

**SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS AND AMERICAN PREARRANGED SERVICES, INC.**
(Preneed Seller)

The State Board of Embalmers and Funeral Directors ("Petitioner" or "Board") and American Prearranged Services, Inc. ("Respondent" or "Licensee") (a "Party," or collectively, the "Parties") hereby enter into this Settlement Agreement (the "Agreement") as a means to resolve Administrative Hearing Commission ("AHC") Case No. 15-0623EM.

1. The Parties stipulate and agree that: (a) the Board is an agency of the state of Missouri, created and established by RSMo. §333.151 for the purposes of executing and enforcing the provisions of RSMo. Chapter 333 and the portions of RSMo. Chapter 436 related to preneed funeral contracts; (b) Licensee is a Missouri general corporation, active and in good standing, with John H. Lake as its registered agent and a registered address with the Missouri Secretary of State of 3401 West Truman Blvd., Jefferson City, Missouri, 65109; and (c) Licensee holds preneed seller license number 2009037756.

2. The Parties further stipulation and agree that: (a) from June 22, 2011, through July 13, 2011, the Board conducted a financial examination of License No. 2009037756, as authorized and mandated by RSMo. §436.470, Board Examination No. 11-2009037756V; (b) upon completion of the financial examination, the Board's examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or after May 15, 2012 (the "Financial Examination Report"); and (c) the Financial Examination Report, among other things, provided notice of the following to the Board:

- i. that Licensee charged a \$100.00 "administrative fee" to consumers as part of 835 preneed contracts (a "Contract" or the "Contracts"); and
- ii. that Respondent did not maintain any percentage of this \$100.00 fee in trust.

3. Licensee represents that 617 of the Contracts remain active (an "Active Account" or the "Active Accounts"); all others having been cancelled or fully performed.

4. On May 1, 2015, the Board filed a Complaint against Licensee, AHC Case No. 15-0623 EM, with regard to the exceptions noted in the Financial Examination Report. Pursuant to the terms of RSMo. §536.060, the Parties waive the right to a hearing by the AHC and the right to a disciplinary hearing before the Board per §621.110 and stipulate and agree to disposition of this matter by this Agreement, other than as provided in paragraph 13 hereof. Within five days of the effective date of this Agreement, the Board shall dismiss said AHC Complaint without prejudice.

5. Licensee, acting by and through its authorized representative, represents and acknowledges that it understands the various rights and privileges afforded to 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 against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial AHC commissioner concerning the charges pending against it; and, subsequently, the right to a hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against its licenses. Being aware of these rights afforded to Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by its terms.

6. Licensee acknowledges that it has received a copy of the Financial Examination Report and other documents relied upon by the Board in deciding to file the AHC Complaint, along with citations to law and/or regulations the Board believes were violated and that it has

been advised of its right to consult with private legal counsel, at its expense, to assist it with this matter.

7. Each party shall bear its own attorney fees, costs, and expenses associated with Board Examination No. 11-2009037756V, the AHC Complaint, and this Agreement. No Party shall be considered a "prevailing party" in connection with these matters.

8. Within 60 days of the effective date of this Agreement, Licensee shall:

a. mail a letter, using the form attached hereto as Exhibit A, to the consumer for each Active Account and provide a copy of each letter to the Board; and

b. for all Contracts other than the Active Accounts, provide documentation to the Board to demonstrate that the Contracts are no longer active, such as a death certificate, proof of payment, or statement of performance for each Contract.

9. Licensee shall retain a copy of each letter mailed pursuant to paragraph 8(a) hereof for the duration of the Contract plus no less than five years after the performance or cancellation of the Contract. All letters returned as undeliverable shall be retained by Licensee, in a separate file, for the duration of the Contract plus no less than five years after the performance or cancellation of the Contract, and shall be made available for Board review. Licensee shall make a good faith effort to ascertain the consumer's current address, including contacting the provider funeral home for assistance.

10. Licensee shall maintain, in a separate file, for the duration of the Contract plus no less than five years after the performance or cancellation of the Contract, all consumer responses to the letters mailed pursuant to paragraph 8(a) above. The file containing the consumer responses shall be made available for Board review.

11. Each consumer response that requests an explanation of the administrative fee or insurance coverage, and/or which alleges any misconduct on the part of the Licensee, shall be provided to the Board within 30 days of Licensee's receipt of the same, along with a copy of any reply to the consumer by Licensee.

12. For all copies required to be provided by the Licensee to the Board pursuant to this Agreement, copies may be provided directly to the Board or through litigation counsel, and copies may be provided in paper, on a CD or drive, or by email.

13. If this Agreement is not fulfilled by Licensee pursuant to the terms hereof, in addition to all other remedies available, the Board may re-file its AHC Complaint and seek discipline of Licensee and its License No. 2009037756 on the issue of the "administrative fee" and the Contracts. Licensee knowingly and willingly waives any statute of limitations or similar argument based on the dismissal of the current AHC Complaint and/or any passage of time since the current AHC Complaint was filed and agrees that it will not raise or attempt to rely on any such defense in any such subsequent case.

14. If this Agreement is not fulfilled by Licensee pursuant to the terms hereof, in addition to all other remedies available, the Board may seek contractual enforcement in the Circuit Court of Cole County, Missouri, and Licensee hereby agrees that venue and jurisdiction are proper in said court.

15. If the Board determines that Licensee has violated a term or condition of this Agreement, and that violation would also be actionable in a proceeding before the AHC or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation(s).

16. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this 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.

17. Licensee, together with its owners, officers, successors, and assigns, and its attorneys, do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to RSMo. §536.087, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in the AHC Complaint or this Settlement, or from the negotiation or execution of this Settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Agreement, in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

18. This Agreement shall be construed in accordance with the laws of Missouri and shall be binding on Licensee, together with its owners, officers, successors, and assigns.

19. This Agreement, which constitutes an order of the Board, shall be maintained as an open and public record of the Board as provided in RSMo. Chapters 333, 610, and 324.

20. This Agreement shall be effective on the date it is executed by the last Party.

Licensee:

Board:

AMERICAN PREARRANGED SERVICES, Inc
By: [Signature]
Its: PRESIDENT

Sandy Sebastian
By: Sandy Sebastian, Executive Director
State Board of Embalmers and Funeral Directors

Dated: 5/11/16

Dated: 5.11.2016

APS Letterhead

Date

Name
Street
city

Dear

Several years ago, you purchased a prearranged funeral contract from our company that is to be performed by NAME Funeral Home. We are updating our records and wanted to confirm that you still reside at this address, and to determine if you have any questions about your prearranged funeral. Your preneed arrangement included a \$100 administrative fee that was used to purchase credit life insurance during your installment payment period. Your contract is now completely paid off, and credit life coverage is no longer needed. The remaining funds that you paid are currently in trust, and will remain so until your time of need. At that time, the arrangement described in your contract will be provided at no additional costs to your family.

If this letter is not returned to us as undeliverable, we will assume you have received this letter at the address in our records and that you do not have any questions. If this letter was forwarded to you at a different address, please contact us with your new address. If you have questions about your prearranged funeral contract please contact us. You may also direct any concerns about your prearranged funeral contract to the Missouri State Board of Embalmers and Funeral Directors at (573) 573-0813.

APS Letterhead

Date

Name
Street
city

Dear

Several years ago, you purchased a prearranged funeral contract from our company that is to be performed by NAME Funeral Home. We are updating our records and wanted to confirm that you still reside at this address, and to determine if you have any questions about your prearranged funeral. Your preneed arrangement included a \$100 administrative fee that was used to purchase credit life insurance during your installment payment period. Your contract is now completely paid off, and credit life coverage is no longer needed. The remaining funds that you paid are currently in trust, and will remain so until your time of need. At that time, the arrangement described in your contract will be provided at no additional costs to your family.

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