SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND OSCAR E. FRIDAY

(Funeral Director and Embalmer Licenses)

The State Board of Embalmers and Funeral Directors (the "Board") and Oscar E. Friday ("Licensee" or "Friday") enter into this "Settlement Agreement Between The State Board of Embalmers and Funeral Directors and Oscar E. Friday" (the "Settlement Agreement") to resolve the question of whether Licensee's funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on Licensee's funeral director and embalmer licenses.

Pursuant to the terms of Section 536.060 RSMo[1], 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 that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and

[1] All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

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.

Licensee acknowledges that he 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 he has been advised of his right to consult with private legal counsel, at his expense, to assist him 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 324.010, RSMo, requires that professional licenses, such as funeral director and embalmer licenses be suspended if the licensee fails to pay his taxes due to the State of Missouri and states:

> All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the

professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

2. Section 333.031, RSMo, requires a license to engage in the practice of either an embalmer or a funeral director and states:

> 1. No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.
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> 2. No person shall engage in the practice of funeral directing unless he has a license issued under this chapter nor shall any person use in connection with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", "funeral director" or other title implying that he is in the business defined as funeral directing herein, unless he or the individual having control, supervision or management of his business is duly licensed to practice funeral directing in this state.

3. Section 333.330, RSMo, authorizes the Board to seek discipline against funeral directors and embalmers and states, in relevant portion:

> 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:
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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;

(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:

The Parties and License

4. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

5. Friday is an individual who has registered his address with the Board at 1315 E. 60th Street, Kansas City, Missouri 64110.

6. Friday holds funeral director license number 004809 that is current and active, but suspended as of October 20, 2012 due to Friday's failure to comply with Missouri tax laws per Section 324.010, RSMo.

7. Friday holds embalmer license number 006193 that current and active, but suspended as of October 20, 2012 due to Friday's failure to comply with Missouri tax laws per Section 324.010, RSMo.

Conduct Giving Cause for Discipline

8. Friday's funeral director and embalmer licenses were both suspended by operation of law on October 20, 2012 due to Friday's failure to comply with Missouri tax laws.

9. By letter dated October 25, 2012, the Board notified Friday of the suspension of his funeral director and embalmer licenses and advised Friday that he could not practice as an embalmer or funeral director until the administrative suspension was lifted.

10. On November 7, 2012, the Board's inspector visited Friday's employer's funeral establishment and met with Mr. Friday.

11. During the November 7, 2012 interview, Mr. Friday denied practicing as an embalmer while his license was suspended.

12. Between October 31, 2012 and November 5, 2012, while his embalmer's license was suspended, Mr. Friday embalmed six bodies.

13. While his license was suspended, Friday held out to his employer and the public that he held an embalmer license that was current and active.

14. The Board has cause to discipline Licensee's funeral director and embalmer licenses pursuant to Section 333.330.2 (5), (6), (7), and (14), RSMo.

Jurisdiction and Venue

15. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 22 and 23 of the Funeral Director Probation Order.

16. Venue is proper.

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:

17. Licensee's license to practice as a funeral director and his license to practice as an embalmer are hereby placed on **PROBATION** for a period of **THREE YEARS** from the effective date of this Settlement Agreement (the "Disciplinary Period"). During the Disciplinary Period, Licensee shall be entitled to practice as a funeral director and as an embalmer, upon proper licensure, subject to the following terms and conditions of probation:

Terms and Conditions of the Disciplinary Period

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

a. Licensee shall not practice as an embalmer or as a funeral director until the administrative suspension of his licenses has been lifted;

b. Licensee shall take all action necessary to have the administrative suspension, pursuant to Section 324.010, RSMo, of his funeral director and embalmer licenses lifted within 30 days of the effective date of this Settlement Agreement;

c. 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;

d. 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;

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. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;

g. 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;

h. 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;

i. 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;

j. Licensee shall provide any death care employer with a copy of this Settlement Agreement within 5 working days from the date of receipt of the final executed Settlement Agreement and within 5 working days from the date of any new employment.

k. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation; and

l. Licensee shall not serve as the supervisor of any funeral director 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.

19. 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.

20. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's licenses 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 funeral director and/or embalmer licenses.

21. The Board shall enter no order imposing further discipline on Licensee's funeral director and/or embalmer licenses without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

22. 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).

23. 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 funeral director and/or embalmer licenses of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

24. Licensee, together with his heirs and assigns and his attorney(s), does 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.

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

26. Licensee understands that he 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. 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.

27. 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.

28. 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

Oscar E. Friday

Oscar E. Friday

Dated: 6-13-2014

Board

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

Dated: 6/30/14

Approved:

Sharon K. Euler # 42950
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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
7.15.14
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS