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STATE BOARD OFFICE

SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND FERRY FUNERAL HOME, INC.

D/B/A FERRY FUNERAL HOME,

(Provider License)

The State Board of Embalmers and Funeral Directors (the "Board") and Ferry Funeral Home, Inc. d/b/a Ferry Funeral Home ("Licensee" or "Ferry Funeral") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Ferry Funeral Home, Inc. d/b/a Ferry Funeral Home" (the "Settlement Agreement") to resolve the question of whether Ferry Funeral's provider license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on this license.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee 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 administrative hearing 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 license. Being aware of these rights provided it by operation of law, Licensee knowingly and voluntarily

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."

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 it.

Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, 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. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 333.315, RSMo, requires a provider license and states, in relevant part:

1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

* * *

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:

(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

2. Section 333.330.2, RSMo, authorizes discipline against provider licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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 or her certificate of registration or authority, permit, or 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 this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her

certificate of registration or authority, permit, license, or diploma from any school;

* * *

(14) Violation of any professional trust or confidence;

Joint Stipulation of Facts and Conclusions of Law

The parties agree and stipulate to the following findings of fact and conclusions of law:

Parties and Licenses

3. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

4. Ferry Funeral Home, Inc. is a Missouri corporation in good standing and has registered its address with the Board as 301 S. Washington, Nevada, Missouri 64772.

5. Ferry Funeral holds provider license number 2009039893. This license was current and active at all times relevant to this Settlement Agreement, except for when the license lapsed due to non-renewal from November 1, 2013 until it was renewed on November 19, 2013.

Conduct Giving Cause for Discipline

Unlicensed Practice as a Provider

6. By letter dated November 12, 2013, the Board notified Ferry Funeral that because its provider license expired and was not renewed prior to October 31, 2013, that Ferry Funeral could not lawfully practice as a provider. This letter also instructed Ferry Funeral as to how to seek reinstatement of its license.

7. Ferry Funeral signed its “2013Renewal Notice/Annual Report Preneed Provider” (the “Provider Renewal”) on September 13, 2013, but did not submit it to the Board on or before the due date of October 31, 2013. The Board received the Provider Renewal on November 15, 2013.

8. Ferry Funeral signed its “Reinstatement” request for its provider license on November 15, 2013 and the Board received it on November 18, 2013.

9. The Board issued a renewed provider license to Ferry Funeral on November 19, 2013.

10. The Board conducted an investigation to determine whether Ferry Funeral acted as a provider during the time when its provider license lapsed.

11. Ferry Funeral continued to act as a provider on its existing preneed contracts while its license was lapsed.

12. Ferry Funeral continued to be designated as a provider of preneed contracts while its license was lapsed and held out as such to the public.

13. Ferry Funeral provided 4 preneed contracts while its license was lapsed.

Cause to Discipline

14. Ferry Funeral practiced as a provider during a period when it held no valid license to do so.

15. The Board has cause to discipline Ferry Funeral’s provider licenses pursuant to Section 333.330.2, (6), (7), (14), and (19) RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

16. Licensee's license to practice as a provider is placed on **PROBATION** for a period of **ONE YEAR** from the effective date of this Settlement Agreement (the "Disciplinary Period"). During the Disciplinary Period, Licensee shall be entitled to practice as a provider, subject to the following terms and conditions of the Disciplinary Period:

Terms and Conditions of the Disciplinary Period

17. Licensee shall comply with the following terms and conditions of the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its funeral director in charge and its manager in charge;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active; and
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation.

18. 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.

19. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

20. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

21. If the Board 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 Board 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).

22. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

23. Licensee, together with its heirs and assigns and its attorney(s), 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 Section 536.087 RSMo, 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 this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

24. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

25. Licensee understands that it may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

26. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect

15 days after the document is signed by the Executive Director of the Board.

27. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee

FERRY FUNERAL HOME, INC.
By David H. Ferry
Ferry Funeral Home, Inc.

Board

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

Dated: 4-22-2014

Dated: 5.9.14

By checking this box, I, David H. Ferry, certify that I am authorized by Ferry Funeral Home, Inc. to enter into this Settlement Agreement on its behalf.

Approved:

David H. Ferry

Sharon K. Euler

Sharon K. Euler # 42950
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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
5.24.2014
**STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**