	1,550-	TAUSCHER	S5D18	395		VOID	
338		VOID		396		VOID	
339	20,100-	ASHER	N54B11&12	397		VOID	
340	11,000-	ASHER	N54B13	398	5,100-	SILVERS	S1bD20
341		CANCELLED		399	1,450-	SILVERS	S5C1
342	9,000-	CHERNOW	N2C3	400	1,450-	SILVERS	S5C2
343		VOID		401	1,450-	SILVERS	S5C3
344		CANCELLED		402	2,100-	SIMON	N1dD9&10
345		VOID		403	5,100-	DIETZ	N1cD1
346		VOID		404	16,400-	MEYER	N3B13
347	24,100-	BASSOLINO	S9B5&6	405	1,990-	DUIN	N48F15
348		VOID		406	12,300-	ALBAMONTE	S1Cc23&24
349	6,250-	SIEGEL	N1bE12	407		VOID	
350	4,990-	FREEDMAN	N48F4	408		VOID	
351	15,600-	DENNERY	S1Ba18&19	409	17,400-	GORDON, N	N1aA22,23&24
352	3,100-	STEINER	N5D6	410		VOID	
353	4,350-	SEIDER/WIEGAND	S5F23,24&25	411	8,600-	Gianarakos	S3D1
354	3,100-	BASS	S5D21&22	412			
355		VOID		413		VOID	
356		VOID		414	9,643-	NEFF	S9A9
357	4,990-	ZUPANC	S48F13	415		VOID	
358	4,990-	COLBY	N3F10	416	13,300-	ALTIERI	S1cB22&23
359		VOID		417	1,000-	TOUCHMAN	N5J40
360	3,100-	LAWRENCE	N5D15&16	418	2,400-	BLOCK	N5J9&10
361		VOID		419	4,990-	CLENZI	S3F7
362		VOID		420			
363	21,100-	NEIMAN	N9B6&7	421			
364		CANCELLED		422	3,100-	NENNER	N5D33&34
365	10,600-	KIMMELMAN	N1Ba15&16	423	7,990-	LEFT	N3A9
366	2,000-	CHESTER	N5I3&4	424		VOID	
367	4,990-	KAPLAN, A	N48F3	425		CANCELLED	
368	4,990-	LEVINE, B	N48F7	426	9,300-	DAVIS	S1bD8&9
369	2,900-	ACKERMAN	N5C9&10	427			
370		VOID		428			
371	11,200-	GOLDBERG	N3A16	429		VOID	
372		VOID		430	4,990-	ABRAMS	N48F6
373	4,990-	TALAMO	S48F14	431	1,000-	MURAWSKI	S5J44
374	4,990-	D'AMATO	S48F15	432		CANCELLED	
375				433	10,600-	ROSENBERG	N1CD2&3/N5E72
376	4,990-	DEVITO	S48F12	434	1,000-	FAIRBROTHER	S5J45
377	4,990-	GILLETTE	S48F4	435	4,990-	BUSCEMI, JR	S48F10
378		CANCELLED		436	2,900-	PARKE	N5F19&20
379	2,900-	EPSTEIN	N5C43&44	437	3,100-	FREEDMAN	N5E43&44
380	9,300-	SIEGEL	N1Bd13&14	438	15,000-	PESCE	S9B7&8
381		CANCELLED		439	3,000-	TRAUB	N5E45&46
382	4,000-	LYNWOOD	S1bF4	440	10,900-	ODABACHIAN	S3C2
383	4,990-	GARRETT	N48F14	441	1,000-	BERKSON	N5J39
384	2,000-	SANDS	N5J41&42	442	9,490-	MEISELES	N43F18
385	3,100-	MINNEHAN	S5D19&20				N48F1

13	CANCELLED	
44	CANCELLED DEMETREUSE	S21F7
445	9,900 - BLACK	N3B2
446	VOID	
447	16,000 - LITTON, G	S1bA15& B14&15
448	CANCELLED	
449		
450	2,050 - LOMBARDI	S21E14
451	4,500 - POST	N43F2
452	10,240 - BRODISH	N3A14
453	10,300 - GLASSMAN	N1bD18&19
454	10,400 - KATZ, M	N9A9
455	4,990 - SILVER	N48F13
456	4,990 - SILVER/GOLDSTEIN	N48F12
457	11,450 - EHRLICH-FLEISHON	N5F18
458	4,990 - SESSA	S48F2
459	4,500 - SHANUS	S1bF14
460	10,900 - COLESANTI/SECOR	S3B12
461	VOID	
462	VOID	
463	4,990 - MCCORD	S48F5
464	VOID	
465	VOID	
466	4,900 - KELNER	N21C1&2
467	11,600 - ROTHaug	N1bA8&9
468	CANCELLED	
469	CANCELLED	
470	VOID	
471	CANCELLED	
472	11,900 - LEANDRI	S9C6
473	CANCELLED	
474	11,500 - NOLL	N9B11
475	5,000 - MELTZER	N1bA6
476	VOID	
477	CANCELLED	
478		
479	10,400 - WEISSMAN	N3B12
480	10,000 - RUDNER	N3B11
481	1,000 - BARON	S5J3
482	11,000 - GOLDMAN	N1bB18&19
483	2,000 - WALSKY	N5J51&52
484	3,900 - MOORE	S5C45&46
485	1,950 - MUSCHANY	S5B45
486	9,100 - PAGANO	S3D7
487	5,850 - FRIEDLANDER	N5C29,30&31
488	VOID	
489		
490		
491		
492		
493	VOID	
494	16,000 - LITTON III	S1bA21&B20 &21
495		

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SCHEDULE "C"  
THE CM TRUST

Account Number: [REDACTED], SunTrust Bank

NOT A CERTIFIED COPY



SCHEDULE "D"  
THE PRE-CONSTRUCTION TRUSTS

Account Number: [REDACTED], SunTrust Bank

Account Number: [REDACTED], SunTrust Bank

NOT A CERTIFIED COPY

**SCHEDULE "E"**  
**SELLERS' SCHEDULE OF EXCEPTIONS**

Section V(a): Taxes for the year of Closing and subsequent years, zoning restrictions, prohibitions, limitations and conditions imposed or required by any governmental body or agency, all matters appearing on the plat and/or common to the subdivision, including utility easements, and entombment rights of purchasers pursuant to Customer Contracts.

**NOT A CERTIFIED COPY**

## SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT ("Second Amendment") dated as of the "Effective Date" (as hereinafter defined), is made and entered into among DFG GROUP, LLC, a Florida limited liability company ("Purchaser"), UNIVERSITY FINANCIAL PLAZA ASSOCIATES, LTD., a Florida limited partnership ("UFPA"), HERITAGE MANOR OF MEMORIAL PARK, INC., a Florida not-for-profit corporation ("Heritage"), ELISHKA E. MICHAEL, an individual ("EM") and KATHLEEN I. MICHAEL, an individual ("KM"). Together, EM and KM are hereinafter collectively referred to as the "Michaels"; collectively, Heritage and the Michaels are hereinafter referred to as the "Sellers"; and collectively, Sellers, Purchaser and UFPA are hereinafter referred to as the "Parties".

### RECITALS:

WHEREAS, Purchaser and Sellers entered into that certain Purchase and Sale Agreement dated as of August 1, 2002, and amended as of November 27, 2002 (collectively, the "Agreement"); and

WHEREAS, the Parties desire to amend the terms and provisions of the Agreement pursuant to the terms and provisions of this Second Amendment; and

WHEREAS, Purchaser has requested that UFPA provide security for Purchaser's obligations hereunder, as hereinafter set forth, and UFPA has agreed to mortgage the "Mortgaged Property" (as hereinafter defined) in consideration of payment by Purchaser to UFPA in the amount of ONE THOUSAND DOLLARS (\$1,000) and other good and valuable consideration, the receipt thereof, is hereby acknowledged by UFPA; and

WHEREAS, Sample Financial Plaza, Inc., a Florida corporation, is the sole general partner of UFPA and Edward Falcone, Arthur Falcone (collectively, the "Falcones") and Robert Falcone are the only limited partners of UFPA and the sole shareholders of the general partner and the Falcones also will, on or before the Closing, have a direct or indirect ownership interest in DFG.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, TEN DOLLARS (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, each intending to be legally bound, do hereby agree as follows:

1. The foregoing recitals are true and are incorporated in this Second Amendment by this reference.
2. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Agreement unless the context indicates a different meaning.

3. In case of any conflict or ambiguity between the terms and provisions of the Agreement and the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall control to the extent of such conflict or ambiguity.

4. Article II of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"II. PURCHASE PRICE, DEPOSIT AND PAYMENTS

Section 2.1: Purchase Price. The aggregate purchase price ("Purchase Price") to be paid by Purchaser to Sellers shall be the sum total of SIX MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$6,125,000).

Section 2.2: Allocation of Purchase Price. The Purchase Price shall be allocated as follows; provided, however, that Sellers may revise such allocation prior to the date of Closing upon notice to Purchaser depending on the amount of receivables at Closing:

The 3 Acres:	\$ 318,000.00
The 15 Acres and Mausoleum Business:	\$5,540,000.00
Customer Accounts Receivable:	\$ 257,000.00
Non-Compete Agreement:	\$ <u>10,000.00</u>
Total Purchase Price:	<u>\$6,125,000.00</u>

Section 2.3: Deposit. Purchaser has previously delivered to Sachs Sax & Klein, P.A., as Escrow Agent, the total sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) ("Original Deposit"). Pursuant to the Agreement, the Deposit has been released to Sellers. The Original Deposit is non-refundable but shall be credited to the Purchase Price at Closing.

Within two (2) business days of the execution of this Agreement, Purchaser shall either (a) deliver to Ruden, McClosky, Smith, Schuster & Russell, P.A. ("Ruden McClosky") SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) ("Additional Deposit") by cashier's check or wire transfer of federal funds or (b) terminate this Agreement. If Purchaser does not terminate this Agreement, Purchaser shall deliver the Additional Deposit to Ruden McClosky. Ruden McClosky shall hold the Additional Deposit in escrow pursuant to the terms and provisions of the Agreement and this Second Amendment. The Additional Deposit, if this

Agreement is not terminated, is and shall remain non-refundable (except in the event of default by Sellers under this Second Amendment) to Purchaser but shall be applied to the Purchase Price at Closing. Provided Purchaser executes and delivers a Form W-9 to Ruden McClosky, the Additional Deposit will be placed in an interest-bearing account with interest accruing to the benefit of Purchaser. If Purchaser terminates this Agreement, Sellers shall have all rights and remedies available to them under this Agreement. Nothing contained in this Section 2.3 shall be deemed to be a waiver by Sellers of any rights they may have against Purchaser or David Goldstein, if any, under or arising out of this Agreement at law or in equity. However, UFPA shall have no liability except for the Additional Deposit as set forth in this Second Amendment.

Section 2.4: Payment of Purchase Price. The balance of the Purchase Price shall be paid at Closing to Sellers as follows: (a) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) shall be paid by Purchaser by cashier's check or wire transfer to Sellers; and (b) Purchaser shall execute and deliver a promissory note payable to Heritage in the amount of THREE MILLION SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$3,625,000) ("Note") in form attached hereto as Exhibit A, and made a part hereof. The Note shall be due and payable on the earlier to occur of: (a) ten (10) business days following the date Purchaser's Amended Application to the Cemetery Board is approved by the Cemetery Board; or (b) May 30, 2003 (the "Maturity Date"). Interest shall accrue on the entire outstanding principal balance of the Note at the rate of interest imputed by the Internal Revenue Service. No payments shall be due prior to the Maturity Date but on the Maturity Date, the outstanding principal balance and all accrued and unpaid interest shall be immediately due and payable. The Note shall be secured by a first mortgage, in the form attached hereto as Exhibit B, and made a part hereof ("Mortgage") on property owned by UFPA located in Coral Springs, Florida, more particularly described on Exhibit C, attached hereto and made a part hereof ("Mortgaged Property")."

5. Section 3.1 of the Agreement is amended to provide that the Closing shall occur on or before March 21, 2003. However, Purchaser shall use its best efforts to close on March 17, 2003.

6. Section 3.2 of the Agreement is hereby amended to add the following:

"(f) Sellers shall deliver the duly executed and acknowledged Deeds, Sellers' Affidavits, FIRPTA Certificates, Assignment of Funds, Assignment and Assumption and Indemnification Agreement and Non-Competition Agreement, copies of which have been delivered to Purchaser. In addition, Sellers shall terminate the existing Construction Contract with Harlan Newton Mausoleums, Inc.

(g) The original termination of Unity of Title from the City of Boca Raton, Florida (the "City") provided that Seller executes and delivers a new Unity of Title acceptable to the City at Closing.

(h) A copy of the Stipulation resolving the Administrative Complaint signed by Heritage to be presented to the Florida Department of Financial Services ("Department"). If the Department executes the Stipulation after Closing, Sellers shall provide evidence that the Department has executed such Stipulation."

7. Section 3.3 of the Agreement is hereby deleted in its entirety and the following insert in lieu thereof:

"Section 3.3: Actions of Purchaser at Closing. At Closing, Purchaser shall deliver to the Michaels and to Heritage, respectively, (a) cash or cashier's checks in the amounts provided for in Section 2.4 above; (b) the Note and Mortgage; (c) such other certificates, instruments and documents as required to be delivered by Purchaser pursuant to the terms of this Agreement; and (d) Purchaser's counsel shall deliver an opinion as to the enforceability of the Note and Mortgage and due authorization and authority of Purchaser and UFPA to enter into the Note and Mortgage respectively."

8. All conditions precedent to Purchaser's obligation to close set forth in Sections 4.1 and 4.2 of Article IV of the Agreement are hereby deemed to be satisfied or waived by Purchaser. Notwithstanding the foregoing, because the Maturity Date of the Note is related to the approval of Purchaser's Amended Application to the Cemetery Board, Purchaser shall file its Amended Application on or before February 25, 2003. Purchaser shall provide copies of all such filings to Sellers' counsel and Sellers' counsel shall have the right to have direct contact with the Cemetery Board and the Department Staff with regard to such Application. Sellers shall, at Purchaser's expense, cooperate with Purchaser with respect to such filing and, if necessary, will join in and sign any such applications. Nothing contained in this Paragraph shall be deemed to reinstate or re-impose the approval by the Cemetery Board of the Amended Application as a condition precedent to Purchaser's obligation to close or pay the Note on the Maturity Date.

9. Section 7.1 of the Agreement is hereby modified by adding the following at the end of said Section:

"Sellers will not materially change the current operation of the Cemetery prior to Closing."

10. Section 9.1 of the Agreement is hereby modified by adding the following:

"Notices to UFPA and Purchaser will also be delivered as follows:

University Financial Plaza Associates, Ltd.  
c/o Transeastern Properties, Inc.  
3300 University Drive  
Coral Springs, Florida 33065

with copy to:

Nason, Yeager, Gerson, White & Lioce, P.A.  
United National Bank Tower - Suite 1200  
1645 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33401  
Attention: Gary Gerson, Esquire"

11. The Non-Compete as referenced in Section 9.10 of the Agreement will be evidenced by the Non-Compete Agreement in the form attached hereto as Exhibit D, and made a part hereof.

12. Seller's Covenants. While this Second Amendment is in effect, Sellers shall observe the following covenants:

A. Sellers shall arrange to keep in force all existing hazard and public liability insurance for the Properties.

B. Sellers shall perform all material obligations under the Construction Contracts.

C. Sellers shall not dispose of any interest in the Properties or the other Acquired Assets and shall not mortgage, pledge or subject to lien or other encumbrance with any interest in the Properties or any of the other Acquired Assets.

D. Sellers shall not terminate, cancel, amend or modify any of the Customer Contracts, except as provided in this Second Amendment, without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed.

E. Sellers shall not sign or consent to any zoning or other change affecting the use of the Properties or any of the other Acquired Assets.

13. Purchaser's Covenants. While this Second Amendment is in effect and until the Note is paid in full, Purchaser shall observe the following covenants:

A. All actions of Purchaser, including any construction of any improvements, shall be in compliance with any and all applicable zoning, building and any other state, federal and local laws, ordinances, rules, regulations, including without limitation, all of those which relate to the operation or construction of the Cemetery in the State of Florida;

B. Purchaser has and shall maintain all licenses, permits, approvals relating to the operation or construction of the Cemetery or any other aspect of its operation or construction of the Cemetery;

C. Sellers shall not default in the performance of its obligations under any material contract;

D. Purchaser shall immediately upon closing the transactions contemplated by the Purchase Agreement continue construction of the north and south buildings;

E. Purchaser shall immediately give Sellers written notice(s) of (a) any event of default under any other contract in an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000), to which Purchaser is a party or (b) any litigation in which the amount of damages claimed is in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000);

F. Except for the transfer of the membership interests in Purchaser to the Falcones or entities owned by the Falcones or to investors with respect to the Private Placement Memorandum to be offered by Purchaser (provided David Goldstein or the Falcones retain control of Purchaser such that approval of the Cemetery Board is not necessary), there shall not be a change in the ownership of any membership interest in Purchaser;

G. Purchaser shall allow no work or construction to be completed on the Cemetery premises or which specifically fabricated for incorporation into the Cemetery premises which have not been fully paid prior to the recording of a Notice of Commencement or which could constitute a lien on the Cemetery premises. Purchaser shall comply with all provisions of the construction laws on the State of Florida including, but not limited to, the provisions relating to payment contained therein;

H. Purchaser shall release or bond any construction lien or equitable lien which may be filed against the assets of Purchaser, including the Cemetery, within fourteen (14) days of service of the Complaint for foreclosure of the lien; and

I. Purchaser shall pay all its expenses and obligations in the ordinary course of business.

14. Risk of Loss Upon Damage. If between the date of this Second Amendment and the Closing Date, all or any part of the Properties is damaged by fire, flood or other casualty, Sellers shall notify Purchaser in writing by the earlier of five (5) days after the occurrence of such damage or the time of Closing, of the facts and circumstances surrounding such damage and whether Sellers elect to attempt to repair such damage by the time of Closing so as to restore the Properties to a similar condition as existed prior to the occurrence of such damage. Upon such notice, one of the following shall occur:

A. If the amount of the estimate to repair such damage is THREE HUNDRED THOUSAND DOLLARS (\$300,000) or more and Sellers' written notice indicates that Sellers do not elect to attempt to repair such damage, this Second Amendment shall, upon Purchaser's election either (i) terminate the Agreement and the Additional Deposit shall be forthwith delivered to Purchaser and, upon delivery of the Additional Deposit to Purchaser,



neither party shall have any further obligations to the other party under the Agreement, or (ii) proceed to Closing, whereupon the amount equal to the sum of the insurance proceeds paid to Sellers plus the deductible for the insurance policies under which such proceeds were paid shall be credited to Purchaser and Sellers shall assign to Purchaser all of Sellers' rights to receive insurance payments not yet received.

B. If the amount estimated to repair such damage is less than THREE HUNDRED THOUSAND DOLLARS (\$300,000), Sellers and Purchaser shall perform their respective obligations under this Agreement and there shall be no diminution or abatement of the Purchase Price and (i) at the Closing, an amount equal to the sum of the insurance proceeds paid to Sellers plus the deductible for the insurance policies under which such proceeds were paid shall be credited to Purchaser and Sellers shall assign to Purchaser all of Sellers' rights to receive insurance proceeds not yet received or (ii) in the event Sellers provide written notice that Sellers elect to attempt to repair such damage, all insurance proceeds paid or payable shall belong to Sellers and all repairs shall be made prior to Closing.

15. Closing Charges and Procedures.

A. Taxes for real property and personal property shall be prorated based on the current year's taxes. If the current year's tax assessments are not available, taxes will be prorated based on the prior year's taxes. Any tax proration based on an estimate may, at the request of either party hereto, be readjusted upon receipt of the tax bill.

B. The following items are to be prorated or adjusted as of midnight preceding the Closing and shall be readjusted between Purchaser and Sellers after the Closing if the information upon which the proration or adjustment was made is found to be incorrect or inaccurate: water, sewer, electric and other utility charges and deposits relating to the Properties which are accrued and unpaid as of the Closing Date or have been prepaid by the Sellers beyond the Closing Date, with the amount of such utility charges and deposits to be based upon statements or upon meter readings conducted as of the Closing Date.

16. Notwithstanding anything to the contrary contained in the Agreement, Heritage covenants and agrees as follows:

A. Heritage shall be solely responsible for, and hereby agree to pay, any deficiency in the CM Trust and the Pre-Construction Trust arising pursuant to the Stipulation and any deficiency in the CM Trust or the Pre-Construction Trust arising after November \_\_, 2002 (the date of the Department's closing audit of the trust funds), through the date of Closing. Until the Department signs the Stipulation, Heritage will be responsible for all trust deficiencies arising prior to the Closing Date;

B. Heritage shall be solely responsible for, and pay all amounts due and owing in connection with that certain purported agreement dated January 8, 2001, entitled "Deborah L. Hotchkiss Employment Contract" for the period prior to and including the date of Closing. Notwithstanding the foregoing, Sellers shall have the right to terminate such contract prior to Closing and to settle any and all claims of Deborah L. Hotchkiss. However, nothing

contained herein shall be deemed to be an acknowledgement by Sellers of the validity of such contract or any claim that Deborah L. Hotchkiss may have thereunder;

C. Heritage shall be and remain fully responsible for the law suit styled Gale, et al. vs. Heritage Manor of Memorial Park, Inc., Case No. 3814(AO), Palm Beach County, Florida;

D. Heritage shall be responsible and pay all liabilities in connection with those matters that Heritage is solely responsible for pursuant to Section I(c) of the Agreement. Heritage shall also be responsible to discharge construction liens on the Properties up to and including the date of Closing, which are not covered by title insurance and, at Closing, will upon the Purchaser's request, terminate all Construction Contracts, including, but not limited to, the Construction Contracts with Harlan Newton Mausoleums, Inc. Sellers will provide such other documentation reasonably requested by the Title Company necessary to delete all matters pertaining to construction liens;

E. Heritage shall be responsible for and pay all obligations arising in connection with (i) any of the Customer Contracts that become "at need" prior to the date of Closing provided Sellers have received notice of such claim prior to Closing, (ii) the cancellation of any Customer Contracts for which Sellers have received notices of cancellation (which as of the date hereof, pertain to seventeen [17] customer contracts for thirty-two [32] crypts, three [3] of which are part of the Gale lawsuit) (the "Excluded Customer Contracts") and such cancellations are made prior to the maturity date of the Promissory Note. If Heritage is liable for any such Excluded Customer Contracts, Heritage shall receive credit for all sums held in the CM Trust and the Pre-Construction Trust. Notwithstanding the foregoing, Purchaser shall use good faith efforts to resolve complaints involving the Excluded Customer Contracts such that no refund shall be paid on such Excluded Customer Contracts, (iii) except with respect to the Excluded Customer Contracts, any liability in excess of the face amount of the Customer Contracts awarded to a Customer Contract holder in a law suit against Purchaser prior to the Maturity Date of the Note for any action arising during Heritage's ownership and operation of the Property and the business conducted thereon prior to the date of Closing; and (iv) any other lawsuit not related to the foregoing but arising out of actions occurring prior to the Closing Date which is filed prior to the six (6) month anniversary of the Closing, provided, however, that Heritage shall have no liability for any matter caused by Purchaser, including, without limitation, design changes or failure to meet construction deadlines under applicable law. Furthermore, Heritage shall not be responsible under any subsection of this Paragraph 16E for any statutory interest or for any actions or omissions taken by Purchaser or arising after Closing including, without limitation, any changes in the design or construction of the Cemetery, failure to meet construction deadlines under applicable law or violation of applicable State law; and

F. Heritage shall forthwith reimburse, within fifteen (15) days of request, the Purchaser for all costs, damages, liabilities and fees (including, but not limited to, reasonable attorneys' fees through all appellate levels) incurred by Purchaser with respect to any of the foregoing items for a period not to exceed the dates set forth above or six (6) months from the date of Closing, whichever occurs first. Notwithstanding anything contained herein to the contrary, except for the liabilities set forth in Paragraphs 16A, 16B, 16C, 16D, 16E(i) and 16E(ii), Heritage shall have no liability for any such costs, damages, liabilities or fees until such

expenses exceed FIFTY THOUSAND DOLLARS (\$50,000) in the aggregate. Purchaser shall be responsible for the first FIFTY THOUSAND DOLLARS (\$50,000) of such expenses. Further, Heritage's total liability (except for the liabilities set forth in Paragraphs 16A, 16B, 16C, 16D, 16E(i) and 16E(ii)) shall not exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000). Upon the Maturity Date, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) shall be placed in escrow with Ruden McClosky as security for Heritage's obligations hereunder. The Escrow Funds shall be released to Heritage if no claim has been made for same by the six (6) month anniversary of Closing. If Purchaser makes a claim hereunder, the Escrow Funds shall not be released to the extent of the amount of the claim, which claim shall be made in good faith. The parties shall execute a reasonably acceptable Escrow Agreement prior to Closing. Heritage shall have the right to defend or prosecute any litigation involving such claim with counsel of Heritage's choosing. Except for the liabilities set forth in Paragraphs 16A, 16B, 16C, 16D, 16E(i) and 16E(ii) which shall remain outstanding until paid, if such liability arose during the periods set forth in this Second Amendment, Heritage's liability under the Agreement and all covenants, obligations, indemnities, representations and warranties under the Agreement shall terminate and expire on the dates set forth in Paragraph 16E(iii), Paragraph 16E(iv) and the six (6) month anniversary of Closing for all other matters. In case of any conflict between the provisions of this Paragraph and the provisions of Section 8.1 of the Agreement, the provisions of this Paragraph shall control. Other than the obligation to deliver documents at Closing, the Michaels' shall have no liability whatsoever to Purchaser under this Paragraph 16 or any other provision of the Agreement.

Other than the representations and warranties expressly set forth herein, Purchaser is purchasing the Acquired Assets and Cemetery on an "AS IS" "WHERE IS" basis and there is no express or implied warranties.

17. Environmental. Purchaser shall have the right to conduct a Phase I environmental test on the Property prior to Closing. If the Phase I environmental testing uncovers any material environmental problems (i.e., the remediation costs for which could exceed FIFTY THOUSAND DOLLARS [\$50,000]), Sellers shall have the right but not the obligation to cure any such problems prior to Closing and in the event such problems are not cured by Closing, Purchaser shall have the right to terminate the Agreement and receive the return of the Additional Deposit, whereby Sellers and Purchaser shall be relieved of all further obligations under the Agreement, except liabilities arising prior to the execution of this Second Amendment. Purchaser shall keep the results of all such tests confidential and, upon termination of the Agreement, shall deliver all reports to Sellers.

18. Appraisal. Sellers shall have the right to obtain an appraisal ("Appraisal") of the Mortgaged Property prior to Closing. If the Appraisal shows the value of the Mortgaged Property is less than TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000), and Purchaser agrees with the valuation set forth in the Appraisal, Purchaser shall deposit the difference between TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) and the appraised value of the Mortgaged Property in escrow with Ruden McClosky. Said funds shall remain in escrow until the Note is paid in full. If Purchaser does not agree with the valuation set forth in the Appraisal, Purchaser and Sellers shall mutually agree on an independent appraiser who shall re-appraise the Mortgaged Property ("Second Appraisal") and such appraiser's valuation of the Mortgaged Property shall be conclusive. If such Second Appraisal

shows the appraised value to be less than TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000), Purchaser shall deposit the difference between the TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) and the appraised value of the Mortgaged Property in escrow with Ruden McClosky. Said funds shall remain in escrow until the Note is paid in full.

19. The term "Effective Date" or such other similar term shall mean the last date upon which this Second Agreement has been fully executed by all parties and such fully-executed Second Amendment has been delivered to the other party.

20. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument. Facsimile signatures shall be deemed to be original.

21. Except as modified hereby, the terms and provisions of the Agreement are hereby ratified and confirmed. Sellers' prior termination of the Agreement is hereby rescinded.

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IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed and delivered as of the date set forth below their respective signatures.

Witnesses.

PURCHASER:

DFG GROUP, LLC, a Florida limited liability company

By: [Signature]  
Printed Name: DAVID F. GOLDSTEIN  
Title: Managing Member  
Dated: 3-14-2003

UFPA:

UNIVERSITY FINANCIAL PLAZA ASSOCIATES, LTD., a Florida limited partnership

By: [Signature]  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

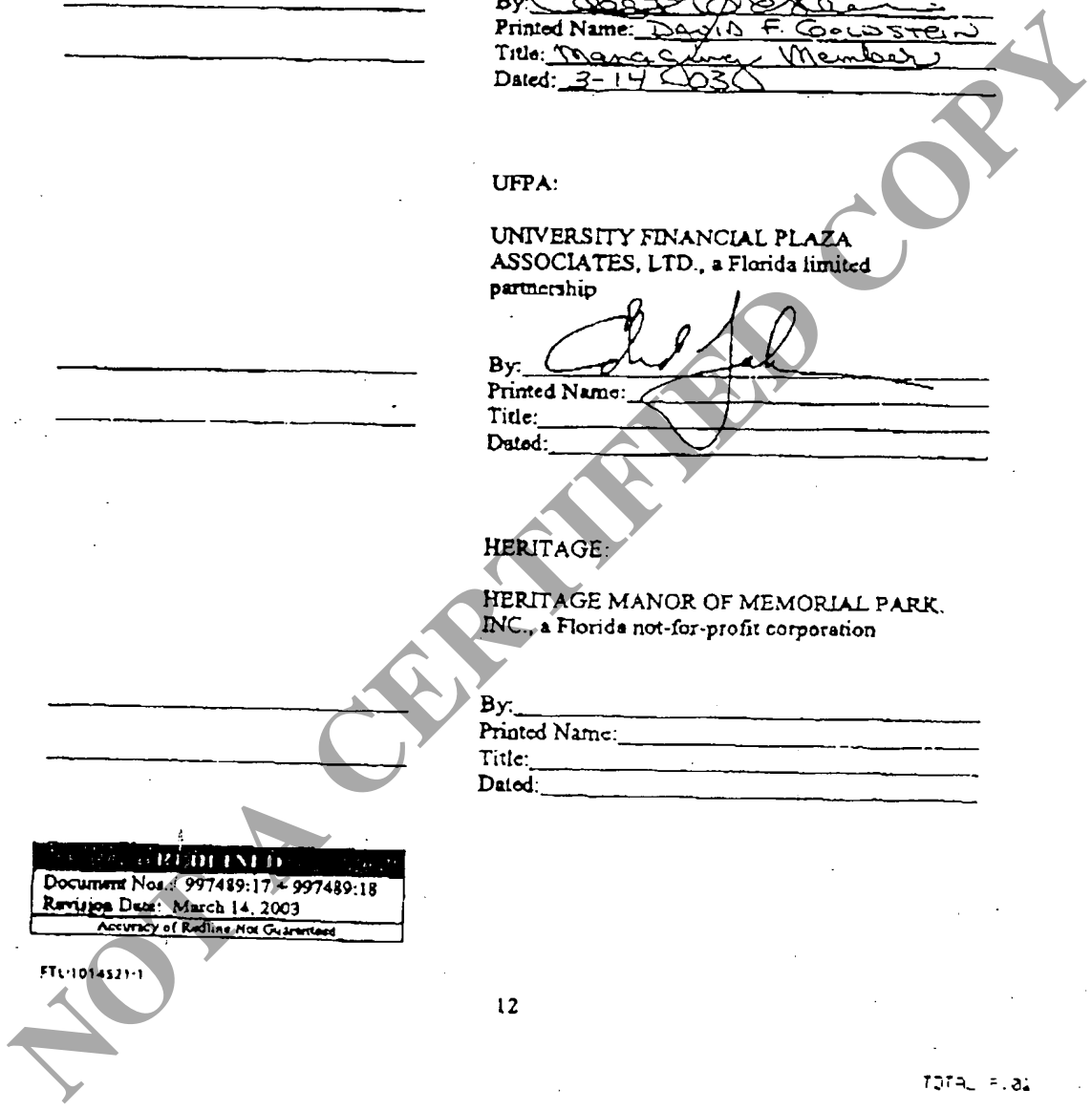
HERITAGE:

HERITAGE MANOR OF MEMORIAL PARK, INC., a Florida not-for-profit corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**RECEIVED**  
Document Nos. 997489:17 - 997489:18  
Revision Date: March 14, 2003  
Accuracy of Redline Not Guaranteed

FTL1014521-1



IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed and delivered as of the date set forth below their respective signatures.

Witnesses:

PURCHASER:

DFG GROUP, LLC, a Florida limited liability company

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

UFPA:

UNIVERSITY FINANCIAL PLAZA ASSOCIATES, LTD., a Florida limited partnership

\_\_\_\_\_  
\_\_\_\_\_

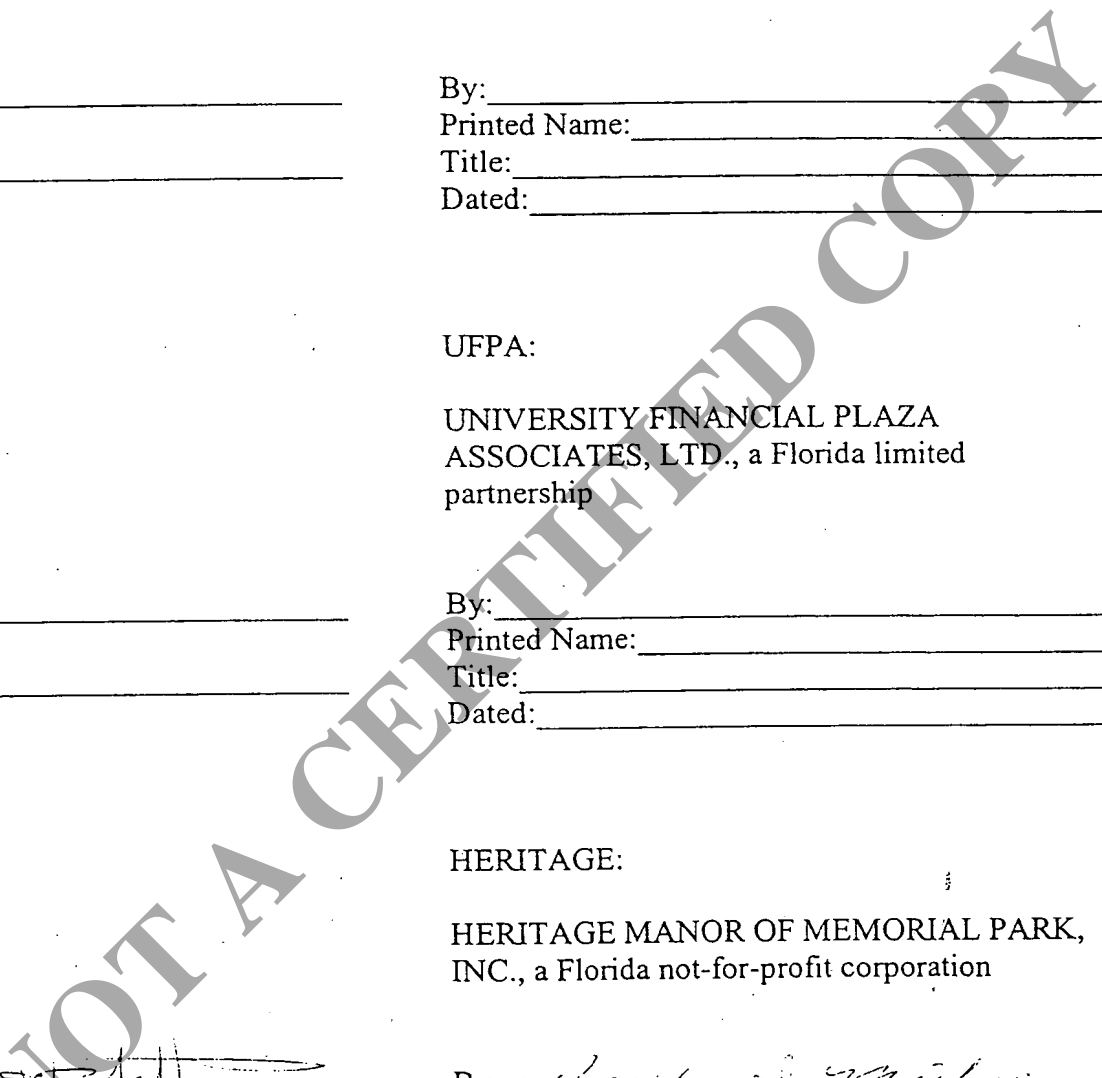
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

HERITAGE:

HERITAGE MANOR OF MEMORIAL PARK, INC., a Florida not-for-profit corporation

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

By: [Signature]  
Printed Name: [Signature]  
Title: [Signature]  
Dated: [Signature]



EM:

~~\_\_\_\_\_~~  
MA

~~\_\_\_\_\_~~  
ELISHKA E. MICHAEL

Dated: 5/3/03

KM:

~~\_\_\_\_\_~~  
MA

~~\_\_\_\_\_~~  
KATHLEEN I. MICHAEL

Dated: 3/1/03

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**EXHIBIT A**

**PROMISSORY NOTE**

\$3,625,000.00

\_\_\_\_\_, Florida  
\_\_\_\_\_, 2003

**1. BORROWER'S PROMISE TO PAY**

FOR VALUE RECEIVED, the undersigned, DFG GROUP, LLC, a Florida limited liability company ("Borrower") with a post office address at \_\_\_\_\_, Attention: \_\_\_\_\_, promises to pay to the order of HERITAGE MANOR OF MEMORIAL PARK, INC., a Florida not-for-profit corporation, ELISHKA E. MICHAEL and KATHLEEN I. MICHAEL, with a post office address at \_\_\_\_\_ (collectively, hereafter called "Lender") the principal sum of THREE MILLION SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$3,625,000). The principal of this Promissory Note ("Note") shall be due and payable as set forth in that certain Purchase and Sale Agreement dated August 1, 2002 ("Agreement"), as amended by the First Amendment dated November 27, 2002 ("First Amendment"), and Second Amendment to Purchase and Sale Agreement dated February \_\_\_\_, 2003 ("Second Amendment") (the Agreement, First Amendment and Second Amendment are sometimes hereinafter collectively referred to as the "Purchase Agreement"), but in no event later than May 31, 2003 ("Maturity Date"). Interest on the outstanding principal balance shall accrue at the percentage rate per annum which is the rate imputed by the Internal Revenue Service (One and Fifty-Six One Hundredths percent [1.56%] as of the date hereof) and shall be paid on the Maturity Date.

**2. PLACE OF PAYMENT**

All payments of principal and/or interest are payable at the office of Lender, \_\_\_\_\_, or at such other place as the holder hereof may from time to time designate in writing, in lawful money of the United States of America, which shall be legal tender for public and private debts at the time of payments, without deduction for or on account of any present or future taxes, duties or other charges levied or imposed on this Note or the proceeds hereof, or upon the Borrower or Lender by any government, or any instrumentality, authority or political subdivision thereof. Borrower agrees, upon the request of the Lender, to pay all such taxes, duties and other charges in addition to principal and interest on this Note, exclusive of United States income taxes and Florida income taxes. Failure to do so within ten (10) days of Lender's written request shall constitute a default under the terms of this Note.

**3. PREPAYMENT**

The Borrower may prepay this Note in full or in part, at any time during the term hereof without premium or penalty.

#### 4. LOAN CHARGES

Notwithstanding any provision in this Note or in any instrument now or hereafter relating to or securing the within indebtedness, the total liability for payments of interest and payments in the nature of interest, including all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by the usury laws of the State of Florida or the applicable laws of the United States of America, whichever shall be higher (the "Maximum Rate"). In the event the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, which for any month or other interest payment period exceeds the Maximum Rate, all sums in excess of those lawfully collectible as interest for the period in question (and without further agreement or notice by, between, or to any party hereto) shall be applied to the reduction of the principal balance immediately upon receipt of such sums by the Lender, with the same force and effect as though the undersigned had specifically designated such excess sums to be so applied to the reduction of the principal balance and the Lender had agreed to accept such sums as a premium-free payment of principal, provided, however, that the Lender may, at any time and from time to time, elect, by notice in writing to the undersigned, to waive, reduce, or limit the collection of any sums in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the principal balance. It is the intention of the parties that the undersigned does not intend or expect to pay nor does the Lender intend or expect to charge, accept or collect any interest under this Note, or under the Loan Documents greater than the Maximum Rate.

#### 5. BORROWER'S DEFAULT, REMEDIES

(A) Time is of the essence hereof. If any payment of principal on this Note or any other sum due hereunder is not paid within ten (10) days following the date such sums are due, the amount thereof shall thereafter bear interest at the rate of eighteen percent (18%) per annum ("Default Rate") from the date of this Note until paid provided, however, that the Default Rate shall not exceed the Maximum Rate. If Borrower, or its successors or assigns, shall be in default of any of its obligations hereunder, such default remains uncured after the expiration of applicable grace periods, then Lender may, at its option, declare immediately due and payable, the outstanding principal balance of this Note together with all accrued and unpaid interest. Any default by Borrower under this Note shall constitute a default under the Purchase Agreement and the Mortgage and Security Agreement of even date ("Mortgage") by University Financial Plaza Associates Ltd. ("Mortgagor") given as security for this Note. Any default by Mortgagor under the Mortgage or the Purchase Agreement shall constitute a default under this Note.

(B) Demand, presentment, notice of dishonor, protest and extension of time of payment are hereby waived by all makers, sureties, guarantors and endorsers hereof, and each of such parties hereby agrees to all modifications, renewals, any number of extensions of time for payment of this Note, release of other persons or entities obligated under this Note, all without further notice, and agree that any such activities shall not release any of such parties not expressly released in writing. This Note shall be the joint and several obligation of each of the parties named as Borrower herein,

and all sureties, guarantors and endorsers of this Note, and shall be binding upon them and their heirs, legal representatives, successors and assigns.

(C) The remedies of the Lender as provided herein shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender, and then only to the extent specifically set forth in the writing.

(D) Borrower agrees to pay all costs of collection, whether suit be brought or not, including, but not limited to, reasonable attorneys' fees, court costs, collection expenses and other expenses which Lender may reasonably incur or pay in the prosecution or defense of its rights hereunder, whether in judicial proceedings, including bankruptcy court, appellate proceedings, postjudgment or whether out of court, including, but not limited to, time expended by Lender.

#### 6. GIVING OF NOTICES

All notices and other communications under this Note shall be in writing and shall be hand delivered, or mailed by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, or via telecopier, telex or other telegraphic means (with receipt confirmed), addressed as follows:

Lender: Heritage Manor of Memorial Park, Inc.  
Elishka E. Michael  
Kathleen I. Michael  
c/o Theodore Michael, Jr.  
5830 Snowshoe Circle  
Bloomfield Hills, Michigan 48301  
Fax: 248-258-6789

With copies to: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
200 East Broward Boulevard, Suite 1500  
Fort Lauderdale, Florida 33301  
Attention: David K. Blattner, Esquire  
Fax: 954-333-4093

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Sachs, Sax & Klein, P.A.  
Northern Trust Plaza – Suite 4150  
301 Yamato Road  
Boca Raton, Florida 33431  
Attention: Michael D. Karsch, Esquire  
Fax: 561-994-4985

Borrower: DFG Group, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_

With copies to: Nason, Yeager, Gerson, White & Lioce, P.A.  
United National Bank Tower - Suite 1200  
1645 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33401  
Attention: Gary Gerson, Esquire  
Fax: 561-686-5442

Borrower and Lender may, from time to time, change the address specified above by delivery of notice in accordance with the terms of this Section. All notice and communications hereunder shall be deemed received when sent as required by the terms of this Section upon receipt at the respective address specified above or upon refusal of receipt as confirmed in a receipt of the party attempting delivery.

7. MISCELLANEOUS

This instrument shall be governed by and construed and enforced according to the laws of the State of Florida, except where specifically preempted by federal law. Venue with respect to any litigation on this Note shall be exclusively in Broward County, Florida. The provisions of this Note may be changed only by a written agreement executed by the Lender and the Borrower.

Whenever used, the singular shall include the plural, the plural shall include the singular, the use of any gender shall be applicable to all genders, and the words "Borrower" and "Lender" shall be deemed to include the respective heirs, legal representatives, successors and assigns of the Borrower and the Lender.

It is expressly understood and agreed that the Lender shall never be construed for any purpose as a partner, joint venturer, co-principal or associate of the Borrower or of any person or party claiming by, through or under the Borrower in the conduct of their respective businesses.

IN WITNESS WHEREOF, Borrower has executed this Note on the date written above.

BORROWER:

DFG GROUP, LLC, a Florida limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER'S ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOT A CERTIFIED COPY

**EXHIBIT B**

Return to: (enclose self-addressed stamped envelope)

Name: David K. Blattner, Esquire

Address:

Ruden, McClosky, Smith,  
Schuster & Russell, P.A.  
Post Office Box 1900  
Fort Lauderdale, Florida 33302

This Instrument Prepared by:

David K. Blattner, Esquire  
Ruden, McClosky, Smith,  
Schuster & Russell, P.A.  
200 East Broward Boulevard  
15th Floor  
Fort Lauderdale, Florida 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between UNIVERSITY FINANCIAL PLAZA ASSOCIATES, LTD., a Florida limited partnership (the "Mortgagor"), with an address at \_\_\_\_\_ and HERITAGE MANOR OF MEMORIAL PARK, INC., a Florida not-for-profit corporation, ELISHKA E. MICHAEL and KATHLEEN I. MICHAEL (collectively, the "Mortgagee"), with an address at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, DFG Group, LLC ("DFG") is indebted to Mortgagee as evidenced by that certain Promissory Note of even date herewith in the principal sum of THREE MILLION SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$3,625,000) executed by DFG and delivered to Mortgagee (the "Note"); and

WHEREAS, DFG has requested that Mortgagor provide security for DFG's obligations under the Note and Mortgagor has agreed to grant this Mortgage in consideration of payment to Mortgagor in the amount of ONE THOUSAND DOLLARS (\$1,000) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; and

WHEREAS, Sample Financial Plaza, Inc., a Florida corporation, the sole general partner of Mortgagor, and Edward Falcone, Arthur Falcone and Robert Falcone are the only limited partners of Mortgagor and are the sole shareholders of Sample Financial, Inc., and Edward Falcone and Robert Falcone also have a direct or indirect ownership interest in DFG.

NOW, THEREFORE, to secure the performance by Mortgagor and DFG of all covenants and conditions in the Note and in this Mortgage and in all other instruments securing the Note, and in

order to charge the properties, interests and rights hereinafter described with such payment and performance and to secure additional advances, renewals and extensions thereof and for and in consideration of the sum of TEN DOLLARS (\$10.00), Mortgagor does hereby grant a first priority mortgage and security interest, sell, pledge and assign to Mortgagee:

#### THE MORTGAGED PROPERTY

A. All of the real property located in the County of Broward, described in Exhibit A, attached hereto and made a part hereof (the "Property"), to have and to hold the same, together with all the improvements now or hereafter erected on such property and all fixtures now or hereafter attached thereto, together with each and every of the tenements, hereditaments, easements, rights, powers, privileges, immunities and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and also all the estate, right, title, interest, homestead, right of dower, separate estate, property, possession and claim whatsoever in law as well as in equity of Mortgagor of, in and to the same in every part and parcel thereof unto Mortgagee in fee simple.

B. Together with a security interest in all personal property and fixtures affixed to or located on the Property.

C. Together with all rents, issues, profits, revenue, income and other benefits from the Property to be applied to the indebtedness secured hereby; provided, however, that permission is hereby given to Mortgagor, so long as no default has occurred hereunder, to collect, receive and use such benefits from the Property as they become due and payable, but not in advance thereof.

D. Everything referred to in paragraphs "A", "B" and "C" hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or any part of these properties is herein referred to as the "Mortgaged Property".

PROVIDED ALWAYS, that if Mortgagor shall pay to Mortgagee all payments due under the Note at the times and in the manner stipulated therein, and in all other instruments securing the Note, including renewals, extensions or modification thereof, and in this Mortgage and in all other instruments securing the Note to be kept performed or observed by Mortgagor, then this Mortgage shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

1. Compliance with the Note and the Mortgage; Warranty of Title. Mortgagor shall comply with all provisions of this Mortgage. Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple and Mortgagor has lawful authority to convey, manage, and encumber the same as provided by this Mortgage, and does hereby so warrant. Mortgagor further covenants and agrees that until the Note is fully paid, no other mortgage, lien, action or encumbrance shall be placed against the Mortgaged Property. Mortgagor's liability under this Mortgage shall be limited to Mortgagor's interest in the Mortgaged Property. There shall be no other personal liability under this



Mortgage to Mortgagor. Simultaneously herewith, Mortgagor shall execute all reasonably necessary financing statements to perfect the first priority security interest in the personal property and fixtures at the Mortgaged Property.

2. Payment of Taxes and Liens. Mortgagor shall pay all the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature now on the Mortgaged Property or that hereafter may be imposed, levied or assessed upon this Mortgage or the Mortgaged Property or upon the indebtedness secured hereby. All such payments to be made when due and payable according to law before they become delinquent and before any interest attaches or any penalty is incurred. Insofar as any indebtedness is of record the same shall be promptly satisfied and evidence of such satisfaction shall be given to Mortgagee. If required by the Mortgagee, at its sole discretion, following any uncured "Event of Default" (as hereinafter defined) under the Note or this Mortgage, Mortgagor shall pay to Mortgagee on the date of such regular installment of principal and interest as required by the Note secured hereby (or on the first day of each month if payments under the Note are due other than monthly), until the Note is fully paid, an amount equal to one-twelfth (1/12th) of such proportionate share of the yearly taxes and assessments as estimated by the Mortgagee to be sufficient to enable the Mortgagee to pay at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such added payment shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable to Mortgagor with respect thereof. Upon demand of the Mortgagee, the Mortgagor agrees to deliver to the Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable the Mortgagee to pay such taxes, assessments or similar charges. During the continuance of an Event of Default by the Mortgagor in the performance of any of the terms, covenants and conditions of this Mortgage or the Note secured hereby, the Mortgagee may apply to the reduction of the principal sum or any other sum secured hereby in such manner as the Mortgagee shall determine; any amount under this Paragraph 2 remaining to the Mortgagor's credit.

3. Insurance. Mortgagor shall keep the Mortgaged Property and the improvements now existing or hereafter erected on the Mortgaged Property insured as may be required from time to time by Mortgagee against loss by fire, flood, other hazards and contingencies in such amounts and for such periods as may be required by Mortgagee.

A. Mortgagor shall pay promptly, when due, any premiums on such insurance. All insurance shall be carried with companies approved by Mortgagee and the policy and renewals thereof shall be held by Mortgagee and have attached thereto loss payable clauses in favor and in form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice by mail to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. Each insurance company concerned is hereby authorized and directed to make payments for such loss directly to Mortgagee instead of either to Mortgagor or Mortgagor and Mortgagee jointly. Insurance proceeds or any part thereof may be applied by Mortgagee, at its option, after deducting therefrom all its expenses, including attorneys' fees, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. Mortgagee is hereby authorized, at its option, to settle and compromise any claims, awards, damages, rights of action and proceeds, and any other payment or relief under any insurance policy. In the event of foreclosure of this Mortgage or other

transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. During the continuance of an Event of Default, Mortgagee may at its option require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12th) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. During the continuance of an Event of Default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any return premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

4. Condemnation. If the Mortgaged Property, or any part thereof, shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State of Florida or the United States of America to so damage or take, and any transfer by private sale in lieu thereof) that would materially impair Mortgagor's use of the Mortgaged Property, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or an account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee and Mortgagee after deducting therefrom all its expenses including attorney's fees may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, this Mortgage or any other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments or any compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

5. Care of Mortgaged Property. Mortgagor shall not remove or demolish any building or other property forming a part of the Mortgaged Property without the written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall keep the same and improvements thereon in good condition and repair. Mortgagor shall notify Mortgagee in writing within five (5) days of any damage or impairment of the Mortgaged Property. Mortgagee may, at Mortgagee's discretion, have the Mortgaged Property inspected at any time and Mortgagor shall pay all reasonable costs incurred by Mortgagee in executing such inspection.

6. Particular Action Requiring Mortgagee's Prior Consent: Mortgagor shall not, except after notice to Mortgagee and with Mortgagee's prior written consent, either partition or subdivide the Mortgaged Property.

7. Mortgagee's Right to Make Certain Payments. In the event Mortgagor fails to pay or discharge the taxes, assessments, levies, liabilities, obligations and encumbrances, or fails to keep the Mortgaged Property insured or to deliver the policies, premiums paid, or fails to repair the Mortgaged Property as herein agreed, Mortgagee may at its option pay or discharge the taxes, assessments, levies, liabilities, and obligations and encumbrances or any part thereof, to procure and pay for such insurance or to make and pay for such repairs. Mortgagee shall have no obligation on its part to determine the validity or necessity of any payment thereof and any such payment shall not waive or affect any option, lien equity or right of Mortgagee under or by virtue of this Mortgage. The full amount of each and every such payment shall be immediately due and payable and shall bear interest from the date thereof until paid at the Default Rate, as hereinafter defined, and together with such interest, shall be secured by the lien of this Mortgage. Nothing herein contained shall be construed as requiring Mortgagee to advance or expend monies for any of the purposes mentioned in this paragraph.

8. Payment of Expenses. Mortgagor shall pay all reasonable costs, charges and expenses, including reasonable attorneys' fees, disbursements and cost of abstracts of title, incurred or paid at any time by Mortgagee due to the failure on the part of Mortgagor promptly and fully to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of this Mortgage. Such costs, charges and expenses shall be immediately due and payable, whether or not there be notice, demand, attempt to collect or suit pending. The full amount of each and every such payment shall bear interest from the date thereof until paid at the Default Rate, as hereinafter defined. All such reasonable costs, charges and expenses so incurred or paid together with such interest, shall be secured by the lien of this Mortgage and any other instrument securing the Note.

9. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property of whatever kind located in or on, or attached to, or used or intended to be used in connection with or in the operation of the Mortgaged Property.

10. Additional Documents. At all times during which this Mortgage is in effect, upon Mortgagee's reasonable request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and thereafter to be re-recorded or refiled at such time and in such places as shall be deemed reasonably desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may reasonably consider necessary or desirable in order to effectuate, complete, enlarge, perfect or to continue and preserve the obligations of Mortgagor under this Mortgage and all other instruments securing the Note, and the lien of this Mortgage as a valid and prior lien upon all the Mortgaged Property. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor. Mortgagor hereby irrevocably appoints Mortgagee agent and attorney-in-fact of Mortgagor to do all things necessary to effectuate or assure compliance with this paragraph.

11. Event of Default. Any one of the following shall constitute an "Event of Default" hereunder.

A. Failure by DFG to pay as and when due and payable pursuant to the terms of the Note, any sums due under the Note or failure by Mortgagor to pay, as and when due and payable, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Mortgagor hereunder.

B. Failure by DFG to keep, perform and observe the covenants set forth in that certain Purchase and Sale Agreement dated August 1, 2002 ("Agreement"), as amended by the First Amendment dated November 27, 2002 ("First Amendment"), and Second Amendment to Purchase and Sale Agreement dated February \_\_\_\_, 2003 ("Second Amendment") (the Agreement, First Amendment and Second Amendment are sometimes hereinafter collectively referred to as the "Purchase Agreement") or a breach by DFG of any other term or provision of such Purchase Agreement that is not cured within ten (10) days after Mortgagee gives written notice specifying the breach or after DFG learns of the breach. However, if such breach is not capable of cure within ten (10) days, Mortgagor shall commence to cure such default within ten (10) days and shall diligently pursue such cure within sixty (60) days.

C. Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in this Mortgage, any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby for a period of ten (10) days after Mortgagee gives written notice specifying the breach or after Mortgagor learns of the breach. However, if such default is not capable of cure within ten (10) days, Mortgagor shall commence to cure such default within ten (10) days and shall diligently pursue such cure within sixty (60) days.

D. If either Mortgagor or DFG: (i) files a voluntary petition in bankruptcy; (ii) is adjudicated a bankrupt or insolvent; or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors; or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or (v) makes any general assignment for the benefit of creditors; or (vi) makes any admission in writing of its inability to pay its debts generally as they become due; or (vii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or (viii) any trustee, receiver or liquidator of Mortgagor of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior

written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

E. The occurrence of any default under the terms of the Note or any breach of any material warranty, representation or covenant of Mortgagor contained in this Mortgage or any other instrument securing the Note that is not cured within ten (10) days after Mortgagee gives written notice specifying the breach or after DFG learns of the breach. However, if such breach is not capable of cure within ten (10) days, Mortgagor shall commence to cure such default within ten (10) days and shall diligently pursue such cure within sixty (60) days.

F. The occurrence of any default under any term or provision of any mortgage or other security instrument which creates a lien or other security interest on or in the Mortgaged Property not cured within the applicable cure periods in such documents.

G. Any sale, encumbrance, lien, mortgage, granting of security interest or conveyance or pledge of the Mortgaged Property or any portion thereof by the Mortgagor.

H. If the Mortgagor, pursuant to Florida Statutes Section 697.04(1)(b), as amended from time to time, shall file for record a notice limiting the maximum amount which may be secured by this Mortgage.

12. Acceleration. If an Event of Default shall have occurred and is continuing, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately. Upon such declaration such principal and interest and other sums shall immediately be due and payable without demand or notice.

13. Remedies after Default. During the continuance of an Event of Default, Mortgagee may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce the performance of any term hereof or any other right; (ii) foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; (iii) collect all rents, issues, profits, revenue, income and other benefits from the Mortgaged Property; (iv) appoint a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenue, income, and other benefits thereof and apply the same as a court may direct and such receiver shall have all rights and powers permitted under law; and (v) pursue any other remedy available to it, at law or in equity, including, but not limited to, taking possession of the Mortgaged Property without notice or hearing to Mortgagor. Mortgagee shall take action either by such proceedings or by the exercise of its power with respect to entry or taking possession, or both, as Mortgagee may determine.

14. No Waiver. No delay or omission of Mortgagee to exercise any right, power or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any event of default or to constitute acquiescence therein.

15. Non-Exclusive Remedies. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note, the Purchase Agreement or any other instrument securing the Note, now or hereafter existing at law, in equity or by statute.

16. Successors and Assigns Bound. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefits of their respective heirs, successors and assigns, whether or not so expressed.

17. Miscellaneous. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

18. Attorneys' Fees. The term "attorneys' fees" as used in this Mortgage includes any and all reasonable legal fees of whatever nature, including, but not limited to, fees resulting from any appeal of an interlocutory order or final judgment or any other appellate proceeding arising out of any litigation.

19. Future Advances. This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed SEVEN MILLION TWO HUNDRED THOUSAND DOLLARS (\$7,200,000), plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements at the Default Rate, as hereafter defined.

20. Obligation of Mortgagor. Mortgagor shall pay the cost of releasing or satisfying this Mortgage of record.

21. No Transfer. It is understood and agreed by Mortgagor that as part of the inducement to Mortgagee to make the loan evidenced by the Note, Mortgagee has considered and relied on the credit worthiness and reliability of Mortgagor. Mortgagor covenants and agrees not to sell, convey, transfer, or further encumber any interest in or any part of the Mortgaged Property without the prior written consent of the Mortgagee, and any such sale, conveyance, transfer or encumbrance made without Mortgagee's prior written consent shall constitute an Event of Default hereunder. It is further understood and agreed that any transfer, sale, agreement for sale, granting of any security interest, conveyance or pledge of any interest of the Mortgagor (including, without limitation, any

general or limited partnership interest) to any other entity, individual, firm, partnership or corporation or the creation of any additional interest in Mortgagor (including, without limitation, any general or limited partnership interest) to any other entity, individual, firm, partnership or corporation without the Mortgagee's prior written consent shall constitute an Event of Default hereunder. A contract to deed or agreement for deed or assignment of beneficial interest in any trust shall constitute a transfer pursuant to the provisions of this Paragraph. If any person or entity should obtain any interest in all or any part of the Mortgaged Property, pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor and an Event of Default hereunder.

22. Default Rate. The Default Rate shall be eighteen percent (18%).

23. Hazardous or Toxic Materials. The Mortgagor warrants and represents that, to the best of Mortgagor's actual knowledge, the Mortgaged Property has not in the past been used, is not presently being used, and will not in the future be used for the handling, storage, transportation or disposal of hazardous or toxic materials. The Mortgagor does hereby indemnify and holds harmless the Mortgagee from and against any loss to the Mortgagee (including, without limitation, attorneys' fees) incurred by the Mortgagee as a result of such past, present or future use, handling, storage, transportation, or disposal of hazardous or toxic materials. The Mortgagee, at the Mortgagee's sole option, at any time, may obtain, at the Mortgagor's expense, a report or reports from reputable environmental consultants of the Mortgagee's choice indicating whether the Mortgaged Property has been or at any time is being used for the handling, storage, transportation, or disposal of hazardous or toxic materials. In the event the Mortgagee requests such a report and said report indicates such past or present use, handling, storage, transportation, or disposal, the Mortgagee, in its sole discretion, may require that all violations of law with respect to hazardous or toxic materials be corrected forthwith and/or that the Mortgagor obtain all necessary environmental permits. Failure of the Mortgagor to promptly take such curative action as required by the Mortgagee may, at the option of the Mortgagee, be deemed an Event of Default under Paragraph 11 above. Notwithstanding the fact that the Mortgagee may have obtained such a report at or prior to the execution hereof, the Mortgagee may, from time to time, obtain additional reports if it deems in its sole discretion that such reports are necessary or appropriate.

24. Additional Financing. The obtaining of any additional financing secured by the Mortgaged Property, or any part thereof, or any other encumbrance of the Mortgaged Property, or any part thereof, including, without limitation, "wrap-around" financing, without the prior written consent of the Mortgagee, shall constitute a default of this Mortgage and Mortgagee may, at Mortgagee's option, enforce any and all of Mortgagee's rights, remedies and recourses set forth in this Mortgage.

25. GIVING OF NOTICES. All communications required to be given will be in writing and will be deemed to have been properly given if transmitted by telecopier, telex or other telegraphic means (with receipt confirmed) delivered to the address of the party directly, and will be deemed to have been received, on the first business day following such facsimile transmission, telex

or telegraph, or if delivered, upon the date of delivery or transmission. Such communications will be sent to the following addresses:

Lender: Heritage Manor of Memorial Park, Inc.  
Elishka E. Michael  
Kathleen I. Michael  
c/o Theodore Michael, Jr.  
5830 Snowshoe Circle  
Bloomfield Hills, Michigan 48301  
Fax: 248-258-6789

With copies to: Ruden, McClosky, Smith, Schuster & Russell, P.A.  
200 East Broward Boulevard, Suite 1500  
Fort Lauderdale, Florida 33301  
Attention: David K. Blattner, Esquire  
Fax: 954-333-4093

Sachs, Sax & Klein, P.A.  
Northern Trust Plaza – Suite 4150  
301 Yamato Road  
Boca Raton, Florida 33431  
Attention: Michael D. Karsch, Esquire  
Fax: 561-994-4985

Borrower: DFG Group, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_

With copies to: Nason, Yeager, Gerson, White & Lioce, P.A.  
United National Bank Tower - Suite 1200  
1645 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33401  
Attention: Gary Gerson, Esquire  
Fax: 561-686-5442

26. Broker Indemnification. Mortgagor represents and warrants that neither the Mortgagor nor any of the Mortgagor's representatives, employees or agents have dealt or consulted with anyone other than persons employed by the Mortgagee in connection with this Mortgage. Mortgagor hereby indemnifies the Mortgagee, its successors and assigns, against, and agrees to protect, save and keep Mortgagee harmless from, any and all liabilities, obligations, charges, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, court costs, legal fees, including paralegals' fees, and any sales or service tax on such fees,



and expenses through all trial, appellate and administrative levels of whatsoever kind and nature, imposed on, incurred by or asserted against Mortgagee, in any way relating to, arising out of, or in connection with any broker, agent or finder claiming to have dealt with or consulted with Mortgagor, or any of Mortgagor's representatives, employees or agents, contrary to the foregoing representation and warranty.

27. Homestead. The Property is not now and never has been the homestead of the Mortgagor nor is the Property adjacent to the homestead of the Mortgagor.

28. Consideration. Mortgagor acknowledges and agrees that it has received good and valuable consideration for execution of this Mortgage and further acknowledges that (i) it has received value for and is benefited by this Mortgage; (ii) Arthur Falcone and Edward Falcone as the holders of the majority of limited and general partnership interests in Mortgagor have a direct or indirect monetary and ownership interest in DFG; (iii) Mortgagee would not have entered into the subject transaction with DFG without the Mortgagor granting this Mortgage to Mortgagor; (iv) both DFG and Mortgagor are solvent, as such term is defined in the Bankruptcy Code of 1978; (v) it has executed this Mortgage in order to induce Mortgagee to consummate the subject transaction with DFG; and (vi) it will not avail itself of any claim or defense that Mortgagor did not receive valid or legal consideration in connection with the granting of this Mortgage.

IN WITNESS WHEREOF, this instrument has been executed on the date first above written.

Signed, sealed and delivered  
in the presence of:

MORTGAGOR:

UNIVERSITY FINANCIAL PLAZA ASSOCIATES,  
LTD., a Florida limited partnership

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF FLORIDA        )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, as \_\_\_\_\_ of UNIVERSITY FINANCIAL PLAZA ASSOCIATES, LTD., a Florida limited partnership. He/She is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

NOT A CERTIFIED COPY

**CONSENT**

The undersigned, as the only limited and general partners of Mortgagor, and the undersigned, individuals who are the sole shareholders of Sample Financial Plaza, Inc., hereby acknowledge and agree that they have received good and valuable consideration for and are benefited by the granting of this Mortgage in favor of Mortgagee, and acknowledge and agree that neither of the undersigned will avail themselves of any claim or defense that any of the undersigned did not receive valid or legal consideration in connection with the grant of this Mortgage.

\_\_\_\_\_  
ROBERT FALCONE

\_\_\_\_\_  
EDWARD FALCONE

\_\_\_\_\_  
ARTHUR J. FALCONE

SAMPLE FINANCIAL PLAZA, INC., a Florida corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

NOT A CERTIFIED COPY

EXHIBIT D

**NON-COMPETITION AGREEMENT**

THIS AGREEMENT (the "Agreement") entered into on this \_\_\_\_ day of March, 2003, by and between ELISHKA E. MICHAEL and KATHLEEN I. MICHAEL, (collectively, "Seller"), and DFG GROUP, LLC, a Florida limited liability company ("Purchaser").

RECITALS:

A. Pursuant to that certain Purchase and Sale Agreement dated August 1, 2002, as amended, between Seller and Purchaser (the "Purchase Agreement"), Seller is selling to Purchaser the goodwill and certain assets used in the business of Heritage Manor of Memorial Park, Inc., a Florida not-for-profit corporation, for the operation of a cemetery, mausoleum and related activities (the "Business").

B. In consideration of such sale and purchase, Seller has agreed that they and their family members will not compete with the Business to be conducted by Purchaser.

NOW, THEREFORE, in consideration of the purchase price, of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth herein are true and correct.
2. Covenants and Confidential Information.

a. Seller and their family members agree, for a period of seven (7) years from the date hereof, not to directly or indirectly, do or suffer any of the following:

(1) Own, manage, control or participate in the ownership, management or control of, be an officer, director or employee or otherwise be affiliated or associated with, as a consultant, independent contractor or otherwise, any person, corporation, partnership, proprietorship, firm, association or other business entity, or otherwise engage in any business which is engaged in any manner in the Business within Broward, Dade, St. Lucie, Martin, Monroe or Palm Beach County.

(2) Solicit, service or receive business from past or existing customers and clients of Seller.

b. Seller expressly agrees and understands that the remedy at law for any breach of this Agreement will be inadequate and that the damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, Seller agrees that, upon adequate proof of Seller's violation of any legally enforceable provision of this Agreement, Purchaser shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing in this Agreement shall be deemed to limit

Purchaser's remedies at law or in equity for any breach by Seller of any of the provisions of this Agreement.

c. In the event Seller shall violate any provision of this Agreement to which there is a specific time period during which it is prohibited from taking certain actions or from engaging in certain activities, as set forth in such provision, then, in such event, such violation shall toll the running of such time period from the date of such violation until such violation shall cease.

d. Seller has carefully considered the nature and extent of the restrictions upon it and the rights and remedies conferred upon Seller under this Agreement, and hereby acknowledges and agrees that the same are reasonable in time and territory, are designed to eliminate competition which otherwise would be unfair to Purchaser, do not stifle the inherent skill and experience of Seller, would not operate as a bar to Seller's sole means of support, are fully required to protect the legitimate interests of Purchaser and do not confer a benefit upon Purchaser disproportionate to the detriment to Seller.

3. Severable Provisions. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provision to the extent enforceable in any jurisdiction shall nevertheless be binding and enforceable. In the event the time or distance limitations set forth in Paragraph 2 are deemed too restrictive to be legally enforceable, such limitations shall nonetheless be effective and enforceable for the longest period of time and greatest distance which are legally enforceable.

4. Binding Agreement. The rights and obligations of the parties hereto shall inure to the benefit of, and shall be binding upon, the parties hereto and their successors, assigns, heirs, personal representatives and/or estate.

5. Notices. Any notice required or permitted to be given under this Agreement shall be personally delivered in writing or shall have been deemed duly given three (3) days after it is posted in the United States' Mails, postage prepaid, registered or certified, return receipt requested, and, shall be addressed to the parties as follows:

If to Purchaser:

DFG Group, LLC  
c/o Transeastern Properties, Inc.  
3300 University Drive  
Coral Springs, Florida 33065

With a Copy to:

Gary N. Gerson, Esq.  
Nason, Yeager, Gerson, White & Lioce, P.A.  
1645 Palm Beach Lakes Boulevard, Suite 1200  
West Palm Beach, Florida 33401

If to Seller:

Kathleen Michael  
c/o Ted Michael, Jr.  
5830 Snowshoe Circle  
Bloomfield, Michigan 48301

Elishka E. Michael  
10460 Prestwick Road  
Boynton Beach, Florida 33436

With a copy to:

Michael D. Karsch, Esquire  
And  
Rebecca Hamilton, Esquire  
Sachs, Sax & Klein, P.A.  
301 Yamato Road, Suite 4150  
Boca Raton, Florida 33431

and

David Blattner, Esquire  
Ruden, McCloskey, Smith, Schuster & Russell, P.A.  
200 East Broward Boulevard  
Fort Lauderdale, Florida 33301

and

Michael Hainer, Esquire  
Hainer & Burman, P.C.  
24255 West 13<sup>th</sup> Mile Road, Suite 270  
Bingham Farms, Michigan 48025

6. Waiver. The failure of either party to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the

waiver of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to it under the circumstances.

7. Attorneys' Fees. In connection with any litigation, including appellate proceedings, arising out of the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

8. Termination. If Purchaser has breached the terms of the Purchase Agreement or defaults in the payment of any sums due under the note, provided that Purchaser has not alleged any default by Seller, this Agreement shall terminate and be of no further force or effect.

9. Governing Law. This Agreement has been executed and delivered in and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Florida.

10. Miscellaneous. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be modified or terminated orally. No modification, termination or attempted waiver of this Agreement shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.

IN WITNESS WHEREOF, Purchaser and Seller have hereunto set their hands as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

PURCHASER: DFG GROUP, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

(SEAL)

SELLER:

\_\_\_\_\_  
Elishka E. Michael

\_\_\_\_\_  
Kathleen I. Michael

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2003,  
by \_\_\_\_\_, the \_\_\_\_\_ President of  
DFG Group, LLC, a Florida limited liability company, on behalf of the company, ( ) who is  
personally known to me OR ( ) who produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2003, by  
Elishka E. Michael, ( ) who is personally known to me OR ( ) who produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:



STATE OF FLORIDA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2003, by Kathleen I. Michael, ( ) who is personally known to me OR ( ) who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

NOT A CERTIFIED COPY

**NOT A CERTIFIED COPY**

SCHEDULE "B"  
THE CUSTOMER CONTRACTS

List attached hereto numbered as "B-1, B-2, B-3 . . ."

NOT A CERTIFIED COPY