SETTLEMENT AGREEMENT BETWEEN MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND THOMAS BRANDTONIES & BRANDTONIES FAMILY FUNERAL HOME, INC.

Thomas Brandtonies ("Brandtonies"), Brandtonies Family Funeral Home, Inc. ("BFFH"), and the Missouri State Board of Embalmers and Funeral Directors ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Brandtonies's licenses as a funeral director (license no. 2003031762) and an embalmer (license no. 2003031759), and BFFH's funeral establishment license (license no. 2004000244) will be subject to discipline. Pursuant to § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo. The Board, Brandtonies, and BFFH jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Brandtonies, individually and on behalf of BFFH, acknowledges that he understands the various rights and privileges afforded him and BFFH by law, including the right to a hearing of the charges against him and BFFH; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial

[1] All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise noted.

evidence; the right to cross-examine any witnesses appearing against him and BFFH at the hearing; the right to present evidence on his or BFFH's 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 him and BFFH; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Brandtonies and BFFH may present evidence in mitigation of discipline; the right to seek recovery of attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to him and BFFH by law, Brandtonies, individually and on behalf of BFFH, knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him and BFFH.

Brandtonies, individually and on behalf of BFFH, acknowledges that he and BFFH have received copies of the documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Brandtonies, individually and on behalf of BFFH, stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Brandtonies's licenses as a funeral director and an embalmer, and BFFH's funeral establishment license, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapters 621 and 333, RSMo.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Board, Brandtonies, and BFFH herein jointly stipulate to the following:

1. The Board is an agency of the State of Missouri, established and existing pursuant to Section 333.151, RSMo, 2000, for the purpose of administering and enforcing Chapter 333 and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. BFFH is a Missouri corporation that has been administratively dissolved since August 3, 2005. BFFH was created on January 26, 2004 with the specific purpose of its business being to own and operate a funeral home.

3. Brandtonies was at all times known herein the President of BFFH.

4. Brandtonies holds Missouri funeral director license number 2003031762. Said license was originally issued on December 30, 2003, expired May 31, 2008, and was renewed on or about July, 1, 2008. Since becoming licensed as a funeral director, Brandtonies has established a level of professional trust and confidence with the customers of BFFH and the general public.

5. Brandtonies holds Missouri embalmer license number 2003031759. Said license was originally issued on December 30, 2003, expired on May 31, 2008, and was renewed on or about July, 1, 2008. Since first becoming licensed as an embalmer, Brandtonies has established a level of professional trust and confidence with the customers of BFFH and the general public.

6. BFFH holds funeral establishment license number 2004000244 for its location at 10 South High, Butler, Missouri 64730. Said license was originally issued on January 6, 2004, expired on December 31, 2007, and was renewed on or about July, 1, 2008. Since first conducting business as a funeral establishment in the state of Missouri, BFFH has established a level of professional trust and confidence with its customers and the general public.

7. On or about June 20, 2008, the Board decided to investigate the practices of BFFH and Brandtonies after the aforementioned licenses held by both entities had not been renewed.

8. The investigation revealed that from the approximate dates on January 9, 2008, to July 19, 2008, BFFH rendered an estimated twenty (20) incidences of funeral services.

9. During this period from January to July, Brandtonies also performed approximately twenty-two (22) incidences of embalming services at BFFH.

10. Each of the estimated twenty incidences of funeral services rendered by BFFH from January to July 2008 occurred while BFFH did not have an active funeral establishment license.

11. Each of the approximate twenty-two incidences of embalming at BFFH from January to July 2008 occurred while BFFH did not have an active funeral establishment license.

12. Section 333.121.2, RSMo, states, in relevant portion, as follows:

> 2. The board may cause a complaint to be filed with the

administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence[.]

13. 20 CSR 2120-2.070, in pertinent part, states:

No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

14. Brandtonies is responsible for the acts of BFFH in that he is registered with the Board as the funeral director in charge of the management and supervision of BFFH.

15. There is cause to discipline the funeral establishment license held by BFFH pursuant to:

a. Section 333.121.2(5), RSMo, in that it has demonstrated incompetency, misconduct, gross negligence, fraud, misrepresentation and/or dishonesty in the performance of the functions or duties as a licensed funeral establishment in that it provided

approximately twenty funeral services and approximately twenty-two embalming services without an active license.

b. Section 333.121.2(6), RSMo, in that it violated a lawful rule or regulation of Chapter 333, RSMo, namely, 20 CSR 2120-2.070(6), by failing to maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

c. Section 333.121.2(13), RSMo, in that it has violated professional trust and confidence in that it provided approximately twenty funeral services and approximately twenty-two embalming services without an active license.

16. There is cause to discipline the funeral director and license of Brandtonies pursuant to:

a. Section 333.121.2(5), RSMo, in that Brandtonies has demonstrated incompetency, misconduct, gross negligence, fraud, misrepresentation and/or dishonesty in the performance of the functions or duties of his profession in that he provided approximately twenty funeral services and approximately twenty-two embalming services on behalf of BFFH when the business did not have an active funeral establishment license.

b. Section 333.121.2(6), RSMo, in that he violated a lawful rule or regulation of Chapter 333, RSMo, namely, 20 CSR 2120-2.070(6), by failing to maintain, as the president and representative of BFFH, a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

c. Section 333.121.2(13), RSMo, in that he has violated professional trust

and confidence in that he provided approximately twenty funeral services and approximately twenty-two embalming services on behalf of BFFH when the business did not have an active funeral establishment license.

II.

Jointly Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §§ 536.060, 621.045.3, and 621.110, RSMo.

1. **Brandtonies' licenses are REVOKED.** Brandtonies's licenses as a funeral director (license no. 2003031762) and as an embalmer (license no. 2003031759) are hereby REVOKED, effective upon the date of the Executive Director's signature.

2. **BFFH's license is REVOKED.** BFFH's license as a funeral establishment (license no. 2004000244) is hereby REVOKED, effective upon the date of the Executive Director's signature.

3. Brandtonies and BFFH, upon signing this Settlement Agreement, will return all indicia of licensure to the Board or its counsel.

4. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Brandtonies of Chapter 333, RSMo, or the regulations promulgated thereunder.

5. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement

Agreement that are either now known to the Board or may be discovered.

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

7. 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.

8. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 610, and 620, RSMo.

9. Brandtonies, together with his partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, 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, 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. 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.

LICENSEES

2/17/10

Thomas Brandtonies Date

2/17/10

Brandtonies Family Funeral Home, Inc. Date

CHRIS KOSTER
Attorney General

KEVIN HALL
Assistant Attorney General
Missouri Bar No. 48763

5/5/10

Becky Dunn, Executive Director Date
State Board of Embalmers
& Funeral Directors

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ATTORNEYS FOR THE MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS