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STATE BOARD OFFICE
**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND NEIL D. GALBRAITH**
(Funeral Director and Preneed Agent Licenses)

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

Pursuant to the terms of Section 536.060 RSMo¹, the parties 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 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 it may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his licenses. 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. Statutes repealed as of August 28, 2009 are also designated as "(old law)."

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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. Licensee acknowledges that he has been advised of his right to seek private legal counsel to represent him in 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 licenses are 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 333.021.2, RSMo, authorizes the State Board to issue funeral director licenses to qualified individuals and states, in relevant portion, "No person shall engage in the practice of funeral directing unless he has a license issued under this chapter...."

2. Section 333.325.1, RSMo, authorizes the State Board to issue registrations to preneed agents and states:

No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's website.

3. Section 333.330.2, RSMo, authorizes discipline against preneed agent and funeral director 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:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(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;

(10) Misappropriation or theft of preneed funds;

(14) Violation of any professional trust or confidence;

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

4. Section 333.121.2, RSMo (2000)(old law) authorizes discipline against a funeral director license for conduct that occurred before August 28, 2009, and stated, in relevant portion:

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:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(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;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo;

5. Section 436.412, RSMo, authorizes discipline against any licensee or registrant for violations of the provisions of the provisions of Chapter 436 related to preneed contracts in even though the provisions of the law in place prior to August 28, 2009, have been repealed and states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

6. Section 333.061, RSMo, requires that each funeral establishment have a funeral director in charge and states, in relevant part:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

7. Regulation 20 CSR 2120-1.040 (14) defines the duties of the funeral director in charge of any establishment and states:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

8. Regulation 20 CSR 2120-3.200(1)(C) requires each seller to designate a manager in charge and states:

(C) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within thirty (30) days of the change.

9. Section 436.021.2(1), RSMo, (2000) (old law) required a seller to maintain its records and stated:

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

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements.

10. Section 436.465, RSMo, requires a seller to maintain its records and states:

A seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

11. Section 436.027, RSMo, (2000) (old law) allowed a preneed seller to retain 20% with the rest to be placed into trust and stated:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

12. Section 436.031, RSMo (2000) (old law) set forth the requirements for a preneed trust and stated, in relevant portion

1. The trustee of a preneed trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it by the seller of a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, pursuant to the provisions of section 436.005 to 436.071. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and the trustee maintains adequate records of all payments received.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof. The trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. A preneed trust agreement may provide that when the principal and interest in a preneed trust exceeds two hundred fifty thousand dollars, investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri-registered independent qualified investment advisor designated by the seller who established the trust; provided, that title to all investment assets shall remain with the trustee and be kept by the trustee to be liquidated upon request of the advisor of the seller. In no case shall control of said assets be divested from the trustee nor shall said assets be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in. The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.

13. Section 436.439, RSMo, sets forth standards for trust funded preneed contracts, after August 28, 2009, and states:

1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333 and this chapter or other state or federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities. This presumption may be rebutted by a showing to the board that control does not in fact exist.

7. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trustee maintains adequate records that individually and separately identify the payments, earnings, and distributions for each preneed contract.

8. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, other circumstances of the trust, and all other requirements of sections 436.400 to 436.520.

9. All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets. Principal of the trust shall not be used to pay the costs of administration. If the income of the trust is insufficient to pay the costs of administration, those costs shall be paid as per the written agreements between the seller, provider and the trustee.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

11. Providers shall request payment by submitting a certificate of performance to the seller certifying that the provider has rendered services under the contract or as requested. The certificate shall be signed by both the provider and the person authorized to make arrangements on behalf of the beneficiary. If there is no written contract between the seller and provider, the provider shall be entitled to the market value of all trust* assets allocable to the preneed contract. Sellers shall remit payment to the provider within sixty days of receiving the certificate of performance.

12. If a seller fails to make timely payment of an amount due a provider under sections 436.400 to 436.520, the provider shall have the right, in addition to other rights and remedies against such seller, to make

demand upon the trustee of the preneed trust for the contract to distribute to the provider from the trust all amounts to which the seller would be entitled to receive for the preneed contract.

13. The trustee of a preneed trust, including trusts established before August 28, 2009, shall maintain adequate books and records of all transactions administered over the life of the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 436.460. The seller shall furnish to each contract purchaser, within thirty days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract including the principal and interest paid to date.

14. A preneed trust, including trusts established before August 28, 2009, shall terminate when the trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

14. Section 436.440, RSMo, allows the trustee to delegate its duties and powers, but subject to certain limits and states:

1. The provisions of this section shall apply to all preneed trusts, including trusts established before August 28, 2009.

2. A preneed trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills would reasonably delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the agency, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the agency.

3. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the agency.

4. By accepting a delegation of powers or duties from the trustee of a preneed trust, an agent submits to the jurisdiction of the courts of this state.

5. Delegation of duties and powers to an agent shall not relieve the trustee of any duty or responsibility imposed on the trustee by sections 436.400 to 436.520 or the trust agreement.

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

Jointly Stipulated Findings of Facts and Conclusions of Law

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

15. 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.

16. Neil Galbraith is an individual who registered his address with the Board as 1823 Blue Mills Road, Independence, Missouri 64058.

17. Neil Galbraith holds funeral director license number 005471 that was and is current and active at all times relevant to this matter.

18. Galbraith holds preneed agent license number 2010002545 that was and is current and active at all times relevant to this matter.

19. Galbraith serves as funeral director in charge of New Salem Funeral Home, Inc. that holds establishment license number 002114, and is located at 1823 Blue Mills Road, Independence, Missouri ("New Salem Funeral")

20. Galbraith served as manager in charge for New Salem Pre-Arrangements, Inc, seller license number 2010001995, located at 1823 N Blue Mills Road, Independence, MO (“New Salem Pre-Arrangements”).

21. Prior to the passage of the law requiring preneed sellers to be licensed, New Salem Preneed Arrangements registered with the Board as a preneed seller, registration number S00520.

22. Under its authority found in Section 436.470, RSMo, the Board conducted a financial examination of New Salem Pre-Arrangements in March, 2012.

23. By letter dated December 29, 2011, the Board requested certain documents and records from New Salem Pre-Arrangements.

24. New Salem Pre-Arrangements provided books and records to the Board in response to the Board’s request.

25. New Salem Pre-Arrangements did not produce all books and records the Board required to fully examine all payments made by purchasers on contracts and into what accounts those funds were deposited and when such funds were deposited.

26. In March, 2012, the Board’s financial examiner conducted an examination of New Salem Pre-Arrangements’ books and records that included an on-site review of the books and records (the “Financial Examination”).

27. After the Board’s examiner completed the Financial Examination, he prepared a Financial Examination Report dated April 6, 2012 (the “First Examination Report”).

28. By letter dated April 9, 2012, the Board provided a copy of the First Examination Report to New Salem Pre-Arrangements for response and requested a plan of action to correct the noted exceptions.

29. The Board's examiner prepared an Amended Financial Examination Report, dated April 11, 2012 (the "Examination Report"). A true and accurate copy of the Examination Report is attached to this Settlement Agreement as Exhibit A and incorporated into this Agreement by reference as if fully set forth in this Settlement Agreement².

30. Both the First Examination Report and the Examination Report noted 4 exceptions.

31. By letter dated April 11, 2012, the Board provided New Salem Pre-Arrangements with a copy of the Examination Report and requested a response and a plan to correct the noted exceptions.

32. On July 10, 2012, Galbraith appeared before the Board to discuss the results of the Financial Examination and the exceptions noted in the Examination Report and to discuss Galbraith's role with New Salem Pre-Arrangements and his conduct related to the handling of consumer funds paid to New Salem Pre-Arrangements for preneed contracts.

Violation of Professional Trust and Confidence

33. Galbraith, as manager in charge of New Salem Pre-Arrangements, acted on behalf of New Salem Pre-Arrangements in making all decisions related to the sale of preneed funeral contracts.

34. Galbraith met with customers of New Salem Pre-Arrangements and received, on behalf of New Salem Pre-Arrangements, funds customers paid to New Salem Pre-Arrangements to purchase their preneed funeral contracts.

35. Galbraith had the duty and responsibility to ensure that the funds preneed contract purchasers paid for their preneed funeral contracts were properly safeguarded and deposited into

² Certain confidential information has been redacted from the Examination Report pursuant to Section 436.525, RSMo.

trust in accordance with the law and with the contracts between New Salem Pre-Arrangements and the preneed contract purchasers.

36. Galbraith made the decisions on behalf of New Salem Pre-Arrangements as to when preneed funds would be deposited and into what account they would be deposited.

37. The preneed customers of New Salem Pre-Arrangements placed their trust and confidence in Galbraith as a preneed agent and as the manager in charge of New Salem Pre-Arrangements to properly and lawfully perform the duties of a preneed agent and as the manager in charge of a preneed seller.

Seller Served as Co-Trustee of Preneed Trust

38. On August 8, 1989, Galbraith, on behalf of New Salem Pre-Arrangements, signed an agreement with First Trust of Mid America, located in Belton, Missouri ("First Trust"), for First Trust of Mid America to establish a preneed trust and for First Trust to serve as the trustee (the "Preneed Trust").

39. On June 17, 2002, Galbraith, acting on behalf of New Salem Pre-Arrangements (referenced in the Trust Agreement as "Seller"), and First Trust entered into a "Second Amendment to Trust Agreement" that stated:

Seller is hereby appointed Co-Trustee to act along with Bank Trustee in the administration of said Trust. Co-Trustee shall have the authority to make investment recommendations and agrees to hold harmless the Bank Trustee for any investment recommendations made by the Co-Trustee and followed by the Bank Trustee. All assets will be under the custody of the Bank Trustee and the Bank Trustee shall have the final decision whether to accept the investment recommendations made by the Co-Trustee.

40. Galbraith, on behalf of New Salem Pre-Arrangements, acted as Co-Trustee of the Preneed Trust until May 11, 2012 when New Salem Pre-Arrangements and First Trust executed a "Revocation of Second Amendment to Trust Agreement".

No Deposits Made Into Preneed Trust After March, 1999

41. Galbraith last made a deposit into the Preneed Trust in March, 1999³.
42. From the date of the last deposit into the Preneed Trust in March, 1999 until the date of the Financial Examination, New Salem Pre-Arrangements continued to sell new preneed contracts and continued to collect funds from consumers as payment for their preneed contracts.
43. As of the date of the Financial Examination, New Salem Prearrangements held 418 active, unfulfilled preneed contracts (the "Active Contracts").
44. In the trust statement provided during the Financial Examination by First Trust, the balance of funds held in trust was \$ 93,693.17.
45. The funds held by First Trust represented funds for 37 preneed contracts.
46. The trust at First Trust should have held at least \$1,077,730.29.
47. Galbraith failed to deposit into the trust at First Trust, at least \$984,037.12.
48. Galbraith deposited none of the consumer funds paid on preneed contracts into trust after March of 1999.
49. Galbraith represented to the preneed purchasers that the funds paid to New Salem Pre-Arrangements would be held in trust at First Trust in accordance with Missouri Preneed Statutes.
50. Galbraith represented to New Salem Pre-Arrangement's preneed purchasers that the funds the purchasers paid for their preneed contracts would be held in trust at First Trust in accordance with their preneed contracts.

³Galbraith, as manager in charge, provided no documents to confirm the exact date of the last deposit. He also offered testimony that the date may have been December, 1999.

51. The funeral director in charge of any funeral establishment is responsible for the general management and supervision of all aspects of the funeral establishment and the services offered to the public.

52. The manager in charge of a preneed seller is responsible for the general management and supervision of all aspects of the operating as a preneed seller and ensuring compliance with all applicable laws.

Causes for Discipline

53. Galbraith violated Section 436.031, RSMo (2000) (old law) and Section 436.430, RSMo (new law) by executing the Second Amendment to Trust Agreement with First Trust designating New Salem Pre-Arrangements as Co-Trustee of the Preneed Trust because New Salem Pre-Arrangements lacked authority to serve as Co-Trustee of the Preneed Trust because it was not an entity with authority to exercise trust powers in Missouri.

54. Galbraith violated Section 436.031, RSMo (2000) (old law) and Sections 436.430 and .440, RSMo (new law) by acting on behalf of New Salem Pre-Arrangements as Co-Trustee because Galbraith lacked authority to make investment decisions or investment recommendations for the Preneed Trust because he was not an entity authorized to exercise trust powers in Missouri nor was he a federally registered or Missouri registered independent qualified investment advisor.

55. Galbraith violated his duties owed to New Salem Pre-Arrangements and as the funeral director in charge of New Salem Funeral Home, Inc. and as manager in charge of New Salem Pre-Arrangements by the conduct set forth in this Settlement Agreement.

56. Galbraith retained in excess of 20% of the preneed funds paid by consumers on contracts sold before August 28, 2009 in violation of Section 436.027, RSMo, (2000) (old law).

57. For contracts sold after August 28, 2009, Galbraith, as manager in charge, failed to deposit 100% of consumer payments on preneed trusts into the Preneed Trust in violation of Section 436.430, RSMo (new law).

58. Galbraith failed to maintain books and records for New Salem Pre-Arrangements so as to accurately record and track payments made by consumers on preneed contracts in violation of Section 436.465, RSMo, and 436.021.2(1), RSMo (2000)(old law).

59. Galbraith violated the professional trust and confidence of the customers of New Salem Pre-Arrangements by not ensuring the preneed purchaser's preneed funds were safeguarded as required by law and the contracts Galbraith executed with the preneed purchasers on behalf of New Salem Pre-Arrangements, Inc.

60. Pursuant to Section 333.330.2(4), (5), (6), (10), (14) and (19), RSMo, there is cause to discipline the preneed agent and funeral director licenses held by Galbraith for conduct that occurred after August 29, 2009.

61. For conduct that occurred prior to August 29, 2009, there is cause for discipline against the funeral director license held by Galbraith pursuant to Section 333.121.2(4), (5), (13), and (15), RSMo (2000)(old law).

Jurisdiction and Venue

62. Jurisdiction and venue are 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:

63. Licensee's licenses to practice as a preneed agent and funeral director are hereby **REVOKED**. Licensee shall return to the Board all indicia of licensure no later than 15 days of the effective date of this Settlement Agreement.

64. 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.

65. Licensee, together with his 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.

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

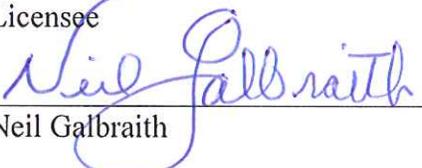
67. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to

the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. 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.

68. 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 licenses. 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.

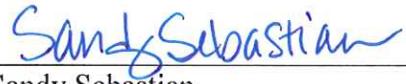
69. This Settlement Agreement shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee


Neil Galbraith

Dated: 17 Dec 2012

Board


Sandy Sebastian
Executive Director

State Board of Embalmers and Funeral Directors

Dated: 12/28/12

Approved:

 12/19/12

Sharon K. Euler # 42950
Division of Professional Registration
615 East 13th Street, Suite 501
Kansas City, Missouri 64106
(816) 889-3687 (voice)

EFFECTIVE DATE
1-12-13
**STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**

COUNSEL FOR LICENSEE

(816) 889-2345 (fax)
Sharon.euler@pr.mo.gov
COUNSEL FOR BOARD

**State Board of Embalmers and Funeral Directors
Amended Financial Examination Report**

Audit #: 12-2010001995
Examiner(s): Randall Jennings
License #: 2010001995
Preneed Seller Name: New Salem Pre-Arrangements Inc.
Date(s) of Examination: 03/27/12 – 04/04/12
Date Report Submitted: 04/11/12

Summary of Examination Results

New Salem Pre-Arrangements Inc. (New Salem) holds seller license number 2010001995. The license is current and active.

From 03/27/12 to 04/04/12, I visited New Salem located at 1823 N. Blue Mills Road, Independence, MO 64058. Mr. Neil Galbraith met with me and provided access to the active preneed files for examination.

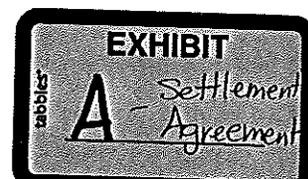
New Salem utilizes life insurance policies and a trust account for its preneed contracts.

After reviewing the active preneed contracts and funding sources, there are insufficient assets in place equal to or greater than the required levels. The preneed contracts and records reviewed appear to meet the statutory requirements, except as summarized below and on Exhibit 1.

The seller signed an attestation stating that they provided access to all records and that they have not used preneed funds as loan collateral. The attestation is attached as Exhibit 2.

Exceptions

- 1) An amendment to the trust agreement dated 06/17/02 was located naming New Salem as "Co-Trustee" (see Exhibit 3) for the account. The amendment states that New Salem can make investment recommendations for the trust and will hold the Trustee harmless for any recommendations followed.
- 2) Documents from the Trustee indicate only 37 preneed contracts are held within the trust (See Exhibit 4) totaling \$96,893.00. This list was submitted 05/13/10 and has not been updated since that date. Only 26 of the contracts listed are still active. There are currently 418 active trust funded preneed contracts.
- 3) On 04/05/12 the Trustee indicated to me by telephone that New Salem has not made any contributions to the trust for the last ten years.
- 4) The trust portfolio balance on 04/04/12 was \$93,693.17 (see Exhibit 5). The current balance should be at least \$1,077,730.29 resulting in a shortage of \$984,037.12. Please see Exhibit 1 for the discrepancies in the 378 contracts listed.



Audit #: 12-2010001995, **Preneed Seller Name:** New Salem Pre-Arrangements Inc.
Date(s) of Examination: 03/27/12 – 04/04/12

Record Keeping

Overall record keeping relating to active preneed contracts appears to be in good order. This examination was completed based on the records provided.



STATE OF MISSOURI
DIVISION OF PROFESSIONAL REGISTRATION
FINANCIAL EXAMINATION ATTESTATION

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
3606 MISSOURI BOULEVARD
P.O. BOX 423
JEFFERSON CITY, MO 65102
TELEPHONE (573) 761-0813
TTY (800) 735-2966 • FAX (573) 761-1155

I. INSTRUCTIONS

Please read the below statements and page 2 of this attestation prior to signing the form.

II. GENERAL INFORMATION

SELLER NAME (PRINT FULL NAME)

SELLER ADDRESS (CITY, STATE, ZIP)

SELLER LICENSE NUMBER (REQUIRED)

III. LOAN COLLATERAL AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)

As a preneed seller, I attest to the following:

As of August 29, 2009, this seller has not used any preneed contracts as collateral or security pledged for a loan, nor have we taken any preneed funds of any existing preneed contract as a loan for any purposes. Further, we have not procured or accepted a loan against any investment, joint account, or insurance contract used to fund a preneed contract.

SIGNATURE OF SELLER REPRESENTATIVE

Neil D. Galbraith VP

DATE

27 March 2012

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

NEIL D. GALBRAITH VICE - President

IV. RECORD ACCESS AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)

As a preneed seller, I attest to the following:

To the best of my knowledge, I have provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.

SIGNATURE OF SELLER REPRESENTATIVE

Neil D. Galbraith VP

DATE

27 March 2012

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

NEIL D. GALBRAITH VICE - President



SECOND AMENDMENT TO TRUST AGREEMENT

This SECOND AMENDMENT TO TRUST AGREEMENT is entered into this 17
day of JUNE, 2002, between NEW SALEM PRE-ARRANGEMENTS, INC.,
a Missouri corporation, hereinafter referred to as "Seller", and FIRST TRUST OF
MIDAMERICA, hereinafter referred to as "Bank Trustee".

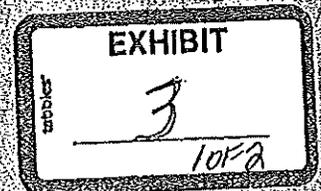
WITNESSETH:

Whereas, Seller and Bank Trustee previously entered into a Trust Agreement dated
August 8, 1989, as amended on December 20, 1991, hereinafter referred to as "Trust";
and pursuant to Article V of the trust, the Seller reserved the right to amend the Trust.

NOW THEREFORE, the Seller and the Bank Trustee are desirous of further
amending the Trust as follows:

Seller is hereby appointed Co-Trustee to act along with Bank Trustee in the
administration of said Trust. Co-Trustee shall have the authority to make investment
recommendations and agrees to hold harmless the Bank Trustee for any
investment recommendations made by the Co-Trustee and followed by the Bank
Trustee. All assets will be under the custody of the Bank Trustee and the Bank
Trustee shall have the final decision whether to accept the investment
recommendations made by the Co-Trustee. In all other respects, the Trust remains in
full force and effect.

IN WITNESS WHEREOF, the parties have executed this amendment on the day and
year first written above.





**FIRST TRUST
OF MIDAMERICA**
People you can trust.

PLEASE DELIVER TO:

Name: Randall Jennings
Company: Office of Embalmers and Funeral Home Directors
Fax Number: 573-592-7111
Date: 4/5/2012

THIS FAX IS FROM:

Name: Joe Hadel

Total Number of Pages included with this fax: _____ If there is a problem with this transmission, please contact First Trust of MidAmerica at (816) 348-6988. My direct number is 816-348-6981.

Privileged and Confidential

This facsimile contains confidential information which may also be legally privileged and which is intended only for the use of the individual or entity named above. If the reader of the facsimile is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby on notice that you are in possession of confidential and privileged information. Any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone and return the original facsimile to the sender at 605 Cherry Street, Suite 304, Belton, Missouri 64012 via the US Postal Service. Thank you.

605 Cherry Street • Suite 304 • Belton Missouri 64012 • (816) 348-6988 • Fax (816) 348-6999

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Profile



CENTRAL TRUST & INVESTMENT CO
Investment Profile

Run on 04/04/2012 03:59:20 PM

As of 04/04/2012

Combined Portfolios

Settlement Date Basis

Administrator: CENTRAL TRUST AND

INVESTMENT KC 913-901-3014

Investment Objective: MODERATE GROWTH
AND INCOME

Investment Authority: JOINT WITH INSTITUTION

Principal Asset Model:

Account: [REDACTED]

NEW SALEM PRE-ARRANGEMENT, INC

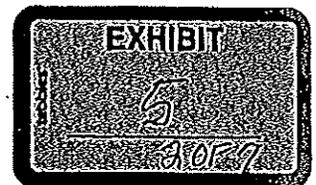
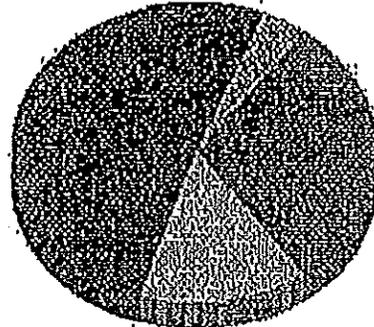
Category	Federal Tax Cost	Market Value	% of Portfolio	Est Income	Yield
<u>CASH AND EQUIVALENTS</u>	12,584.08	12,584.08	13.43	18.34	0.15
<u>EQUITIES</u>	16,516.85	16,472.76	17.58	197.98	1.20
<u>FIXED INCOME</u>	48,653.16	48,370.04	51.63	2,229.27	4.61
<u>REAL ASSETS</u>	4,501.63	3,864.08	4.12	621.94	16.10
<u>ALTERNATIVE INVESTMENTS</u>	12,673.54	12,402.21	13.24	169.72	1.37
Total Portfolio	94,929.26	93,693.17	100.00	3,237.25	3.46

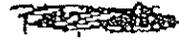
YTD SHORT TERM GAIN/LOSS 0.13
 YTD LONG TERM GAIN/LOSS 5.49

Market Value

\$12,584.08 13.43%
 \$16,472.76 17.58%
 \$48,370.04 51.63%
 \$3,864.08 4.12%
 \$12,402.21 13.24%

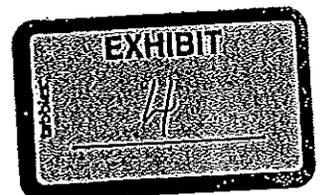
- CASH AND EQUIVALENTS
- EQUITIES
- FIXED INCOME
- REAL ASSETS
- ALTERNATIVE INVESTMENTS





New Salem Pre-arrangement Contracts May 13, 2010

M. F. A.	\$3616.00
M. K. B.	3292.00
C. M. E.	720.00
P. A. B.	4376.00
M. K. B.	2856.00
E. B.	640.00
D. R. B.	3616.00
M. E. B.	1273.00
J. B.	3616.00
B. J. B.	3616.00
L. R. B.	3432.00
M. B.	4030.00
K. B.	2195.00
N. J. C.	924.00
K. D.	720.00
J. C. D.	1980.00
A. M. D.	2780.00
E. J. G.	3124.00
H. E. H.	3408.00
H. K. J.	3812.00
L. M. J.	3812.00
V. M. J.	1752.00
R. L. Mc.	2079.00
D. M. P.	4036.00
M. C. R.	3616.00
L. R. S.	2856.00
B. R. S.	2856.00
B. F. S.	2856.00
G. L. S.	924.00
D. L. S.	924.00
V. T.	693.00
R. W.	2718.00
E. W.	3801.00
B. W.	1875.00
M. W.	1875.00
B. W.	2776.00
C. E. W.	3418.00
Total	96,893.00



ProfileCategory

Page 1 of 1



CENTRAL TRUST & INVESTMENT CO
Investment Profile Detail

Run on 04/04/2012 03:59:33 PM

As of 04/04/2012

Account: [REDACTED]

NEW SALEM PRE-ARRANGEMENT, INC

Combined Portfolios

Settlement Date Basis

Administrator: CENTRAL TRUST AND

INVESTMENT KC 913-901-3014

Investment Objective: MODERATE GROWTH

AND INCOME

Investment Authority: JOINT WITH INSTITUTION

Principal Asset Model:

CASH AND EQUIVALENTS

Ticker	Description	Units	Price	Federal Tax Cost	Market Value	Est Income	Yield	Pricing Date
	<u>CASH</u>			0.00	0.00			
FPOXX	<u>GOLDMAN SACHS PRIME OBLIGATION FD #462</u>	<u>12,584.080000</u>	1.000	12,584.08	12,584.08	18.34	0.15	12/23/2009
	Total			12,584.08	12,584.08	18.34	0.15	





CENTRAL TRUST & INVESTMENT CO
Investment Profile Detail

Run on 04/04/2012 03:59:41 PM

As of 04/04/2012

Combined Portfolios

Settlement Date Basis

Administrator: CENTRAL TRUST AND INVESTMENT KC 913-901-3014

Investment Objective: MODERATE GROWTH AND INCOME

Investment Authority: JOINT WITH INSTITUTION

Principal Asset Model:

Account: [REDACTED]

NEW SALEM PRE-ARRANGEMENT, INC

EQUITIES

Ticker	Description	Units	Price	Federal Tax Cost	Market Value	Est Income	Yield	Pricing Date
AMOMX	AQR MOMENTUM FD CLL	115.983000	15.770	1,769.20	1,829.05	10.90	0.60	04/03/2012
ASMOX	AQR SMALL CAP MOMENTUM FD CLL	122.396000	15.800	1,914.52	1,933.86	2.57	0.13	04/03/2012
DECEX	DFA EMERGING MARKETS CORE EQUITY PORTFOLIO	95.335000	20.000	2,090.47	1,906.70	36.61	1.92	04/03/2012
HAINX	HARBOR INTL FD INST SHRS	27.038000	60.130	1,686.83	1,625.79	35.58	2.19	04/03/2012
OAKIX	OAKMARK INTL CLL	85.257000	19.200	1,662.79	1,636.93	10.74	0.66	04/03/2012
SVUDX	RYDEX/SGI MIDCAP VALUE INST CL	168.532000	11.320	2,054.83	1,907.78	7.25	0.38	04/03/2012
VINIX	VANGUARD INSTITUTIONAL INDEX FD INST SHRS	29.601000	129.430	3,564.73	3,831.26	70.89	1.85	04/03/2012
FMIEX	WASATCH LARGE CAP VALUE FD	125.358000	14.370	1,773.48	1,801.39	23.44	1.30	04/03/2012
Total				16,516.85	16,472.76	197.98	1.20	



Central Trust & Investment Company



CENTRAL TRUST & INVESTMENT CO

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Investment Profile Detail

As of 04/04/2012

Combined Portfolios

Settlement Date Basis

Administrator: CENTRAL TRUST AND INVESTMENT KC 913-901-3014

Investment Objective: MODERATE GROWTH AND INCOME

Account: [REDACTED]

NEW SALEM PRE-ARRANGEMENT, INC

Investment Authority: JOINT WITH INSTITUTION

Principal Asset Model:

REAL ASSETS

Ticker	Description	Units	Price	Federal Tax Cost	Market Value	Est Income	Yield	Pricing Date
CSRSX	COHEN & STEERS REALTY SHARES	24,400,000	66.910	1,595.02	1,632.60	29.08	1.78	04/03/2012
PCRIX	PIMCO COMMODITY REAL RETURN STRATEGY FD CL 1	330,101,000	6.760	2,906.61	2,231.48	592.86	26.57	04/03/2012
Total				4,501.63	3,864.08	621.94	16.10	





CENTRAL TRUST & INVESTMENT CO
Investment Profile Detail

Run on 04/04/2012 04:00:09 PM
As of 04/04/2012

Account: [REDACTED]

NEW SALEM PRE-ARRANGEMENT, INC

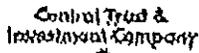
Combined Portfolios
Settlement Date Basis
Administrator: CENTRAL TRUST AND
INVESTMENT KC 913-901-3014
Investment Objective: MODERATE GROWTH
AND INCOME
Investment Authority: JOINT WITH INSTITUTION
Principal Asset Model:

ALTERNATIVE INVESTMENTS

Ticker	Description	Units	Price	Federal Tax Cost	Market Value	Est Income	Yield	Pricing Date
ADAIX	AOR DIVERSIFIED ARBITRAGE FD I	379.257000	11.100	4,262.17	4,209.75	35.27	0.84	04/03/2012
AOMIX	AOR MANAGED FUTURES STRATEGY FD CL I	419.589000	9.520	4,157.38	3,994.49	15.94	0.40	04/03/2012
EGRIX	EATON VANCE GLOBAL MACRO ABSOLUTE RETURN ADVANTAGE FD CL I	417.293000	10.060	4,253.99	4,197.97	118.51	2.82	04/03/2012
Total				12,673.54	12,402.21	169.72	1.37	

Back Save





CENTRAL TRUST & INVESTMENT CO
Investment Profile Detail

Run on 04/04/2012 03:59:50 PM

As of 04/04/2012

Combined Portfolios

Settlement Date Basis

Administrator: CENTRAL TRUST AND
INVESTMENT KC 913-901-3014

Investment Objective: MODERATE GROWTH
AND INCOME

Account: ██████████

NEW SALEM PRE-ARRANGEMENT, INC

Investment Authority: JOINT WITH INSTITUTION

Principal Asset Model:

FIXED INCOME

Ticker	Description	Units	Price	Federal Tax Cost	Market Value	Est Income	Yield	Pricing Date
AJANX	AMERICAN CENTURY INFLATION ADJUSTED BOND FD INSTL CL	341.954000	12.830	4,264.02	4,387.27	162.43	3.70	04/03/2012
AHIFX	AMERICAN FDS AMER HIGH INCOME TR CL F-2	268.511000	11.060	3,052.12	2,969.73	231.99	7.81	04/03/2012
EIFHX	EATON VANCE FLOATING RATE HI INCOME FD	528.833000	8.810	4,676.66	4,659.02	218.94	4.70	04/03/2012
LSGBX	LOOMIS SAYLES GLOBAL BOND FD INST SHRS	148.659000	16.810	2,564.58	2,498.96	110.45	4.42	04/03/2012
MEODX	MFS EMERGING MARKETS DEBT CL I	349.942000	15.170	5,171.23	5,308.62	284.50	5.36	04/03/2012
MEDYX	MANAGERS FIXED INCOME FO INSTL CL	537.764000	11.260	6,082.95	6,055.22	282.33	4.66	04/03/2012
PTTRX	PIMCO TOTAL RETURN FD INST CL	539.325000	11.060	5,952.56	5,964.93	196.31	3.29	04/03/2012
PTRAX	PIMCO TOTAL RETURN ADMIN SHRS	0.001000	11.060	10.00	0.01			04/03/2012
TFCIX	THIRD AVENUE FOCUSED CREDIT FD	449.938000	10.000	4,989.38	4,499.38	363.10	8.07	04/03/2012
VBTIX	YANGUARD TOTAL BOND MARKET INDEX FD INSTL SHRS	1,102.374000	10.910	11,889.66	12,026.90	379.22	3.15	04/03/2012
Total				48,653.16	48,370.04	2,229.27	4.61	

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