SETTLEMENT AGREEMENT
BETWEEN
MISSOURI STATE BOARD FOR EMBALMERS AND FUNERAL DIRECTORS
AND
THEODORE V. FOSTER
AND
TED FOSTER & SONS, INC
AND
TED FOSTER & SONS FUNERAL HOME, INC

Theodore V. Foster ("Foster"), Ted Foster & Sons, Inc ("Foster & Sons"), Ted Forster & Sons Funeral Home, Inc ("Foster & Sons Funeral Home"), 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 Foster's license as an embalmer, no. 005469, and funeral director, license no. 000890, Foster & Sons' license as a funeral home establishment, license no. 2004021704, Foster & Sons Funeral Home's licenses as funeral home establishments, license no. 001502 and no. 002397, are subject to discipline. Pursuant to § 536.060, RSMo 2000,[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 Supp. 2010. The Board, Foster, Foster & Sons, and Foster & Sons Funeral Home, jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2010.

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

Foster, Foster & Sons, and Foster & Sons Funeral Home, acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; 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 them at the hearing; the right to present evidence on their 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 them; 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 Foster, Foster & Sons, and Foster & Sons Funeral Home 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 Board.

Being aware of these rights provided to them by law, Foster, Foster & Sons, and Foster & Sons Funeral Home, knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them.

Foster, Foster & Sons, and Foster & Sons Funeral Home, acknowledge that they have received a copy of 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. Foster, Foster & Sons, and Foster & Sons Funeral Home, stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the Board that Foster's license as a embalmer, license no. 005469, and funeral director, license no. 000890, Foster & Sons' license as a funeral home establishment, license no. 2004021704, Foster & Sons Funeral Home's licenses as funeral home establishments, license no. 001502 and no. 002397, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 333, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Foster, Foster & Sons, and Foster & Sons Funeral Home, in Part II herein is based only on the agreement set out in Part I herein. Foster, Foster & Sons, and Foster & Sons Funeral Home, understand that the Board may take further disciplinary action against them based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

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

1. Theodore V. Foster, Sr. ("Foster") was licensed by the Board as an embalmer, License No. 005469. At all relevant times herein, Foster's license was active and current. Foster's license was suspended pursuant to § 324.010, RSMo, on or about

October 12, 2010, for failure to comply with the Department of Revenue on tax compliance. To date, it remains suspended.

2. Foster was licensed by the Board as a funeral director, License No. 000890. At all relevant times herein, Foster's funeral director license was active and current. Foster's funeral director license was suspended pursuant to § 324.010, RSMo, on or about October 12, 2010, for failure to comply with the Department of Revenue on tax compliance. To date, it remains suspended.

3. Foster was the registered funeral director in charge ("FDIC") for Ted Foster & Sons Funeral Home, Inc., and Ted Foster & Sons, Inc., as such had a duty to manage all aspects of the businesses, including the filing of notice to the Board of each individual businesses' intent to cease business.

4. Ted Foster & Sons Funeral Home, Inc. ("Foster & Sons Funeral Home") held funeral establishment licenses in the following locations in St. Louis, Missouri: 1207, 1221-1225 North Grand Avenue, License No. 001502; and 3737 Olive Street, License No, 002397. The Olive Street and Grand Avenue licenses were current and active until December 31, 2009, but business operations ceased in or about December 2007. Foster & Sons Funeral Home is a Missouri corporation, Charter No. 00854866, and is in good standing. Its principal place of business is 1811 Veronica Street, St. Louis, Missouri 63136.

5. Ted Foster & Sons, Inc. ("Foster & Sons") held a funeral establishment license for 10192 Halls Ferry Road, License No. 2004021704. The Halls Ferry license was current and active until December 31, 2009, but business operations ceased in or about July 2008. Foster & Sons is a Missouri corporation, Charter No. 00216634, and was administratively dissolved on February 8, 2008.

6. Foster & Sons Funeral Home held a preneed provider registration at the Grand location, Registration No. P00332. At all times relevant herein, the registration was active and current. On May 13, 2008, Foster filed written notification to the Board of intent to cease business for this preneed provider registration.

7. Foster & Sons held a preneed seller registration at the Halls Ferry location, Registration No. S00461. At all times relevant herein, the registration was active and current. On June 11, 2008, Foster & Sons filed written notification to the Board of intent to cease business for this preneed seller registration.

8. Foster & Sons held a preneed provider registration at the Halls Ferry location, Registration No. 2004021703. At all times relevant herein, the registration was active and current. On June 11, 2008, Foster & Sons filed written notification to the Board of intent to cease business for this preneed provider registration.

9. Because Foster was the FDIC for Foster & Sons Funeral Home, references herein to Foster are also references to Foster & Sons Funeral Home and vice versa.

10. Because Foster was the FDIC for Foster & Sons, references herein to Foster are also references to Foster & Sons and vice versa.

Applicable Law

11. Section 333.121, RSMo, sets forth the grounds for discipline for funeral directors, embalmers, and funeral establishments and provides in pertinent part:

> 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:
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> . . . .
>
> (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;
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> (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;
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> . . . .
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> (13) Violation of any professional trust or confidence;
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> . . . .
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> (15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo[.]

12. Section 436.015, RSMo, states in pertinent part:

2. Each provider shall under one or more preneed contracts shall:

. . . .

(2) File annually with the state board a report which shall contain:

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

(b) The name and address of each seller with whom it has entered into a written agreement since last filing a report;

(c) The name and address of the custodian of its books and records containing information about preneed contract sales and services;

. . . .

(4) At least thirty days prior to selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business, give written notification to the state board and to all sellers with whom it has one or more preneed contracts of its intent to engage in such sale or to cease doing business. In the case of a sale of assets or stock, the written notice shall also contain the name and address of the purchaser. Upon receipt of such written notification, the state board may take reasonable and necessary action to determine that any preneed contracts which the provider is obligated to service will be satisfied at the time of need. The state board may waive the requirements of this subsection, or may shorten the period of notification whenever in its discretion it determines that compliance with its provisions are not necessary. Failure of the state board to take action regarding such sale or termination of business within thirty days shall constitute such a waiver.

13. Section 436.021, RSMo, states in pertinent part:

> 2. Each seller shall under one or more preneed contracts shall:
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> . . . .
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> (3) File annually with the state board a signed and notarized report on forms provided by the state board. Such a report shall only contain:
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> (a) The date the report is submitted and the date of the last report;
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> (b) The name and address of each provider with whom it is under contract;
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> (c) The total number of preneed contracts sold in Missouri since the filing of the last report;
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> (d) The total face value of all preneed contracts sold in Missouri since the filing of the last report;
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> (e) The name and address of the financial institution in Missouri in which it maintains the trust accounts required under the provisions of sections 436.005 to 436.071 and the account numbers of such trust accounts;
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> (f) A consent authorizing the state board to order an examination and if necessary an audit by staff of the division of professional registration who are not connected with the board of the trust account, designated by depository and account number. The staff of the division of professional registration in conducting the audit shall not release a detailed accounting of the trust account to the board unless there exist circumstances indicating that the account does not comply with the requirements of sections 436.005 to 436.071, but shall provide the board with a summary of the examination or audit showing general compliance with the provisions of

sections 436.005 to 436.071;

. . . .

3. Prior to selling or otherwise disposing of a majority of its business assets, or a majority of its stock if a corporation, or ceasing to do business as a seller, the seller shall provide written notification to the state board of its intent to engage in such sale at least sixty days prior to the date set for the closing of the sale, or of its intent to cease doing business at least sixty days prior to the date set for termination of its business.

Preneed Provider Failure to Report

14. In or around June 2007, properties belonging to Foster & Sons and/or Foster & Sons Funeral Home were sold at foreclosure sales. Those properties were:

a. 10192 Halls Ferry Road, St. Louis, Missouri;

b. 1207, 1221-1225 North Grand, St. Louis, Missouri; and

c. 3737 Olive Street, St. Louis, Missouri.

15. Foster & Sons Funeral Home was evicted from the Olive Street and Grand locations on or about December 12, 2007; and Foster & Sons was evicted from the Halls Ferry Road location on or about April 12, 2008.

16. The foreclosure sale and eviction from these properties represented the disposing of a majority of Foster & Sons business assets and the majority of Foster & Sons Funeral Home business assets.

17. Pursuant to § 436.015.2, RSMo, Foster & Sons, Foster, and Foster & Sons Funeral Home, as preneed providers, were required to provide written notice to the Board at least 30 days prior to the disposing of the majority of their business assets.

18. On or about May 13, 2008, Foster & Sons and Foster & Sons Funeral Home filed a notice with the Board that, as preneed providers, they intended to sell assets and was to cease doing business after the disposal of their business assets.

19. Foster & Sons and Foster & Sons Funeral Home failed to supply written notice to the Board within at least 30 days of the disposing of the majority of their business assets.

20. Based on the aforementioned conduct, Foster & Sons is in violation of § 436.015.2, RSMo, and thus provides cause for the Board to discipline Foster & Sons' funeral home establishment license pursuant to § 333.121.2(15), RSMo.

21. Based on the aforementioned conduct, Foster & Sons Funeral Home is in violation of § 436.015.2, RSMo, and thus provides cause for the Board to discipline Foster & Sons Funeral Home's funeral home establishment license pursuant to § 333.121.2(19), RSMo.

22. Foster, as FDIC for Foster & Sons and Foster & Sons Funeral Home, had a duty to ensure that both corporate entities complied with the laws regulating funeral homes.

23. Foster's conduct, as FDIC for both of the above-mentioned corporate entities, in violation of his duty to ensure compliance with the law as a FDIC constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of a funeral director and thus cause exists for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(5), RSMo.

24. Based on the aforementioned conduct, Foster, as FDIC, in violation of his duty to ensure compliance with the law as a FDIC, assisted in enabling Foster & Sons and Foster & Sons Funeral Home to violate § 436.015.2, RSMo, and thus cause exists for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(6), RSMo.

25. Foster's conduct as outlined above, including, but not limited to, his failing to timely notify the Board of the impending disposal of a majority of business assets, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of an embalmer or funeral director, and thus provides grounds for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(5), RSMo.

Preneed Seller Failure to Report

26. In or around June 2007, properties belonging to Foster & Sons and/or Foster & Sons Funeral Home were sold at foreclosure sales. Those properties were:

a. 10192 Halls Ferry Road, St. Louis, Missouri;

b. 1207, 1221-1225 North Grand, St. Louis, Missouri; and

c. 3737 Olive Street, St. Louis, Missouri.

27. Foster & Sons Funeral Home was evicted from the Olive Street and Grand locations on or about December 12, 2007; and Foster & Sons was evicted from the Halls Ferry Road location on or about April 12, 2008.

28. The foreclosure sales of and evictions from these properties represented the disposing of a majority of Foster & Sons' and/or Foster & Sons Funeral Home's business assets.

29. Pursuant to § 436.021.3, RSMo, as a preneed seller, Foster & Sons was required to provide written notice to the Board at least 60 days prior to the disposing of the majority of its business assets.

30. On or about June 11, 2008, Foster & Sons filed a notice with the Board that as a preneed seller, it intended to sell assets and to cease doing business after the disposal of its business assets.

31. Based on the aforementioned conduct, Foster & Sons is in violation of § 436.021.3, RSMo, and thus cause exists for the Board to discipline Foster & Sons' establishment license pursuant to § 333.121.2(15), RSMo.

32. Foster, as FDIC for Foster & Sons and Foster & Sons Funeral Home, had a duty to ensure that both corporate entities complied with the laws regulating funeral homes.

33. Based on the aforementioned conduct, Foster, as FDIC, in violation of his duty to ensure compliance with the law as a FDIC enabled Foster & Sons to violate § 436.021.3, RSMo, and thus cause exists for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.330.2(6), RSMo Cum. Supp. 2009.

34. Foster's conduct as outlined above, in the capacity as FDIC for the above-mentioned corporate entities is in violation of his duty to ensure compliance with the law as a FDIC, and including, but not limited to, the failing to timely notify the Board of the impending disposal of a majority of business assets, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of an embalmer or funeral director, and thus provides grounds for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(5), RSMo.

Preneed Provider Failure to File Annual Report

35. Foster & Sons was registered as a preneed provider, Registration No. 2004021703, until a written ceasement of business notification was filed with the Board on May 13, 2008.

36. Foster & Sons Funeral Home was registered as a preneed provider, Registration No. P00332, until a written ceasement of business notification was filed with the Board on May 13, 2008.

37. As preneed providers, Foster & Sons and Foster& Sons Funeral Home were required to file annual reports pursuant to § 436.015.2(2), RSMo.

38. Foster & Sons and Foster & Sons Funeral Home failed to file preneed provider annual reports for 2007.

39. Based on the conduct described above, Foster & Sons Funeral Home is in violation of § 436.015.2(2), thus providing cause for the Board to discipline Foster & Sons Funeral Home's establishment license pursuant to § 333.121.2(15), RSMo.

40. Based on the conduct described above, Foster & Sons is in violation of § 436.015.2(2), thus providing cause for the Board to discipline Foster & Sons' establishment license pursuant to § 333.121.2(15), RSMo.

41. Foster, as FDIC for Foster & Sons and Foster & Sons Funeral Home, had a duty to ensure that both corporate entities complied with the laws regulating funeral homes.

42. Foster's conduct in violation of his duty as FDIC for the aforementioned corporate entities to ensure compliance with the law, and including but not limited to, failing to ensure the filing of the annual preneed provider reports, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of an embalmer or funeral director, and thus provides grounds for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(5), RSMo.

43. Based on the aforementioned conduct and because Foster, as FDIC for the aforementioned corporate entities, violated his duty as FDIC to ensure compliance with

the law, enabled Foster & Sons Funeral Home and Foster & Sons to violate § 436.015.2(2), RSMo, and thus cause exists for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(6), RSMo.

Preneed Seller Failure to File Annual Report

44. Foster & Sons was registered as a preneed seller, Registration No. S00461, until a ceasement notification was filed with the Board on June 11, 2008.

45. As a preneed seller, Foster & Sons was required to file an annual report pursuant to § 436.021.2(2), RSMo.

46. Foster & Sons failed to file a preneed seller annual report for 2007.

47. Foster, as FDIC for Foster & Sons and Foster & Sons Funeral Home, had a duty to ensure that both corporate entities complied with the laws regulating funeral homes.

48. Foster's conduct, as FDIC for the aforementioned corporate entities, violated his FDIC duty to ensure compliance with the law, and including, but not limited to, failing to ensure the filing of the annual preneed seller reports, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of an embalmer or funeral director, and thus provides grounds for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(5), RSMo.

49. Based on the conduct described above, Foster & Sons is in violation of § 436.021.2(2), thus providing cause for the Board to discipline Foster & Sons' establishment license pursuant to § 333.121.2(15), RSMo.

50. Based on the conduct described above, Foster, as FDIC with a duty to ensure compliance with the law, is in violation of § 436.021.2(2), thus providing cause for the Board to discipline Foster's embalmer's and funeral director's licenses pursuant to § 333.121.2(15), RSMo.

Headstones

51. Foster, as a funeral director, held a professional trust and confidence to the next of kin of the deceased and to the public at large that he served.

52. Foster & Sons Funeral Home, as a funeral home, held a professional trust and confidence to the next of kin of the deceased and to the public at large that it served.

53. In or around 1993, Foster was involved in producing at least 22 headstones for a cemetery relocation project spurred by the expansion of the St. Louis City Airport from the Washington Park Cemetery.

54. Twenty-two of the headstones were not ultimately used, despite having the names and dates of decedents on them because of disagreement by family members of the deceased on the accuracy of the information. These and other headstones remained in the possession of Foster.

55. In December 2007, Foster was evicted from his business location on Olive Street in St. Louis, Missouri.

56. Upon eviction, Foster & Sons Funeral Homes failed to remove the headstones and abandoned them in the building without any records or documentation.

57. These headstones were later moved outside of the building by the new occupant of the building, and for several weeks were left lining an adjacent sidewalk to the consternation of relatives of the deceased and the public at large who frequented the area.

58. By on or about January 24, 2008, Foster finally collected the headstones and placed them in a trailer.

59. Foster & Sons Funeral Home's conduct, as outlined above, including, but not limited to, the abandonment of the headstones, constitutes a violation of the professional trust or confidence that Foster & Sons Funeral Home had to the next of kin of the deceased and the public at large as a licensed funeral establishment, and thus provides grounds for the Board to discipline Foster & Sons Funeral Home's funeral establishment license pursuant to § 333.121.2(13), RSMo.

Failure to Notify

60. Foster, as a funeral director, held a professional trust and confidence to the next of kin of the deceased that he served.

61. Foster & Sons, as a funeral home, held a professional trust and confidence to the next of kin of the deceased that it served.

62. In or around April 11, 2008, Foster, as the registered FDIC of Foster & Sons, oversaw the eviction of Foster & Sons from its Halls Ferry location.

63. Despite having bodies belonging to families in his possession, Foster failed to contact the families in advance to provide notice of the eviction and subsequent removal of the family members' loved one's bodies.

64. Foster's conduct, as outlined above, in the capacity of FDIC for Foster & Sons, including, but not limited to, failure to provide notice to families on the eviction and subsequent removal of the aforementioned bodies, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of a funeral director, and thus provides grounds for the Board to discipline Foster's funeral director's license pursuant to § 333.121.2(5), RSMo.

65. Foster's conduct, as outlined above, in the capacity of FDIC for both corporate entities, including, but not limited to, failure to provide notice to families on the eviction and subsequent removal of the aforementioned bodies, constitutes a violation of the professional trust or confidence that Foster had to the next of kin of the deceased as a licensed funeral director, and thus provides grounds for the Board to discipline Foster's funeral director's license pursuant to § 333.121.2(13), RSMo.

66. Foster & Sons' conduct, as outlined above, including, but not limited to, failure to provide notice to families on the eviction and subsequent removal of the aforementioned bodies, constitutes incompetence, misconduct, or gross negligence in the performance of the functions and duties of a funeral establishment, and thus provides grounds for the Board to discipline Foster & Sons' funeral establishment's license pursuant to § 333.121.2(5), RSMo.

67. Foster & Sons' conduct, as outlined above, including, but not limited to, failure to provide notice to families on the eviction and subsequent removal of the aforementioned bodies, constitutes a violation of the professional trust or confidence that Foster & Sons had to the next of kin of the deceased as a licensed funeral home, and thus provides grounds for the Board to discipline Foster & Sons' funeral establishment's license pursuant to § 333.121.2(13), RSMo.

II.
Joint 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, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

68. **Foster's license is suspended, followed by a period of probation.** Foster's license as a funeral director is hereby SUSPENDED for a period of 3 YEARS, and shall immediately thereafter be placed on PROBATION for a period of 2 YEARS. The periods of suspension and probation shall constitute the "disciplinary period."

During the period of suspension, Foster shall not be entitled to practice as a embalmer pursuant to Chapter 333, RSMo. During the period of probation, Foster shall be entitled to practice as a embalmer under Chapter 333, RSMo, provided Foster adheres to all the terms of this Settlement Agreement.

69. **Foster's license is suspended, followed by a period of probation.** Foster's license as an embalmer is hereby SUSPENDED for a period of 3 YEARS, and shall immediately thereafter be placed on PROBATION for a period of 2 YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Foster shall not be entitled to practice as an embalmer pursuant to Chapter 333, RSMo. During the period of probation, Foster shall be entitled to practice as an embalmer under Chapter 333, RSMo, provided Foster adheres to all the terms of this Settlement Agreement.

70. **Foster & Sons Funeral Home's licenses are revoked and all indicia of licensure shall be surrendered immediately.** Foster & Sons Funeral Home's licenses as funeral establishments are hereby REVOKED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

71. **Foster & Sons's license is revoked and all indicia of licensure shall be surrendered immediately.** Foster & Son's license as a funeral home establishment is

hereby REVOKED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

72. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

73. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

General Requirements

A. Licensee shall keep the Board informed of Licensee's current work and home 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 his current and active e-mail address;

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. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

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;

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;

I. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;

J. Licensee shall provide a copy of this Order to any employer engaged in the funeral industry within 5 business days of the commencement of his employment or within 5 days of Licensee's receipt of this Order;

74. Upon the expiration of the disciplinary period, the licenses of Foster shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Foster 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 suspend, revoke or otherwise lawfully discipline Foster's licenses.

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

76. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Foster, Foster & Sons Funeral Home, or Foster & Sons, of Chapter 333, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

77. 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.

78. If any alleged violation of this Settlement Agreement occurs during the disciplinary period, the parties agree that the Board 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 occurred and, if so, may impose further disciplinary action. Foster, Foster & Sons, and Foster & Sons Funeral Home agree and stipulate that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

80. 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.

81. 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 324, RSMo, as amended.

82. Foster, Foster & Sons, and Foster & Sons Funeral Home, together with their 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 (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. 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.

83. Foster, Foster & Sons, and Foster & Sons Funeral Home, understands that they may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Foster's, Foster & Sons', Foster & Sons Funeral Homes' licenses. If Foster, Foster & Sons, and/or Foster & Sons Funeral Home desire the Administrative Hearing Commission to review this Settlement Agreement, Foster may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

84. If Foster, Foster & Sons, and/or Foster & Sons Funeral Home, request 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 Foster's, Foster & Sons', and Foster & Sons Funeral Homes' licenses. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Board may proceed to seek discipline against Foster, Foster & Sons, and/or Foster & Sons Funeral Home, as allowed by law. If Foster, Foster & Sons, and/or Foster & Sons Funeral Home, do not request review by the Administrative Hearing Commission, then this Settlement

Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

Theodore V. Foster Sr. 12-21-11

Theodore V. Foster Sr. Date

LICENSEE

Theodore V. Foster Sr 12-21-11

Foster & Sons, Inc Date

LICENSEE

Theodore V. Foster Sr. 12-21-11

Foster & Sons Funeral Home, Inc. Date

MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Sandy Sebastian

Sandy Sebastian, Executive Director

Date: 1-9-12

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