

SETTLEMENT AGREEMENT
BETWEEN
OFFICE OF ENDOWED CARE CEMETERIES
OF THE MISSOURI DIVISION OF PROFESSIONAL REGISTRATION
AND
STANZA & COMPANY, INCORPORATED
D/B/A OAK GROVE CEMETERY

Stanza & Company, Incorporated d/b/a Oak Grove Cemetery (“Stanza & Company” or “Licensee”) and the Office of Endowed Care Cemeteries of the Missouri Division of Professional Registration (the “OECC”) enter into this settlement agreement (the “Settlement Agreement”) for the purpose of resolving all issues set forth in this Settlement Agreement including resolution of the matter of *Missouri Office of Endowed Care Cemeteries v. Stanza and Company Incorporation, d/b/a Oak Grove Cemetery*, case number 12-1407 EN, (the “Complaint”) currently pending before the Administrative Hearing Commission. OECC and Stanza & Company may be collectively referred to herein as the “Parties.” The OECC and Stanza & Company jointly stipulate and agree to final disposition of this matter as stated in this Settlement Agreement and pursuant to §§ 536.060 and 621.045, RSMo.¹

¹ All statutory citations are to the 2000 Revised Statutes of Missouri, as supplemented, unless otherwise noted. Applicable sections of Chapter 214, RSMo, were first passed in 1991, and amended in 2010.

Stanza & Company acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against it; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the OECC at which time Stanza & Company may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the OECC.

Being aware of these rights provided to it by law, Stanza & Company knowingly and voluntarily waives each and every one of these rights subject to the terms of this Settlement Agreement and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Stanza & Company acknowledges that it has received a copy of documents that were the basis upon which the OECC determined there was cause for discipline, along with citations to law and/or regulations the OECC believes were violated. Stanza & Company stipulates to the facts for purposes of this Settlement Agreement, stipulates to all conclusions of law in this Settlement Agreement and stipulates that Stanza & Company's license as an endowed care cemetery, license no. 2000165800, is subject to disciplinary action by the OECC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 214.270 through 214.410, RSMo. Although not a condition for this settlement, the parties note that State ex rel. Mallan v. Huesemann, 942 S.W.2d 424 (Mo.App. 1997) found that, in civil actions, a party could not read or introduce at trial portions of joint stipulations of a licensee and his licensing board when the stipulations were expressly for purposes of settlement.

The Parties stipulate and agree to the disciplinary order contained in this Settlement Agreement. Stanza & Company understands that the OECC may take further disciplinary action against it based on facts or conduct not specifically mentioned in this Settlement Agreement, the Complaint, or the 2010 Audit (as defined below) that are either now known to the OECC or may be discovered.

I.
Jointly Stipulated Findings of Fact and Conclusions of Law

For purposes of settlement, the OECC and Stanza & Company stipulate and agree to the following:

The Parties

1. The OECC is an office contained within the Division of Professional Registration and is an agency of the state of Missouri that has been vested with the powers and duties to enforce and implement the Cemetery Endowed Care Fund Law, §§ 214.270 through 214.410, RSMo. Section 214.392, RSMo.

2. Stanza & Company is a Missouri corporation, in good standing, which operates under the duly registered fictitious name of Oak Grove Cemetery. Stanza & Company, under the name of Oak Grove Cemetery, holds a license as an endowed care cemetery, license no. 2000165800.

3. Oak Grove Cemetery is located at 7800 St. Charles Rock Road, St. Louis, Missouri 63114.

Procedural History

4. In 2008, the OECC conducted an audit of the books and records of the Stanza & Company's endowed care trust fund for the period of January 1, 2000 through December 31, 2007 (the "2008 Audit").²

5. In 2010, the OECC conducted a follow-up review to the 2008 Audit and conducted an audit of the Stanza & Company's endowed care trust fund for the period of January 1, 2000 through December 31, 2008 (the "2010 Audit").

6. Both the 2008 Audit and the 2010 Audit made findings and recommendations concerning Stanza & Company's endowed care trust funds.

7. On August 3, 2012, the OECC filed its Complaint with the Administrative Hearing Commission seeking discipline of Stanza & Company's endowed care cemetery license (the "AHC Case").

8. The AHC Case remains pending as of the date of execution of this Settlement Agreement.

9. After the filing of the Complaint in the AHC Case, Stanza & Co. requested an opportunity to provide documentation not provided previously

² Note that the Complaint lists 2009 as the year that this audit was conducted and defines this audit as the "2009 Audit."

in order to possibly reduce deficiency findings from the 2008 Audit and 2010 Audit.

10. As of the date of this Settlement Agreement, the OECC is conducting another audit of Stanza & Company care fund records for the period of January 1, 2009 through December 31, 2012 (the "2012 Audit"). Any violations found by the 2012 Audit that are not specifically addressed in this Settlement Agreement, are specifically excluded from this Settlement Agreement and the OECC may seek discipline based on violations found by that audit; *provided however*, that Stanza and Company reserves any and all of its rights to challenge the findings and conclusions of the 2012 Audit or any discipline sought to be imposed by the OECC.

The Stanza & Company Trust Funds

11. Stanza & Company maintains the following four separate endowed care trust funds (collectively, the "Oak Grove Trust Funds"):

a. The Cemetery Trust Fund. The Oak Grove Endowed Care Cemetery Trust Fund held by Central Trust & Investment Company (the "Cemetery Trust Fund") is used for the deposit of endowed care funds derived from the sale of grave spaces and lawn crypts in the cemetery.

b. The Mausoleum Trust Fund. The Oak Grove Perpetual Care Fund held by Bank of America, referred to herein as the “Mausoleum Trust Fund,” is used for the deposit of endowed care funds derived from the sale of crypts and niches in the Oak Grove Mausoleum.

c. The Chapel Trust Fund. The Oak Grove Mausoleum and Chapel Endowed Care Trust Fund held by Central Trust & Investment Company, referred to herein as the “Chapel Trust Fund,” is used for the deposit of endowed care funds derived from the sale of graves and niches in the area of the Oak Grove Cemetery known as the Chapel.

d. The Memorial Trust Fund. The Oak Grove Memorial Endowed Care Trust Fund (the “Memorial Trust Fund”) held by Central Trust & Investment Company is used for the deposit of endowed care funds derived from the sale of monuments and markers for interment spaces contained within Oak Grove Cemetery. As of May 4, 2012, the Memorial Trust Fund was restated to comply with Chapter 214, RSMo, and all trust assets were subsequently transferred to Central Trust & Investment Company.

Audit Violations & Cause for Discipline

12. During the period under review in the 2010 Audit, Stanza & Company violated the Cemetery Endowed Care Trust Fund Law (§ 214.270, RSMo, et seq.) as follows:

a. While Stanza & Company made their records generally available to the auditors for the 2010 Audit, certain records, including statements for two of four funds making up the Memorial Trust Fund, were not made available. As a result and as reported in the 2010 Audit Report, the auditor's financial analysis for the Memorial Trust Fund was incomplete, including the analysis related to cost basis and capital gains with respect to distributions for the period under review. OECC acknowledges that these records were provided as part of the negotiations for this Settlement Agreement;

b. Mausoleum Trust Fund.

(1) During 2000 through 2008, six deposits were made 10 to 17 months after the contracts had been paid in full in violation of Section 214.320.1, as follows:

<u>Date Paid In Full</u>	<u>Deposit Date</u>	<u>Months Difference</u>
4/12/2000	3/4/2001	11
5/16/2000	3/4/2001	10

7/17/2002	6/22/2003	11
1/24/2002	6/28/2009	17
4/2/2008	6/28/2009	10
4/15/2008	3/4/2009	10

c. Chapel Trust Fund.

- (1) During 2000 through 2001, five deposits were made 10 to 12 months after the contracts had been paid in full in violation of Section 214.320.1, as follows:

<u>Date Paid In Full</u>	<u>Deposit Date</u>	<u>Months Difference</u>
3/30/2000	3/4/2001	12
4/17/2000	3/4/2001	11
4/20/2000	3/4/2001	11
4/21/2000	3/4/2001	11
5/26/2000	3/4/2001	10

d. The Memorial Trust Fund

- (1) For the period under review for the 2010 Audit, the Memorial Trust Fund did not have a valid trustee that was a state or federally chartered financial institutions authorized to exercise trust powers in the State of Missouri in violation of Section 214.330, RSMo.
- (2) Due to a difference in interpretation regarding the interaction of Chapters 214 and 469, RSMo, between

the OECC and Stanza & Company, and for purposes of settlement, the Parties stipulate that principal in an amount of \$189,070 was disbursed from the Memorial Trust Fund in violation of § 214.330.1, RSMo, which states that the “principal of such funds shall be kept intact.”

- (3) The annual reports for the Memorial Trust Fund for 2000 through 2008 were not certified by a trustee, and the 2008 annual report for the Memorial Trust Fund contained mathematical errors.

13. Stanza & Company’s failure to make certain of the Oak Grove Trust Fund records available to the OECC auditors and failure to make timely deposits into the Mausoleum Trust Fund and the Chapel Trust Fund violates § 214.320.1 and .3, RSMo 2000, which states in relevant part:

1. An operator of an endowed care cemetery shall establish and deposit in an endowed care fund not less than the following amounts for burial space sold or disposed of, with such deposits to the endowed care fund to be made semiannually on all burial space that has been fully paid for to the date of deposit:

(1) A minimum of fifteen percent of the gross sales price, or twenty dollars, whichever is greater, for each grave space sold;

(2) A minimum of ten percent of the gross sales price of each crypt or niche sold in a community mausoleum, or a minimum of one hundred dollars for each crypt or ten dollars for each niche sold in a garden mausoleum;

(3) A minimum of seventy-five dollars per grave space for each lawn crypt sold.

...

3. . . . The operator of any cemetery representing the cemetery, or any portion of the cemetery, as an endowed care cemetery shall make available to the division for inspection or audit at any reasonable time only those cemetery records and trust fund records necessary to determine whether the cemetery's endowed care fund is in compliance with sections 214.270 to 214.410. . . .

14. Stanza & Company's failure to retain a state or federally chartered financial institution as trustee for the Memorial Trust Fund and the stipulated excessive distributions of \$189,070 of principal from the Memorial Trust Fund, violate § 214.330.1, RSMo 2000, which states:

The endowed care fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed care trust shall be a state- or federally chartered financial institution authorized to exercise trust powers in Missouri and located in this state. The income from the endowed care fund shall be distributed to the cemetery operator at least annually or in other convenient installments. The cemetery operator shall have the duty and responsibility to apply the income

to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the endowed care fund shall have been established and not for any other purpose. The principal of such funds shall be kept intact and appropriately invested by the trustee. . . . The trustee's duties shall be the maintenance of records and the accounting for and investment of moneys deposited by the operator to the endowed care fund. . . . With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator and for the opening and closing of all graves, crypts, or niches for human remains in any cemetery property owned by the cemetery operator.

15. Stanza & Company's failure to submit proper trustee-certified annual reports to the OECC with respect to the Memorial Trust Fund violates § 214.340.2, RSMo 2000, which states:

2. Subdivisions (1) through (7) of the report described in subsection 1 above shall be certified to under oath as complete and correct by a corporate officer of the trustee. Subdivision (8) of such report shall be certified under oath as complete and correct by an officer of the cemetery operator. Both the trustee and the cemetery operator or officer shall be subject to the penalty of making a false affidavit or declaration.

16. Cause exists to discipline the endowed care cemetery license of Stanza & Company pursuant to § 214.276(6), RSMo³, which states:

2. The division may cause a complaint to be filed with the administrative hearing commission as provided in chapter 621 against any holder of any license, required by sections 214.270 to 214.516 or any person who has failed to surrender his or her license, for any one or any combination of the following causes:

.....

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 214.270 to 214.516, or any lawful rule or regulation adopted pursuant to sections 214.270 to 214.516.

II.

Jointly Agreed Disciplinary Order

The Parties agree and stipulate that the following shall constitute the disciplinary order entered by the OECC in this matter under the authority of § 536.060, RSMo, and §§ 621.045 and 621.110, RSMo.

17. Stanza & Company's license is on probation. Stanza & Company's license as an endowed care cemetery is hereby placed on **PROBATION** for a period of **FIVE YEARS** beginning with the effective date of this Settlement Agreement. The period of probation shall constitute the "Disciplinary Period." During the Disciplinary Period, Stanza & Company

³ Section 214.276 was amended in 2010; however, the provisions providing cause for discipline were unchanged by the statutory amendments.

shall be entitled to operate as an endowed care cemetery under §§ 214.270 through 214.410, RSMo, as amended, provided Stanza & Company complies with the terms and conditions of the Disciplinary Period. The OECC shall close the 2008 Audit and the 2010 Audit on the effective date of this Agreement.

18. **Terms and conditions of the Disciplinary Period.** During the Disciplinary Period, Stanza & Company shall comply with the following:

General Requirements

a. Stanza & Company shall keep the OECC informed of its current telephone numbers and addresses of Stanza & Company and its manager. Stanza & Company shall notify the OECC in writing within thirty (30) business days of any change in this information. If Stanza & Company utilizes e-mail, Stanza & Company shall provide the OECC with the name and current and active e-mail address of the manager of the cemetery;

b. Stanza & Company shall comply with all applicable provisions of Chapter 214, RSMo, all OECC regulations and all federal, state and local laws and regulations related to business operations in the cemetery and death care industry. Stanza & Company shall engage

in no conduct that would give the OECC cause to file a complaint with the Administrative Hearing Commission under § 214.276.2, RSMo;

c. A representative of Stanza & Company shall meet in person with the OECC or any OECC representative as required by the OECC or its representative upon reasonable notice. Any such meetings shall be at the OECC's discretion. Stanza & Company shall accept and cooperate with unannounced visits from the OECC, or its representatives, to monitor compliance with the terms and conditions of probation;

d. Upon the request by the OECC or its representative, Stanza & Company shall make available to the OECC or its representatives any and all records requested by the OECC to show compliance with these terms and conditions;

e. Stanza & Company shall timely renew all required licenses and/or registrations, shall pay timely all fees required for such licensure/registration, and shall meet all other requirements necessary to maintain all such required licenses and registrations issued by the OECC current and active;

Auditing Requirements

f. Stanza & Company shall comply with all reasonable requests to make available records and all additional information pertinent to a pending audit requested by any auditor or auditor's staff as authorized by the OECC in relation to such pending audit;

g. Stanza & Company shall maintain all records necessary for the OECC to conduct its audits and to determine compliance with this Settlement Agreement and sections 214.270 through 214.410, RSMo;

Reporting Requirements

h. Stanza & Company shall certify and file annual reports for each of its endowed care trust funds, as required by Section 214.340, RSMo, no later than March 31 of each year;

i. Commencing November 1, 2014, Stanza & Company shall file with the OECC quarterly written compliance reports on or before February 1 (which report shall pertain to the fourth quarter of the previous year), May 1 (which report shall pertain to the first quarter of the then-current year), August 1 (which report shall pertain to the second quarter of the then-current year), and November 1 (which report shall pertain to the third quarter of the then-current year) of each year that show (i) all sales that have occurred since the previous report, (ii)

all contributions to and distributions from the Oak Grove Trust Funds, (iii) and a copy of the most recent trust transaction statements received from the trustee and Oak Grove Cemetery's attestation to compliance with all relevant provisions of Chapter 214, RSMo;

Correction of Deficiency

j. Licensee shall correct the deficiency of \$189,070 in the Memorial Trust Fund as required by § 214.325, RSMo.

19. Upon the expiration of the Disciplinary Period, the license of Stanza & Company shall be fully restored if all requirements of law have been satisfied; *provided, however*, that, in the event the OECC determines, within a period allowed by law, but not to exceed one year after the expiration of the Disciplinary Period, that Stanza & Company has violated any term or condition of this Settlement Agreement, the OECC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Stanza & Company's license.

20. No additional discipline shall be imposed by the OECC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the OECC as a contested case in accordance with the provisions of Chapter 536, RSMo.

21. This Settlement Agreement does not bind the OECC or restrict the remedies available to it concerning any violations by Stanza & Company of §§ 214.270 through 214.410, RSMo, as amended, or the regulations promulgated thereunder, that are not specifically mentioned in the Complaint, the 2010 Audit, or this Settlement Agreement, nor does the Settlement Agreement bind the OECC or restrict the remedies available to it concerning any violations of the terms and conditions of this Settlement Agreement.

22. This Settlement Agreement does not bind the OECC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in the Complaint, the 2010 Audit, or this Settlement Agreement that are either now known to the OECC or may be discovered.

23. If any alleged violation of this Settlement Agreement occurred during the Disciplinary Period, the Parties agree that the OECC may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the Settlement Agreement occurred and, if so, may impose additional disciplinary action, subject to Stanza & Company's rights to have any such determinations reviewed under Chapter 536, RSMo. Stanza & Company agrees and stipulates that the OECC has continuing jurisdiction to hold a

hearing to determine if a violation of this Settlement Agreement has occurred.

24. If the OECC determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the OECC may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s); *provided, however*, that Stanza and Company reserves any and all rights to challenge any such determinations including Stanza & Company's rights to have any such determinations reviewed under Chapter 536, RSMo.

25. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

26. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

27. The parties to this Settlement Agreement understand that the OECC will maintain this Settlement Agreement as an open record of the OECC as required by Chapters 214, 324, and 610, RSMo, as amended.

28. Stanza & Company, together with its partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the OECC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement; *provided, however*, that Stanza and Company reserves any and all rights to contest, challenge, or otherwise defend itself against any allegation by the OECC that it violated the Settlement Agreement; and *provided further* that the content of this paragraph is not meant to release the OECC its respective members, employees, agents and attorneys including former members, employees,

agents and attorneys with respect to any conduct occurring from and after the Effective Date of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable

29. This Settlement Agreement shall become effective 15 days after the document is signed by the Executive Director of the OECC. Within 15 days after the effective date of this Settlement Agreement, the OECC shall file its Notice of Dismissal in the case of *Missouri Office of Endowed Care Cemeteries v. Stanza & Company Incorporated, d/b/a Oak Grove Cemetery* pending before the Missouri Administrative Hearing Commission as Case No. 12-1407 EN.

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STANZA & COMPANY,
INCORPORATED
A Missouri Corporation

OFFICE OF ENDOWED CARE
CEMETERIES OF THE
MISSOURI DIVISION OF
PROFESSIONAL REGISTRATION

By: Marilynn N. Stanza

Marilynn Stanza, President

Date: May 20, 2014

Tom Reichard

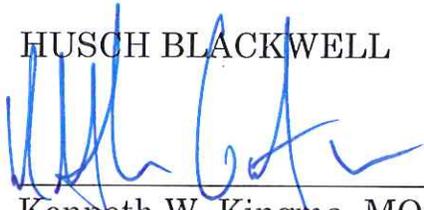
Tom Reichard, Executive Director

Date: June 6, 2014

By checking this box, I, Marilynn N. Stanza, certify that I am authorized by Stanza & Company, Incorporated to enter into this Settlement Agreement on behalf of Stanza & Company, Incorporated.

Approved:

HUSCH BLACKWELL



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