

1. PREAMBLE

- 1.1. **Whereas ENiche** built a **Wall of Remembrance** on the Property of Doxa Deo Faerie Glen located on the corner of Atterbury Road and Olympus Drive, Olympus, Pretoria, to be used for the inurnment of cremated human remains and;
- 1.2. **Whereas the Purchaser** desires to purchase from **ENiche** a reservation for the use of a **Niche** for the inurnment of a **Designee** or **Designees** in the **Wall of Remembrance**.

2. PARTIES

The **Parties** to this **Agreement** are:

2.1. **ENiche**, a South African resident company, having its principal place of business at:

2.1.1. Physical Address: 905 Oudtshoorn Street, Wingatepark, Pretoria;

2.1.2. Telephone: 083 536 4874

2.1.3. Email: faerieglen@doxadeo.org

(hereinafter referred to as **ENiche**)

and

2.2. The Purchaser as Identified through the online registration whose further particulars are as submitted by the Purchaser on the **ENiche** Website.

(hereinafter referred to as **the Purchaser**)

3. INTERPRETATION

3.1. In this **Agreement**, unless otherwise specified or the context clearly indicates a contrary intention, the following words and expressions shall have the meanings assigned to them below:

- 3.1.1. “**Acceptance Date**” means the date on which the **Purchaser** hereto signs this **Agreement**;
- 3.1.2. “**Agreement**” means this reservation of **Niche Use Agreement** and all annexures, addendums and schedules thereto from time to time;
- 3.1.3. “**Business Day(s)**” means any day excluding a Saturday, Sunday or Public Holiday in the Republic of South Africa;
- 3.1.4. “**Calendar Day(s)**” means any day, including a Saturday, Sunday or Public Holiday in the Republic of South Africa;
- 3.1.5. “**Designee(s)**” means the individual whose cremated remains will be inurned within the **Niche** as identified in this **Agreement**;
- 3.1.6. “**Doxa Deo Faerie Glen**” means the Apostolic Faith Mission of South Africa: Doxa Deo Tshwane Assembly;
- 3.1.7. “**Granite Identification Plaque**” means the granite plaque that will be attached to the purchased **Niche** in order to identify the **Designee(s)** whose cremated remains are stored in the specific **Niche**;
- 3.1.8. “**Initiation Fee**” means a once of fee that is charged in order to cover the granite, inscription and building fees of the applicable **Niche**;
- 3.1.9. “**Niche**” means the 225 mm x 110 mm x 205 mm space assigned to the **Purchaser** for the inurnment of cremated human remains;
- 3.1.10. “**Parties**” means **ENiche** and the **Purchaser** collectively and the term “**Party**” shall mean any one of them as the context may require;
- 3.1.11. “**Storage Fee(s)**” means the fee payable, annually, for the storage of the cremated remains of the **Designee(s)** in the identified **Niche**;
- 3.1.12. “**VAT**” means Value-Added Tax as levied in terms of the Value-Added Tax Act, No. 89 of 1991 as amended or re-enacted from time to time.
- 3.1.13. “**Wall of Remembrance**” means the **Wall of Remembrance** built on the property of Doxa Deo Faerie Glen on the corner of Atterbury Road and Olympus Drive, Olympus, Pretoria.
- 3.2. Any reference to:
- 3.2.1. the singular shall include the plural and vice versa;
- 3.2.2. any gender shall include the other genders.

- 3.3. Any reference to an enactment is to that enactment as at the **Signature Date** and as amended or re-enacted from time to time.
- 3.4. The headings of clauses in this **Agreement** are for reference purposes only and shall not be considered in construing the contents hereof.
- 3.5. If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this **Agreement**.
- 3.6. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any **Party**, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the **Agreement**.
- 3.7. When any number of days is prescribed in this **Agreement**, same shall (unless otherwise stated) be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day other than a **Business Day**, in which case the last day shall be the immediately following **Business Day**.
- 3.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.9. Where any term is defined within the context of a particular clause in this **Agreement**, it shall bear the meaning ascribed to it for all purposes in terms of this **Agreement**, notwithstanding that that term has not been defined in this interpretation clause.
- 3.10. The expiration or termination of this **Agreement** shall not affect such of the provisions contained herein that expressly provide that they will operate after such expiration or termination or which out of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide therefore.
- 3.11. The rule of construction that this **Agreement** shall be interpreted against the **Party** responsible for the drafting or preparation of this **Agreement**, shall not apply.
- 3.12. The words "include", "including" or "such as" shall, if used in this **Agreement**, be construed as referring to examples and shall not be construed as limiting the generality of any preceding word(s).
- 3.13. The annexures, addendums and / or schedules hereto are integral and are incorporated as part of the **Agreement**.

4. INURNMENT OF CREMATED HUMAN REMAINS

4.1. The **Purchaser** hereby purchases and **ENiche** hereby sells to the **Purchaser** the right to use a **Niche(s)** in the **ENiche Wall of Remembrance** for the exclusive purpose of the inurnment of the cremated human remains of the **Designee(s)**.

5. IDENTIFICATION OF NICHE

5.1. The **Parties** agree that the **Purchaser** purchased the right to use the **Niche** as identified through the online reservation process as is identified in the **Niche** placement plan within the **Wall of Remembrance**.

5.2. The **Purchaser** shall have the right to use the **Niche** in accordance with the terms and conditions of this **Agreement**.

6. IDENTIFICATION OF DESIGNEE(S)

6.1. The **Niche** whose use is reserved by this **Agreement** will be used to inurn the cremated remains of the individual(s) (the **Designee(s)**) as identified by the **Purchaser** through the online reservation process.

7. PAYMENT TERMS

7.1. The **Purchaser** will pay to **ENiche** the following amounts:

7.1.1. An Initiation Fee of R3 400-00 (Three Thousand Four Hundred Rand), excluding VAT, on the signature date of this **Agreement**;

7.1.2. An annual **Storage Fee** of R240-00 (Two Hundred and Forty Rand), excluding VAT, payable on or before the 31st of January of every year for the duration of this **Agreement**.

7.1.3. The annual **Storage Fee** will escalate with the Consumer Price Index +1% as published by STATS SA during the month of October of each year.

7.1.4. Should the **Purchaser** choose to pay the annual **Storage Fees** in advance he/she may do so. In such a case the **Storage Fee** will amount to R 7 500-00 (Seven Thousand Five Hundred Rand Alone) once off.

8. DURATION OF THIS AGREEMENT

8.1. The **Purchaser** has the right to utilize the **Niche** for a period of **30 (thirty) years** from the Acceptance Date of this **Agreement** subject to the payment of the fees referred to in this **Agreement**.

8.2. The **Purchaser** may renew this lease for an additional agreed upon term between the **Parties** on the terms and conditions contained in this **Agreement** save that additional **Storage Fees** will be payable as determined by **ENiche** in its sole discretion.

9. OBLIGATIONS OF THE PURCHASER

9.1. The **Purchaser** shall:

9.1.1. arrange for the actual inurnment of the **Designee(s)**' cremated remains within the allocated **Niche** within the **Wall of Remembrance**;

9.1.2. arrange for the engravement of the Granite Identification Plaque that will be used to cover the **Niche**;

9.1.3. ensure that the Granite Identification Plaque is:

9.1.3.1. a standard "Rustenburg Black" Plaque;

9.1.3.2. the correct size and dimensions to fit in the allocate space within the **Wall of Remembrance**;

9.1.3.3. engraved as per the specifications communicated to the **Purchaser** via email.

9.1.4. cover all costs pertaining to the Granite Identification Plaque, including, but not limited to, the purchase price of the Plaque and the cost for the engravement of the Plaque;

9.1.5. arrange any and all applicable Memorial and/or Placement Ceremonies with **ENiche**;

- 9.1.6. ensure that the urn used for the inurnment of the **Designee(s)**' remains will fit the space available within the **Niche**;
- 9.1.7. ensure that his/her next of kin carries proper instructions as to the **Agreement** should he/she become incapable, for whatever reason, to manage this **Agreement** during its duration.
- 9.2. The **Purchaser** may not sell, transfer, or encumber the right to use the **Niche**.

10. OBLIGATIONS OF ENICHE

- 10.1. **ENiche** shall:
- 10.1.1. Maintain the **Wall of Remembrance** and the surrounding garden in a state of good repair;
 - 10.1.2. Insure that **Wall of Remembrance** against damage and or loss and;
 - 10.1.3. Apply quality control to ensure uniformity of all Plaques and **Niches**.
- 10.2. By this **Agreement**, **ENiche** provides only the use of a **Niche**. **ENiche** does not agree to perform, arrange, or pay for the cremation of the bodies of the **Designee(s)**.

11. TERMINATION OF THIS AGREEMENT

- 11.1. This **Agreement** may, prior to the expiry date, be terminated by the **Purchaser** by giving **ENiche** 1 (one) calendar month's written notice to that effect.
- 11.2. This Agreement will terminate in the event that
- 11.2.1. no inurnment in the **Wall of Remembrance** shall have occurred within 2 (two) years after the death of the **Designee(s)** stipulated in the registration process, unless **ENiche**, in its sole discretion, agrees to extend the reservation thereafter.
 - 11.2.2. the **Purchaser** does not pay his/her annual **Storage Fees** and does not correct the non-payment within 30 calendar days after receipt of notice of such failure.

- 11.3. If this **Agreement** is terminated for whatever reason and the **Purchaser** is not available for instructions regarding the **Designee(s)**' inurned remains **ENiche** will have the right to discard the inurned remains in accordance with the statutory provisions provided for in South African legislation at that time after 30 days' notice to the **Purchaser** at his/her *Domicilium* Address.

12. RIGHTS OF ENICHE

- 12.1. **ENiche** may adopt Rules and Regulations for the **Wall of Remembrance**.
- 12.1.1. 12.1The **Purchaser** acknowledges that **ENiche** may, in its sole discretion, amend the Rules and Regulations (if adopted) from time to time;
- 12.1.2. When adopted, copies of the Rules and Regulations will be available in the Doxa Deo Faerie Glen Campus Manager's office during office hours:
- 12.1.3. The **Purchaser** agrees that the use of a **Niche** and all rights and obligations under this **Agreement** are subject to those Rules and Regulations referred to in 12.1 (if and when adopted).
- 12.2. Upon the termination of this **Agreement**, for whatever reason, **ENiche** shall be entitled to resell the right to use the **Niche** identified in this **Agreement**.

13. LIMITATION OF RIGHTS

- 13.1. The purchase of a reservation to use a **Niche** does not convey the **Purchaser** any property interest in the **Niche**, the **Wall of Remembrance**, or any other property (real or personal) of Doxa Deo Faerie Glen, title to all of which shall at all times remain with Doxa Deo Faerie Glen.
- 13.2. The **Purchaser** agrees that, except in the case of gross negligence by **ENiche**, neither **ENiche**, nor anyone acting on behalf of **ENiche** shall be responsible for any damage to the **Wall of Remembrance** or its contents.
- 13.3. Neither **ENiche**, nor anyone acting on behalf of **ENiche** shall be liable for incidental or consequential damages suffered by the **Purchaser** and/or his/her family. The **Purchaser's** sole and exclusive remedy against **ENiche** or

anyone acting on behalf of **ENiche** for all claims related in any way to this **Agreement** or the use of the **Niche** in the **Wall of Remembrance** shall be limited to the return of the Initial Initiation Fee paid by the **Purchaser** to **ENiche**.

14. DISCLAIMER NOTICE AND INDEMNITY

14.1. By entering into this Agreement, the Purchaser, his/her spouse, his/her heirs in title and guests (hereinafter "Visitors") who attend the Wall of Remembrance do so at their own risk. Doxa Deo Faerie Glen and/or ENiche its agent(s) and/or its employee(s) shall not be liable for, and the Visitors hereby waive(s) and abandon(s) any claims of whatever nature including but not limited to that for theft, injury, loss or damage of whatever nature, against Doxa Deo Faerie Glen and/or ENiche, whether arising from Doxa Deo Faerie Glen and/or ENiche's default, negligence or otherwise. The Visitors, in addition to the aforesaid, hereby indemnify Doxa Deo Faerie Glen and ENiche against any claims which may arise from whatever nature, whether arising from Doxa Deo Faerie Glen and/or ENiche's default, negligence or otherwise.

15. WARRANTEES

15.1. **ENiche** provides only the use of a **Niche** for the inurnment of cremated human remains in a container. By its design and construction, the **Niche** may not be weatherproof nor corrosion proof. No warranty, representation or agreement is or can be made concerning the effects of weather, exposure, or time upon the remains inurned in a **Niche**.

15.2. While **ENiche** presently anticipates that it shall operate the **Wall of Remembrance** at its present location for the foreseeable future, no representation is made that the **Wall of Remembrance** shall be maintained by **ENiche** in perpetuity. The **Purchaser** acknowledges that **ENiche** may in its sole discretion decide to cease the operating of the **Wall of Remembrance**.

16. DOMICILIUM CITANDI ET EXECUTANDI

- 16.1. Each **Party** chooses as its *domicilium citandi et executandi* (address for the service of notices, processes, pleadings and the like) the address set out in clause 2 of this **Agreement**, as well as the physical address registered by the Purchaser during the online registration process, at which address all notices and pleadings in connection with this **Agreement** or any other action arising there from, must effectively be served.
- 16.2. The *domicilium citandi et executandi* address of either **Party** may be changed with 7 days' written notice to the other; provided that such address is within the Republic of South Africa. The other **Party** shall acknowledge in writing receipt of such notice.
- 16.3. Any notice in terms of this **Agreement** must be:
- 16.3.1. delivered by hand,
 - 16.3.2. or sent by email.
- 16.4. Any notice in terms of this **Agreement** will, unless the contrary is proven, be considered duly received:
- 16.4.1. if delivered by hand, on the date of delivery; or
 - 16.4.2. if sent by email on the date of successful transmission.

17. GENERAL

- 17.1. No indulgence granted by a **Party** shall constitute a waiver of any of that **Party's** rights under this **Agreement**. Accordingly, that **Party** shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.
- 17.2. No **Agreement** varying, adding to, deleting from or cancelling this **Agreement**, shall be effective unless reduced to writing and signed by or on behalf of the **Parties**.
- 17.3. This **Agreement** contains the entire **Agreement** between the **Parties** and neither **Party** shall be bound by any undertaking, representations or warranties not recorded herein or in the annexures to this **Agreement**.
- 17.4. Any provision in this **Agreement** which is or may become illegal, invalid or unenforceable, for any reason whatsoever, in any jurisdiction affected by

this **Agreement** shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* (as not written in the **Agreement**) and severed from the balance of this **Agreement**, without invalidating the remaining provisions of this **Agreement** or affecting the validity or enforceability of such provision in any other jurisdiction.

17.5. Each of the **Parties** hereby respectively agrees and acknowledges that:

17.5.1. it has been free to secure independent legal advice as to the nature and effect of each provision of this **Agreement** and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

17.5.2. each provision of this **Agreement** is fair and reasonable in all the circumstances and is part of the overall intention of the **Parties** in connection with this **Agreement**.

17.6. The rule of construction that this **Agreement** shall be interpreted against the **Party** responsible for the drafting or preparation of this **Agreement**, shall not apply.