SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND RONALD MARTS AND MARTRON, L.L.C.

Ronald Marts ("Marts") and Martron, L.L.C. d/b/a Marts Memorial Services ("Marts Memorial") and the State Board of Embalmers and Funeral Directors ("the Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Marts' license as a funeral director, No. 004036, and Marts Memorial's license as a funeral establishment, No. 2002000826, will be 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 Cum. Supp. 2008. The Board, Marts, and Marts Memorial jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Marts and Marts Memorial 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

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

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disciplinary hearing before the Board at which time Marts and Marts Memorial 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, Marts and Marts Memorial 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.

Marts and Marts Memorial 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. Marts and Marts Memorial stipulate that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Marts' license as a funeral director, No. 004036, and Marts Memorial's license as a funeral establishment, No. 2002000826, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapters 333, 436 and 193, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board, Marts, and Marts Memorial in Part II herein is based only on the agreement set out in Part I herein. Marts and Marts Memorial 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.

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I.

Joint Stipulation of Facts and Conclusions of Law

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

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

2. Marts Memorial holds a funeral establishment license, No. 2002000826, issued by the Board. This funeral establishment license has been current and active at all relevant times.

3. Marts is the funeral director in charge at Marts Memorial. Marts holds a funeral director's license, No. 004036. This license has been current and active at all relevant times herein.

4. During the period from May 2008 to October 2008, Marts and Marts Memorial:

a. knowingly failed to refrigerate, embalm, or place in a hermetically sealed casket all human remains within 24 hours of death;

b. failed to file certificates of death with the local registrar of the county where the death occurred within five days of death;

c. failed to deliver completed certificates of death certifying the cause of death as determined by the medical examiner/coroner or physician to the registrar of

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the county where death occurred before having bodies cremated even when the cause of death could be established within 72 hours after death and instead made a practice of relying on written authorizations to cremate bodies from the medical examiner/coroner or physician who would be certifying the cause of death;

d. failed to use a cremation authorization form that contained the place of birth of the deceased, the date and place of the funeral, the date and time cremation began, and to whom the remains were released to; and

e. failed to accurately record embalmings.

5. Warren Watkins, Jr. ("Watkins") is employed as an embalmer and funeral director with Watkins Brothers Memorial Chapel, Inc., located at 4000 Cleaver Boulevard, Kansas City, Missouri 64130.

6. Watkins is a licensed embalmer in the State of Missouri, No. 005529, and a licensed funeral director in the State of Missouri, No. 002802.

7. On or about May 22, 2008, Watkins embalmed the body of Ms. Sharon Eastep. On or about July 6, 2008, Watkins embalmed the body of Mr. Thomas Monahan.

8. Marts forged Watkins' signature under the "statement by licensed embalmer" section of the death certificates for Sharon Eastep and Thomas Monahan.

9. Watkins never gave Marts permission to sign his name to any certificate of death.

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10. Cause exists to discipline Marts' license as a funeral director and Marts Memorial's license as a funeral establishment pursuant to § 333.121.2(5), (6), (13), (15), and (16), RSMo Cum. Supp. 2008, which states:

> 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;
>
> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> . . . .
>
> (13) Violation of any professional trust or confidence;
>
> . . . .
>
> (15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo;
>
> (16) Presigning a death certificate or signing a death certificate on a body not embalmed by, or under the personal supervision of, the licensee[.]

11. Rule 20 CSR 2120-2.070(21) states in relevant part:

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(21) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract.

(A) The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo'

(B) Any person or friend who assumes responsibility for the disposition of the deceased's remains if no next of kin assumes such responsibility may authorize to embalm the deceased;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo may authorize to embalm the deceased;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

(E) If the Missouri licensed funeral establishment receives no authorization to embalm from any of the persons identified in subsections (21)(A), (B), or (C) of this rule, the Missouri licensed funeral establishment may proceed with embalming if it has attempted to locate a person from whom

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authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate such a person. However, the Missouri licensed embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death; and

(F) If a Missouri licensed embalmer proceeds to embalm a body under the provisions of subsection (21)(E), the Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

12. Rule 19 CSR 10-10.100 states:

(1) If the cause of death can be established within seventy-two (72) hours after death, a completed death certificate certifying the cause of death as determined by the medical examiner/coroner or physician shall be delivered or mailed to the local registrar of the county where the death occurred before a body is cremated.

(2) If a completed death certificate cannot be filed because the cause of death has not been determined, the medical examiner/coroner or physician certifying the cause of death shall give the funeral director notice of the reason for the delay. A body shall not be cremated until written authorization by the medical examiner/coroner or physician is received by the funeral director. This authorization shall be a signed statement which identifies the deceased and authorizes final disposition by cremation.

(3) Management of a crematory shall require from an authorized funeral home representative presenting a body for cremation a signed statement which identifies the deceased and which states that--

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(A) A completed death certificate has been filed with the local registrar where the death occurred; or

(B) The funeral director has received a written authorization to cremate the body from the medical examiner/coroner or physician who will be certifying the cause of death.

13. Rule 20 CSR 2120-2.071(3)(B) and (4) state as follows:

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

. . . .

(B) Information regarding the cremation which shall include:

1. The full name of the deceased;

2. The last place of residence of the deceased;

3. The place of death of the deceased;

4. The place of birth of the deceased;

5. The date and place of the funeral;

6. The name of the Missouri licensed funeral director, other than a limited license funeral director, with whom the arrangements were made;

7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;

8. The date and time when cremation was begun;

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9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and

10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

(4) Cremation log--a written record or log kept in the cremation area available at all times in full view, which will include the following:

(A) The name of the deceased to be cremated;

(B) The name of the Missouri licensed establishment where the body is cremated;

(C) The date and time the body arrived at the crematory;

(D) The date and time the cremation took place;

(E) The name and signature of the Missouri licensed funeral director supervising the cremation;

(F) The supervising Missouri licensed funeral director's license number; and

(G) The name of the Missouri licensed funeral establishment or other that was in charge of making the arrangements if from a different location.

14. Section 193.075, RSMo, states as follows:

1. The forms of certificates and reports required by sections 193.005 to 193.325 or by regulations adopted hereunder shall include as a minimum the items recommended by the federal agency responsible for national vital statistics.

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2. Each certificate, report, and other document required by sections 193.005 to 193.325 shall be on a form or in a format prescribed by the state registrar.

3. All vital records shall contain the date received for registration.

4. Information required in certificates or reports authorized by sections 193.005 to 193.325 may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

5. In addition to other personal data required by the registrar to be entered on a birth certificate, each parent shall furnish to the registrar the Social Security account number, or numbers if applicable, issued to the parent unless the registrar finds good cause for not requiring the furnishing of such number or numbers. Good cause shall be determined in accordance with regulations established by the Secretary of the United States Department of Health and Human Services. The registrar shall make numbers furnished under this section available to the division of child support enforcement of the department of social services. Such numbers shall not be recorded on the birth certificate. The division of child support enforcement shall not use any Social Security number furnished under the section for any purpose other than for the establishment and enforcement of child support obligations, and the confidentiality provisions and penalties contained in section 454.440, RSMo, shall apply. Nothing in this section shall be construed to prohibit the department of health and senior services from using Social Security numbers for statistical purposes.

15. The conduct of Marts and Marts Memorial, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and dishonesty in the performance of the functions or duties of a licensed funeral director and licensed funeral establishment, providing cause for discipline pursuant to § 333.121.2(5), RSMo Cum. Supp. 2008.

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16. Marts and Marts Memorial's conduct, as set forth above, violated Rules 20 CSR 2120-2.070(21); 19 CSR 10-10.100; 20 CSR 2120-2.071(3)(B) and (4); and § 193.075, RSMo, providing cause for discipline pursuant to § 333.121.2(6), RSMo Cum. Supp. 2008.

17. Marts and Marts Memorial's conduct, as set forth above, violated the professional trust and confidence of their clients and the public, providing cause for discipline pursuant to § 333.121.2(13), RSMo Cum. Supp. 2008.

18. Because Marts and Marts Memorial violated § 193.075, RSMo, cause exists to discipline the licenses of Marts and Marts Memorial pursuant to § 333.121.2(15), RSMo Cum. Supp. 2008.

19. By forging the signature of Warren Watkins, Jr. on death certificates, Marts signed a death certificate on a body not embalmed by him, or under his personal supervision, providing cause for discipline pursuant to § 333.121.2(16), RSMo Cum. Supp. 2008.

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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, 621.045.3, and 621.110, RSMo. Cum. Supp. 2008:

1. **Marts' and Marts Memorial's licenses are on probation.** Marts' license as a funeral director and Marts Memorial's license as a funeral establishment are hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Marts shall be entitled to practice as a funeral director and Marts Memorial shall be entitled to operate as a funeral establishment pursuant to Chapters 333, 436, and 193, RSMo, as amended, provided they adhere to all the terms of this agreement.

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

A. Marts Memorial shall keep the Board appraised at all times in writing of its current business address and telephone number, and Marts shall keep the Board appraised at all times in writing of his current home and work addresses and telephone numbers at each place of business. Marts Memorial and Marts, respectively, shall provide the Board with written notification within ten days of any change in this information.

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B. Marts Memorial and Marts shall timely renew all board issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain their licenses and registrations in a current and active state.

C. If, at any time within the disciplinary period, Marts Memorial and/or Marts change residence and/or place of business from the State of Missouri, cease to be currently licensed under the provisions of Chapter 333 or Chapter 436, or fail to keep the Board advised of all current places of business and/or residence, the time of absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

D. Marts Memorial and Marts shall comply with all provisions of Chapter 333, RSMo; §§ 436.005 through 436.071, RSMo; all rules and regulations of the Board; and all state and federal laws related to the performance of duties in the funeral industry.

E. Marts and/or an agent of Marts Memorial shall appear before the Board or its representatives upon the Board's request.

F. Marts Memorial and Marts shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor their compliance with these terms and conditions.

G. Marts Memorial and Marts shall submit written reports to the Board by no later than January 1 and July 1 during each year of the disciplinary period stating

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truthfully whether there has been compliance with all terms and conditions of this settlement and all embalming and/or refrigeration statutes and regulations.

H. Marts and Marts Memorial shall refrigerate, embalm, or place in a hermetically sealed casket all human remains within 24 hours following death.

3. Upon the expiration of the disciplinary period, the licenses of Marts and Marts Memorial shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Marts and/or Marts Memorial have 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 Marts' and/or Marts Memorial's licenses.

4. 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.

5. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Marts and/or Marts Memorial of Chapter 333, 436, and 193, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

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6. 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.

7. If any alleged violation of this Settlement Agreement occurred 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. Marts and Marts Memorial agree and stipulate that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. 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.

10. 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, 436, 193, 610, and 620, RSMo, as amended.

11. Marts and Marts Memorial, together with their partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby

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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 Settlement Agreement or any portion thereof void or unenforceable.

12. Marts and Marts Memorial understand that they may, either at the time the Settlement Agreement is signed by all parties, or within 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 the licenses of Marts and Marts Memorial. If Marts and/or Marts Memorial desire the Administrative Hearing Commission to review this Settlement Agreement, Marts and/or Marts Memorial may submit their request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

If Marts and/or Marts Memorial requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding

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that the Settlement Agreement sets forth cause for disciplining the licenses of Marts and Marts Memorial. If Marts and Marts Memorial do not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE		STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS	
Ronald C Marts 5/18/09		Becky Dunn	
Ronald Marts	Date	Becky Dunn, Executive Director	
Ronald C Marts 5/18/09		Date 5/28/09	
Martron, L.L.C.	Date		

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