

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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GOVERNOR

CEMETERY BOARD

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ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

TO: NEW YORK STATE CEMETERY BOARD

FROM: LEWIS A. POLISHOOK, Director

CC: ANTONIO MILILLO, Counsel

DATE: SEPTEMBER 30, 2020

RE: BETTER PLACE FORESTS

Summary

Better Place Forests (Better Place) has applied to the Board for a determination that its business model would not make it a “cemetery corporation” in New York, as defined in Not-for-Profit Corporation Law Article 15.

Better Place is a for-profit corporation based in California. In brief, Better Place sells the right to dispose of cremated remains and establish a memorial in a forest it owns or partners with.

Based on the information provided to us, the Division recommends that the Board reject this application because public policy prohibits for-profit cemetery corporations and Better Place’s business model would make it a cemetery corporation. Better Place has submitted official filings indicating that its business is the operation, marketing, and development of cemeteries and in fact presents itself as itself as a greener or cheaper alternative to traditional cemeteries in providing a final specific resting place and memorial site for remains; this activity has been and must remain limited to not-for-profit (and religious and municipal) cemetery corporations.

Exhibits

- A. Statement of Information (Foreign Corporation)
- B. July 31, 2019 email
- C. June 19, 2020 memorandum from Better Place
- D. Screenshots from Better Place’s Website
- E. Proposed form of contract
- F. September 28, 2020 memorandum from Better Place

Better Place

Better Place is a Delaware for-profit Corporation with its principal place of business in California. In a filing with the California Secretary of State, it describes its type of business as “DEV/MRKT & OPS OF CEMETERIES.” Exh. A. Its actual method of operation is described in greater detail below, based on its website.

New York Public Policy

Article 15 of the Not-for-Profit Corporation Law governs the establishment and operation of cemetery corporations. It begins with the following declaration of policy:

The people of this state have a vital interest in the establishment, maintenance and preservation of public burial grounds and the proper operation of the corporations which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this state that **cemeteries shall be conducted on a non-profit basis for the mutual benefit of plot owners therein.**

N-PCL § 1501 (emphasis added). New York public policy has prohibited for-profit cemeteries since before the enactment of the current cemetery statute in 1949. The Legislature passed what is now Not-for-Profit Corporation Law Article 15 because of findings of “shocking” practices whereby cemeteries were improperly “run as lucrative commercial ventures” and turned into “devices for profiteering on the widest possible scale.” 1949 Attorney General Report at 6. A main purpose of Article 15 was to ensure that cemeteries continue to operate as not-for-profit corporations for the benefit of the communities they serve, and not for the benefit of private individuals or shareholders. The State reaffirmed this important public policy in 1998 when it prohibited for-profit funeral entities from owning or controlling cemetery corporations.

N-PCL section 1502(a) defines “cemetery corporation” as:

any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.

Counsel to the Division and Board has separately reviewed Article 15, caselaw, and formal opinions and has prepared an opinion on the issue of whether Better Place would, if it acted as it proposes, be subject to Article 15 issue to be presented to the Cemetery Board in executive session. This memorandum explains why, as a matter of public policy, the Division believes that Better Place, as a for-profit corporation, is not and should not be allowed to provide a final resting place and place of memorialization for remains, which is properly the business of an Article 15 cemetery corporation.

The Application

In its June 19, 2020 memorandum (Exhibit B), Better Place described itself as follows:

Better Place Forests (BPF) started in 2015 in California. Our company builds and maintains conservation memorial forests. We offer families idyllic landscapes to experience, explore, and memorialize their loved ones. For those families whose loved ones have an affinity for our forests, we provide beautiful, sustainable memorial alternatives for people who choose cremation but do not wish to inter, entomb or bury their loved ones.

* * *

BPF's forests allow individuals or families to contribute to the conservation of a forest by preserving a tree that will serve as a different kind of memorial than those used in cemeteries — in a BPF forest, the trees themselves are the

memorials. BPF purchases property and works with local land trusts to permanently protect forests, open spaces, and wilderness habitats. In connection with the markets where it currently operates, BPF permits families to spread cremated remains at a designated location in the forest. However, this activity is not mandatory.

This memorandum suggests that the primary focus of Better Place is “conservation of a forest” and not disposition of cremated remains. As Better Place’s corporate filing, website, and contract of sale makes clear, this mischaracterizes their business and marketing.

Better Place’s Business Model

Notwithstanding the assertions in Better Place’s June 19, 2020 memorandum, its website (Exhibit D) makes very clear that its business model is to sell a final resting place for human cremated remains memorial to prospective customers. The “How It Works” tab on Better Place’s website (betterplaceforests.com) explains:

How it works

Return your ashes to the earth beneath a memorial tree your family and friends can visit for years to come.

Similarly, the “Pricing” tab makes explicit that Better Place sees itself as a competitor to traditional cemeteries:

A more meaningful, more affordable
resting place

A traditional burial, plot and headstone costs around \$15,000.* We offer a range of packages for any budget—at less than half the cost of a traditional burial.

More examples from the Pricing tab:

Young tanoak
\$2,900

INCLUDES 1 MEMORIAL CEREMONY

7” diameter

25 impact trees planted

\$12,100 less than a traditional burial

Heritage redwood
\$8,500

INCLUDES 2 MEMORIAL CEREMONIES

- 14” diameter
- Iconic coastal redwood
- 50 impact trees planted
- \$21,500 less per person than a traditional burial

The “Testimonials” all make clear that the customers perceive the service Better Place offers as a substitute for traditional burial:

I've always looked at a traditional burial as being too final. Not only is the traditional service roughly twice the cost, but you're very limited on what you get out of it.

Spencer R.

This opportunity is so special and exciting. No other option better supports our parents' conservation and environmental philosophy. They loved the forest, the outdoors, and the preservation of open space.

Mark F.

Point Arena Forest, CA

This was an awesome experience! I had so much fun picking my tree. The forest is so peaceful. I will have a wonderful place to rest.

Andra C.

Point Arena Forest, CA

I chose Better Place Forests because it gave me the answer I was looking for— a place for my remains where I will continue to be relevant and make a difference. The idea of being part of a forest brought me peace and joy.

Julia O.

Santa Cruz Forest, CA

What a wonderful and peaceful place! Our eternity is all set in a beautiful place. [Better Place Forests has a] wonderful staff here that love what they do. We are so pleased.

Jim & Barbara T.

Point Arena Forest, CA

Contract

The sample contract Better Place provided to us as an example of their relationship with purchasers (Exhibit E) states:

Seller agrees to sell and Buyer agrees to purchase an irrevocable license to spread the ashes of up to [#] people and [#] pet(s) around [Type of Tree] (#Tree Number) (the "Dedicated Tree") in the [Name of Section] section of the Better Place Forests conservation area, [Name of Property], located at [Address of Property] (the "Forest"), subject to the terms and conditions set forth herein, and Seller's Conservation Area Rules and Regulations (the "Tree Dedication Rights").

Second Better Place Memo

In a memorandum dated September 28, 2020 (Exhibit F), Better Place offers to, among other things, disclose to prospective purchasers of its services that it does not offer the legal protections of human cemeteries, to establish something akin to a permanent maintenance fund for the forests in question, and to grant an "irrevocable, perpetual right to visit a New York forest, including a selected tree," and suggests that these offers should address the Division's concerns. They do not. Better Place continues to be a for-profit corporation, selling cemetery-like services as an explicit alternative to cemeteries selling specific locations for disposition of remains and memorialization.

Conclusion

As Better Place has informed its home state of California, Better Place's business model is selling specific final resting places—associated with a specific tree—and memorials to the general public. It calls itself a developer, operator, and marketer of cemeteries, advertises as a cemetery alternative, and provides purchasers with a right of disposition of cremated remains and memorialization in a specific location. As a matter of policy, Better Place should be deemed to be a cemetery and the Board should deny its application for a determination that it is not a "cemetery corporation." Allowing it to operate here in New York would undermine the State's policy dictating that cemeteries be operated on a not-for-profit basis.

EXHIBIT A



State of California Secretary of State

F

Statement of Information (Foreign Corporation)

FEES (Filing and Disclosure): \$25.00.**If this is an amendment, see instructions.****IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM****1. CORPORATE NAME****2. CALIFORNIA CORPORATE NUMBER**

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)**3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.** If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 13**.**Complete Addresses for the Following** (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE

8. SECRETARY ADDRESS CITY STATE ZIP CODE

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

Type of Business

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE

EXHIBIT B

From: Marsh, Tanya <marshtd@wfu.edu>
Sent: Wednesday, July 31, 2019 6:21 PM
To: Polishook, Lewis (DOS) <Lewis.Polishook@dos.ny.gov>
Subject: Better Place Forests

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Lewis,

I hope you're having a good summer. I'm working with Better Place Forests to determine which states they can operate in, which is actually a pretty fascinating undertaking given that most states' definitions of a "cemetery" don't contemplate their model of a "conservation memorial forest" in which people can "purchase" spreading rights under a particular tree in a forest that has conservation easements or is owned by a land trust.

I understand that Jake Young from BPF gave you a call earlier this year to discuss their model and that you believe that they would need to be regulated as a cemetery in New York. I'm trying to figure out how that would work given the way the New York statutes are structured. For example, I don't know how to advise them to incorporate as a non-profit for the mutual benefit of plot owners when there will be no plot owners. In order to protect the forests with the conservation easement or land trust model, BPF won't be selling real property interests. Do you have any examples of existing cemeteries in New York that are simply permitting spreading of ashes on private land without any burials, etc. that I could use as a model? I think this would be a great, environmentally friendly approach in the Northeast but I'm just not sure how we could make it work in New York.

Please let me know if you have time to discuss.

thanks!
Tanya

--

Tanya D. Marsh
Professor of Law
Wake Forest School of Law
1834 Wake Forest Road
Winston-Salem, NC 27109
marshtd@wfu.edu
@Tmar22

EXHIBIT C

Date: June 19, 2020

To: New York State Cemetery Board

From: Better Place Forests

Re: Request for Clarification

As a follow-up to the New York State Division of Cemeteries' Board meeting on June 9, 2020, our firm would like to provide background information on Better Place Forests and our conservation memorial forests.

With this letter, we seek clarification as to whether a company like ours— which allows memorials but conducts no burials in its forests— is permitted to operate in the State of New York.

Better Place Forests:

Better Place Forests (BPF) started in 2015 in California. Our company builds and maintains conservation memorial forests. We offer families idyllic landscapes to experience, explore, and memorialize their loved ones. For those families whose loved ones have an affinity for our forests, we provide beautiful, sustainable memorial alternatives for people who choose cremation but do not wish to inter, entomb or bury their loved ones.

In our forests, families connect with nature through serene groves, adventurous trails, and beautiful views. Families bond through hikes, intimate gatherings, and tributes to loved ones who have passed. Better Place Forests manages our forests through sustainable forest practices, which benefit local economies and the environment.

How we work:

BPF's forests allow individuals or families to contribute to the conservation of a forest by preserving a tree that will serve as a different kind of memorial than those used in cemeteries — in a BPF forest, the trees themselves are the memorials. BPF purchases property and works with local land trusts to permanently protect forests, open spaces, and wilderness habitats. In connection with the markets where it currently operates, BPF permits families to spread cremated remains at a designated location in the forest. However, this activity is not mandatory.

Better Place Forests contributes to the local economy and community. We employ forest stewards and arborists in each forest we operate. In addition, Better Place Forests hires local contractors and consultants for site-specific work, generating economic benefits in the millions

of dollars through the construction of proposed improvements and ongoing forest management and maintenance. Our forests also attract family members and visitors on an ongoing basis, creating associated revenues for local services industries such as restaurants, hotels, and shops.

Better Place Forests creates a more sustainable and healthier environment. We preserve forest land through sustainable forestry management practices, while protecting the trees our customers choose as memorials for themselves or their loved ones. We strive to preserve wildlife habitats and watersheds for generations to come, contributing to the health and well-being of local communities.

Every 100 acres of forest land that is preserved equates to a reduction of approximately 126.5 million car miles and its trees can sequester millions of pounds of carbon dioxide from the atmosphere.

Our Conservation Forests are Not Cemeteries:

A Better Place Forests conservation memorial forest would operate consistent with N.Y. Not-for-Profit Corp. Law § 1517(i) which allows cremated remains to be disposed of “in any manner whatever on the private property of a consenting owner.” The statute differentiates between the disposition of cremated remains in a cemetery and disposing of cremated remains on private property. Placement of cremated remains on private property does not automatically convert such property into a cemetery. For example, the New York City Department of Parks & Recreation allows cremated remains to be scattered in public parks.

In contrast, a “cemetery” is understood under New York Law as a piece of real property where bodies are buried, interred, placed in a columbarium, or entombed (see N.Y. Not-for-Profit Corp. Law § 15, references to “burial grounds” and uses of the words “burial” and “interment”). Better Place Forests does not inter, entomb, or bury. Rather, the company allows visitors to spread a mixture of cremated remains and native soil topically at the foot of trees, but above the surface of the soil.

N.Y. Not-for-Profit Corp. Law § 1501 describes the fundamental organizational structure of cemeteries in New York State, which is for the mutual benefit of lot owners. Conservation memorial forests will not be subdivided, and there will be no lot owners, or any persons with a similar legal standing to a lot owner. The existence of an individual property right in a particular lot or grave is a cornerstone concept of New York cemetery law and inapplicable to a conservation memorial forest. Better Place Forests will state explicitly in all marketing materials that its conservation memorial forests are not cemeteries under New York law, and purchasing a memorial at a conservation memorial forest will not offer the purchaser the same rights as New York cemeteries offer. However, it should be noted that customers’ contributions will be used to create a fund to maintain the forest for *conservation purposes* in perpetuity.

Long-term/Permanence:

At the June 9, 2020 Board Meeting, the Cemetery Board and the Division of Cemeteries had questions about the assurances Better Place Forests' customers receive about the permanence of their memorials. Again, in a conservation memorial forest, the forest itself is the memorial. Although our conservation memorial forests are not cemeteries, Better Place Forests is committed to providing perpetual access to the families who support the conservation of our forests.

- Better Place Forests will grant customers an irrevocable, perpetual right to visit a New York forest, including a selected tree.
- Better Place Forests will use proceeds from New York customers to set up a Stewardship Fund that will ensure its property has funding for long-term maintenance and operation. The Better Place Forests business model enables a Stewardship Fund.
- Better Place Forests will partner with a New York land trust to grant a conservation easement to the land trust, protecting the forest land and preventing it from being developed. As described below, Better Place Forests is well-positioned to partner with a local land trust in connection with a New York-based forest.

Partnerships with New York Land Trusts:

One important component of Better Place Forests' conservation memorial forests are our partnerships with local land trusts. We grant a conservation easement to a local land trust that ensures that our conservation memorial forests will be protected by a reputable, local partner in perpetuity.

Better Place Forests has not entered into a conservation easement with any New York Land Trusts to date because Better Place Forests has not established a conservation memorial forest in New York. However, we have already begun initial conversations with the Columbia Land Trust, Hudson Highlands Land Trust, and Delaware Highlands Conservancy, among others.

Conclusion:

As this letter has outlined, Better Place Forests has much to offer to the State of New York and its residents, and we are committed to good corporate citizenship in the State.

As a good corporate citizen, we are committed to operating in compliance with all applicable laws. However, as a new business model, we seek clarification that because no burials occur in our conservation memorial forests, these forests do not constitute cemeteries under New York law. As such, Better Place Forests would be required to meet all local zoning and permitting requirements, but would not need to apply for licensure as a cemetery with the Division of Cemeteries.

We humbly request the opportunity for consideration of this request for clarification by the Cemetery Board as part of the agenda for the Cemetery Board's July public meeting.

Should you have any questions about Better Place Forests, please contact Nandi Chhabra at nandi@betterplaceforests.com or (318) 218-7335.

EXHIBIT D



How it works

Return your ashes to the earth beneath a memorial tree your family and friends can visit for years to



01

Get to know us

Let us introduce ourselves and answer your questions. Learn about how we maintain our forests or how we help with personalized planning.

02

Tour the forest

Experience the sights and sounds of the forest and learn what makes each section unique. Tour online from the comfort of home or in-person with one of our forest stewards.



03

Gather your loved ones

When it's time, your ashes are mixed with soil and returned to the base of your tree during a personalized memorial ceremony.

04

Leave a legacy

Give your loved ones a beautiful place to remember you and help protect the forest for future generations.



01

Get to know us

Expand

02

Tour the forest

Expand

03

Gather your loved ones

Expand

04

Leave a legacy



Preserve a forest for generations

Your tree and forest will be protected, preserving your legacy for future generations.

Schedule Your Call With an Advisor



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CONTACT

877-830-8311

hello@betterplaceforests.com

ADDRESS

3717 Buchanan St.
Suite 400
San Francisco, CA 94123

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A more meaningful, more affordable resting place

A traditional burial, plot and headstone costs around \$15,000.* We offer a range of packages for any budget—at less than half the cost of a traditional burial.

Talk to Your Advisor

Better Place Forests offers transparent pricing: no hidden fees and no surprise add-ons.

We'll tailor your memorial package to your needs,
vision and budget.

Pricing varies based on:



Location & setting
(views, water features, etc.)





Number of memorial ceremonies

Example packages



Young tanoak

\$2,900

INCLUDES 1 MEMORIAL CEREMONY

7" diameter

25 impact trees planted

\$12,100 less than a traditional burial



Heritage redwood

\$8,500

INCLUDES 2 MEMORIAL CEREMONIES

14" diameter

Iconic coastal redwood

50 impact trees planted

**\$21,500 less per person than a
traditional burial**



Monument ponderosa pine

\$16,700

INCLUDES 2 MEMORIAL CEREMONIES

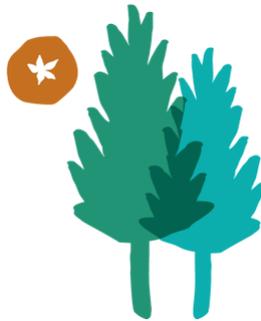
30" diameter



mountain peaks

400 impact trees planted

**\$13,300 less per person than a
traditional burial**



Reserve redwood

Pricing on request

Custom packages unlock our most exclusive species and impressive settings. These typically include trees over 55" diameter, two or more memorial ceremonies and 800+ impact trees planted in your honor.

Talk to Your Advisor



What's included

For you

- A comprehensive memorial plan and peace of mind
- Your tree, identified by its unique number and location
- The right to spread ashes beneath your tree. Most trees include two spreadings
- The right to purchase additional spreadings
- Knowledge that you're helping the planet while preserving your memory

For your loved ones

- Memorial ceremony where your ashes are mixed with soil and returned to the base of your tree, with support of a forest steward
- Customized memorial marker



- A place of natural beauty with walking trails and a visitor's center

For the earth

- Protection of green spaces and forest land
- Carbon offset from your memorial tree
- For every package, Impact Trees are planted in partnership with the non-profit One Tree Planted to help reforest America

Schedule Your Tour



I am so thrilled to know that my eternity will be spent in such a peaceful and natural setting. And I couldn't be happier knowing that I am helping to preserve a part of the coastal ecosystem!

Barbara B.

Santa Cruz Forest, California

Resources

Information to help you make informed, empowered choices.



The Costs (Hidden and Otherwise) of Cremation, Burial & Spreading

JAN 2, 2019



Tree memorial pricing vs. traditional options

FEB 22, 2018

*According to the [National Funeral Directors Association](#), the median cost of a funeral with viewing, vault and burial in 2019 was \$9,135 per person. A headstone and plot can range from \$1,700-\$10,000, depending on location, according to [Choice Mutual](#).

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neilo@betterplaceforests.com

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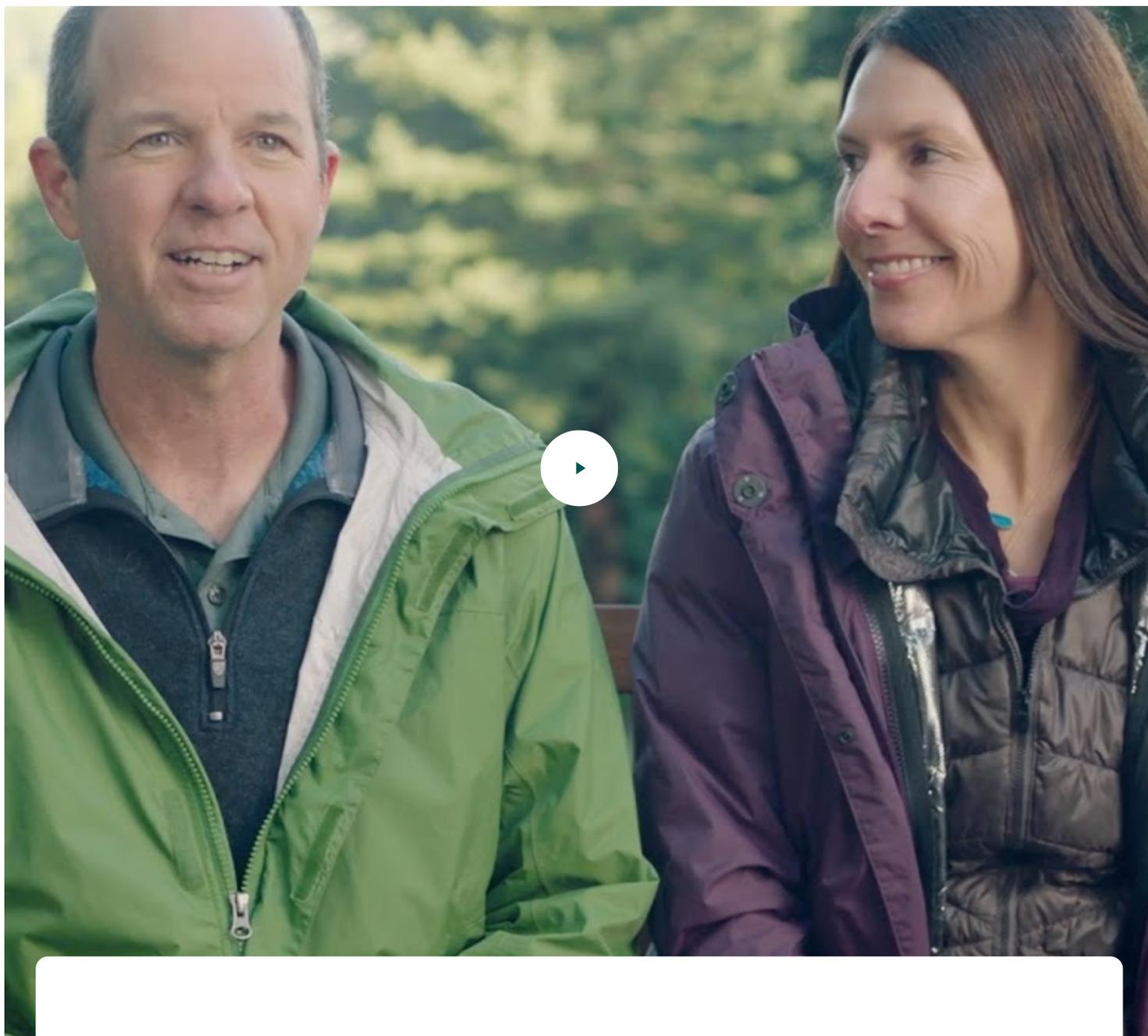
A final resting place worth talking about

Our customers choose Better Place Forests for deeply personal reasons: our stunning locations, a more personal memorial option or a beautiful place for loved ones to reflect. Many also comment on our caring team that is there every step of the way. Hear more straight from our customers.



I've always looked at a traditional burial as being too final. Not only is the traditional service roughly twice the cost, but you're very limited on what you get out of it.

Spencer R.



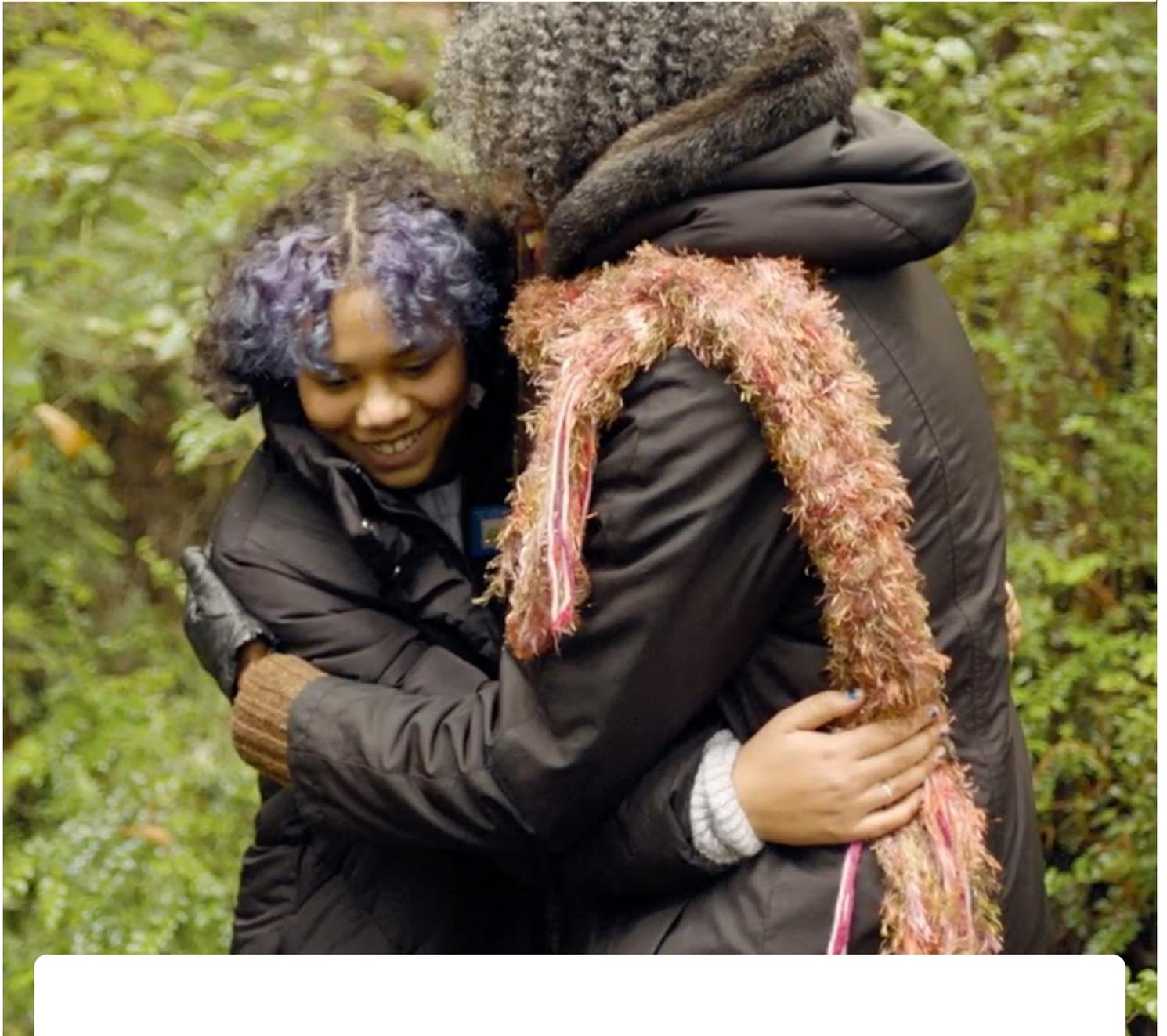
“

When you come to this forest you leave here feeling better. You leave here feeling healed and nurtured and hopeful.

Chris & Innette's Story



explains how he overcame initial doubts while Carlette explores the connection she feels to science and spirituality when she's among the trees.



“

None of us know what's on the other side of this. But I am here to tell you that I know that Louie's in a Better Place.



for their beloved husband/father brought peace to the whole family. They explore the significance of their faith in this decision, and the joy they feel knowing Louie is in a "Better Place."

Beloved by many

9/10

Customers highly recommend Better Place Forests

1,000+

People have chosen Better Place Forests as a final resting place

4.7/5

Average rating after visiting one of our forests

100,000+

People signing up to learn more



“
This opportunity is so special and exciting. No other option better supports our parents' conservation and environmental philosophy. They loved

“
This was an awesome experience! I had so much fun picking my tree. The forest is so peaceful.

“
What a wonderful and peaceful place! Our eternity is all set in a beautiful place. [Better Place Forests has a] wonderful staff

“
I chose Better Place Forests because it gave me the answer I was looking for— a place for my remains where I will continue to be relevant



the
 outdoors,
 and
 the
 preservation
 of
 open
 space.
 Mark
 F.
 Point
 Arena
 Forest,
 CA

have
 a
 wonderful
 place
 to
 rest.

Andra
 C.
 Point
 Arena
 Forest,
 CA

love
 what
 they
 do.
 We
 are
 so
 pleased.

Jim
 &
 Barbara
 T.
 Point
 Arena
 Forest,
 CA

...
 difference.
 The
 idea
 of
 being
 part
 of
 a
 forest
 brought
 me
 peace
 and
 joy.

Julia
 O.
 Santa
 Cruz
 Forest,
 CA

Verified reviews

Better Place Forests averages



Sophia

VERIFIED CUSTOMER

Beautiful and Peaceful Memory

Thank you so much for everything you and the team have done for my mom, sister. I was floored by the professionalism, care, and attention to detail that you applied to even made something that was so painful in our lives into a beautiful and peaceful memory.

POINT ARENA FOREST

FEBRUARY 2020

Jake

VERIFIED CUSTOMER

Super Impressed

Worked with Max for our online tour. After we picked online, we decided to go to the Santa Cruz Forest. She was friendly and easy to work with. She answered all of our questions to make sure we had the perfect tree for ourselves. Have been super impressed with the service. I have spoken with her and she has been friendly, helpful, and really care about the mission of the forest as a regular cemetery!

SANTA CRUZ FOREST

DECEMBER 2019

Becca

VERIFIED CUSTOMER



both made my experience of choosing a final resting place for my son a peaceful

SANTA CRUZ FOREST

AUGUST 2019

Joan

VERIFIED CUSTOMER

Loved What I Saw

I visited my tree in the Pt Arena Forest last week. I loved what I saw and experienced views of the Pacific and the creek. But I was most impressed with the beauty of the structured, well kept. I am so happy that I made the decision to have my ashes spread in a pristine and serene setting. And I love that trees are being planted in my name that were destroyed by wildfires.

SANTA CRUZ FOREST

AUGUST 2019



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Get our latest articles on better end-of-life planning sent directly to your inbox.



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CONTACT

877-830-8311

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San Francisco, CA 94123

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Tour Online

EXHIBIT E

AGREEMENT FOR THE PURCHASE OF TREE DEDICATION RIGHTS

This Agreement for the Purchase of Tree Dedication Rights ("Agreement") is made this date of [Month/Day/Year], by and between Better Place Forests Co. ("Seller") and John Doe and Jane Doe ("Buyer"). If there is more than one Buyer, they shall hold their interest as joint tenants with rights of survivorship.

Seller agrees to sell and Buyer agrees to purchase an irrevocable license to spread the ashes of up to [#] people and [#] pet(s) around [Type of Tree] (#Tree Number) (the "Dedicated Tree") in the [Name of Section] section of the Better Place Forests conservation area, [Name of Property], located at [Address of Property] (the "Forest"), subject to the terms and conditions set forth herein, and Seller's Conservation Area Rules and Regulations (the "Tree Dedication Rights").

TREE DEDICATION RIGHTS

Subject to the terms and conditions of this Agreement, Buyer's Tree Dedication Rights consist of the right to enter the Forest to spread ashes at the Dedicated Tree (for the number of persons and pets, as applicable, set forth in the second paragraph of this Agreement) and the right to visit the Dedicated Tree.

Seller shall install, at no cost to Buyer, a Forest-standard memorial marker at the Dedicated Tree at Buyer's request. If Buyer's Tree Dedication Rights include the right to spread the ashes of multiple people and/or pets, Buyer and Buyer's permitted designees and heirs will have the right to update the memorial marker at no charge after additional ashes are spread. In order to protect the Forest, Buyer acknowledges that no private memorial markers may be installed.

If the Dedicated Tree dies at any time before Buyer has placed any ashes at the Dedicated Tree, Seller will assist Buyer in selecting a comparable tree in the Forest at no additional cost to Buyer. If the Dedicated Tree dies at any time after Buyer has placed any ashes at the Dedicated Tree, Buyer shall have the right to replant an approved tree in the same location as the Dedicated Tree if it is legal and practicable to do so.

Buyer's Tree Dedication Rights are subject to the terms, conditions and requirements of the Seller's Conservation Area Rules and Regulations, which may be amended from time to time. Buyer understands and agrees that the ashes spread at the Dedicated Tree will be subject to weather, the natural environment of the forest and its inhabitants, and will be commingled with the ashes of other persons and/or pets as authorized by Buyer or by the natural movement of the earth and/or water on the property or erosion.



OPTION FOR RELOCATION

Seller hereby grants Buyer the option to select another Dedicated Tree of equal or greater value either in this Forest or another forest owned by Seller and the amount Buyer paid to Seller under this Agreement shall be applied at the time the option is exercised as a credit to the purchase of such replacement Tree Dedication Rights. Buyer may exercise this option at any time prior to the establishment of a memorial marker or the spreading of ashes beneath the Dedicated Tree. If Buyer fails to timely exercise this option, it shall automatically lapse on Month/Day/Year. If the different or other Tree Dedication Rights are of greater value than that set forth below, then Buyer shall agree to pay the difference at the time that the option is exercised.

IMPACT TREES

In connection with Buyer's purchase of Tree Dedication Rights, Seller will contribute towards the planting of [##] trees to support reforestation ("Impact Trees").

REFUND POLICY

Provided that Buyer has not yet spread any ashes at the Dedicated Tree, Buyer may, within 365 days of executing this Agreement, request in writing, and Seller will provide, a full refund of any and all funds paid by Buyer.

YOUR PRICING

Tree Dedication Rights	\$X	
Option for Relocation	Included at No Charge	
Deposit	- \$X	
Balance Owing		_____ \$X



TERMS AND CONDITIONS

Seller and Buyer hereby agree to the following terms and conditions:

1. Buyer hereby agrees to pay the Balance Owing to Seller within 30 days after the date of this Agreement, unless payment terms have been otherwise agreed between the parties and attached to this Agreement.
2. Buyer shall not be permitted to spread ashes at the Dedicated Tree until the Balance Owing and any interest due has been paid in full.
3. Buyer acknowledges that the Tree Dedication Rights are an irrevocable license, which is a type of real property interest, in the Forest. Buyer agrees that this license is subject to these terms and conditions and Seller's Conservation Area Rules and Regulations, which may be hereinafter adopted, amended or altered. A written copy of Seller's Conservation Area Rules and Regulations can be reviewed at the Forest or Seller's office from time to time and will be provided to Buyer upon request. Buyer agrees to at all times comply with such Rules and Regulations. Buyer acknowledges that the right to enter the Forest is subject to the Rules and Regulations, and shall be limited to days and times when the Forest is open to visits.
4. All references in this Agreement to "ashes" shall be understood to mean cremated remains. Spreading of the cremated remains at the Dedicated Tree shall be done only by the Buyer or a person authorized by Buyer.
5. Buyer may schedule a memorial ceremony for the cremated remains of persons during times posted by Seller from time to time. Seller may be able to accommodate a memorial ceremony outside those times upon Buyer's request and potentially at an additional charge. Ceremonies for pets are also performed at no cost provided that they are at the same time as a person's spreading.
6. Either of the following shall constitute an event of default by Buyer: (i) failure to comply with any provision in this Agreement; or (ii) failure to comply with any provision of Seller's Conservation Area Rules and Regulations. In the event of a default by Buyer, Seller shall have all remedies at law or in equity, including the right to terminate this Agreement pursuant to this Section.
7. The parties agree that it is impractical and extremely difficult to fix the actual damage, if any, which may proximately result from a breach of this Agreement by Seller or any error or mistake in connection with the Tree Dedication Rights provided hereunder; and in the event of a resulting loss, Seller's liability hereunder shall be limited to amounts theretofore paid to Seller by Buyer plus a maximum of \$150.00 as liquidated damages and not as a penalty and this liability shall be the exclusive remedy of Buyer.
8. The Tree Dedication Rights may not be assigned or transferred by Buyer without the prior written consent of Seller, which may not be unreasonably withheld. The Tree Dedication Rights may only be assigned or transferred to family members or heirs of the Buyer in the event that no cremated remains have been spread at the time of assignment or transfer. Notwithstanding the foregoing, upon Buyer's death and subject to Seller's prior written consent, which shall not be unreasonably withheld, Buyer's rights to enter the Forest to spread ashes at the Dedicated Tree and from time-to-time visit the



Dedicated Tree may be assigned to Buyer's permitted designees and heirs upon Buyer's death. It is agreed that the Tree Dedication Rights are purchased solely for personal or family commemorative purposes only and not for speculation. Neither Seller or its agents in any way represent or guarantee the feasibility of a resale thereof. Seller must be kept informed, from time to time, of the names and contact information of any transferees. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of Buyer. Buyer further agrees that Seller may assign or transfer its rights under this Agreement and that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of Seller.

9. Seller shall provide reasonable care and maintenance with respect to the Tree Dedication area as set forth in the Conservation Area Rules and Regulations.
10. Unless otherwise expressly provided in this Agreement, no waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to any party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.
11. If any part of this Agreement is unenforceable, the rest of the Agreement will stay in effect.
12. This Agreement shall be governed by the laws of the state in which the Forest is located. Buyer agrees that any suit involving this Agreement must be brought in courts within the state and county in which the Forest is located.
13. Buyer and Seller agree that the prevailing party regarding any dispute concerning this Agreement will be entitled to recover reasonable attorney's fees and enforcement costs against the non-prevailing party.



Important Notice

This Forest is NOT a cemetery under New York State Law. As a consequence, this Forest is NOT regulated by the Division of Cemeteries and consumers ARE NOT entitled to the protections and legal rights granted by New York State Law to consumers of cemeteries.

Specifically:

- **New York State Laws which provide the family and descendants of the deceased certain protections and legal rights, such as mandatory records of burials, rights of memorialization, and restrictions on removals, are NOT applicable to the Forest.**
- **The Division of Cemeteries WILL NOT inspect the Forest to ensure that the property is being maintained in its current condition and for its current purpose.**
- **New York State Laws which provide the family or descendants of the deceased continued access to cemeteries are NOT applicable to the Forest. New York State Laws which restrict the sale or transfer of cemeteries are NOT applicable to the Forest.**
- **New York State Laws which require the maintenance and preservation of burial plots or memorials for cremains in cemeteries are NOT applicable to the Forest.**
- **New York State Laws which require that cremains disposed of in a cemetery must remain where they were initially deposited are NOT applicable to the Forest.**

Please note, however, that although the Forest is not a cemetery and is not regulated by the Division of Cemeteries, Buyer owns a real property interest in the Forest and has the right to enforce Seller's contractual obligations to Buyer pursuant to the Agreement under New York State Law.

Specifically:

- **Our common goal is the preservation of the Forest and the Dedicated Trees contained within it. We will maintain the Forest as a beautiful place for your family to visit and seek to permanently protect our forests from development.**



- **You have the right pursuant to the Agreement to receive a full refund within one year after purchase, provided that no ashes have been spread at your Dedicated Tree.**
- **If your Dedicated Tree dies for any reason and you have not yet spread ashes, you have the right under the Agreement to a comparable replacement tree. If your Dedicated Tree dies for any reason after ashes have been spread, you have a right to plant an approved replacement tree in that location.**
- **You can choose to have a Forest-standard memorial marker installed at your Dedicated Tree and updated each time ashes are spread.**



EXHIBIT F

Date: September 28, 2020

To: Lewis Polishook, Director, Division of Cemeteries

Cc: Antonio Milillo, Division of Cemeteries
Jill Faber, New York State Attorney General's Office
Mark Pattison, New York State Department of State
Thomas Fuller, New York State Department of Health

From: Better Place Forests

Re: Proposal - Memorandum of Understanding

As we have described in our previous materials, Better Place Forests (BPF) is dedicated to leaving a legacy of protected landscapes at the locations in which we operate, while offering families who support this preservation with beautiful places to scatter the ashes of loved ones. Our company's commitment to service and sustainability has much to offer the State of New York and its residents, if provided the opportunity.

We appreciate that BPF's approach to conservation is a new model. We also understand that the end-of-life component of our offering is non-traditional. Although we firmly believe our approach falls outside of conventional cemetery regulation, we understand this approach may raise questions for the Division of Cemeteries about the differences between our memorial forests and a regulated cemetery.

In an effort to demonstrate our commitment to good corporate citizenship, we propose to address these concerns by entering into a voluntary arrangement (such as a Memorandum of Understanding) with the Division which would highlight BPF business practices relevant to the interests of the Division of Cemeteries and New York consumers. BPF is committed to compliance with New York laws and regulations, and such an arrangement would affirm BPF's commitment to compliance, on the record. An MOU would further help ensure transparency, accountability, and protection for the Division of Cemeteries and New York consumers.

We propose such an MOU address the following issues the Division has raised:

1. **Consumer Disclosures.** As we have shown through sample advertisements and sample contract language, BPF is willing to provide consumer disclosures that would clearly identify that memorial forests are not cemeteries, and that BPF customers would not have the same rights under New York law as cemetery customers.
2. **Memorials, Not Burials.** The MOU could contain information that reiterates that our services are strictly for families who choose cremation, but that BPF does not, nor do we allow customers to, inter, entomb or bury their loved ones on our properties. They are allowed to spread a mixture of cremated remains and native soil topically at the foot of

trees, but above the surface of the soil only, in compliance with New York state law permitting scattering ashes on private property.

3. **Protection from Development.** A Memorandum could specify that BPF will purchase the property, and place a conservation vehicle on the property, such as working with local land trusts to ensure its conservation values are protected in perpetuity.
4. **Creation of an Endowment Fund.** We would include in an MOU a commitment to create an endowment fund for any forest in the State of New York. BPF would be willing to provide reporting on its endowment funds.
5. **Agreements in Perpetuity.** The MOU may also outline that Better Place Forests will grant customers an irrevocable, perpetual right to visit a New York forest, including a selected tree.
6. **Compliance.** Better Place Forests' continued operation within the State of New York would require that the company comply with the terms of this MOU.

It is our goal to work collaboratively on the outstanding concerns that the Division of Cemeteries may have concerning our business model and mode of operation in the State of New York. We believe an MOU highlighting current BPF business practices can serve as a guide upon entering into agreements with land trusts, and also holds BPF accountable. We sincerely hope this approach helps to address the Division's concerns.

We look forward to your thoughts and response.