**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND MIZELL UNDERTAKING COMPANY, INC. D/B/A MIZELL FUNERAL HOME**

(Establishment License)

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

Pursuant to the terms of Section 536.060 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 to final disposition of this matter by this Settlement Agreement.

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

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 Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."

waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that it has been advised of its right to consult with private legal counsel, at its expense, to assist it with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

**Relevant Statutes and Regulations**

1. Section 333.061, RSMo, requires an establishment license 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.
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> 2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:
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> (1) That the establishment is under the general management and the supervision of a duly licensed funeral director;
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> (2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;
>
> (3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the

department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have a register book or log which shall be available at all times for the board's inspector and that shall contain:

(a) The name of each body that has been in the establishment;

(b) The date the body arrived at the establishment;

(c) If applicable, the place of embalming, if known; and

(d) If the body was embalmed at the establishment, the date and time that the embalming took place, and the name, signature, and license number of the embalmer; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121*. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121* shall be followed

2. Section 333.071, RSMo, restricts the practice of funeral directing or embalming to only licensed funeral establishments and states:

> The business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment. This section does not prevent a licensed funeral director owning or employed by a licensed funeral establishment from conducting an individual funeral from another and different funeral establishment or at a church, a residence, public hall, or lodge room.

3. Rule 20 CSR 2120-2.070 sets forth requirements for funeral establishment licenses and states, in relevant portion:

> (10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.
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> * * *
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> (13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.
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> (A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.
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> (B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri

licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

4. Section 333.330.2, RSMo, authorizes discipline against establishment 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:
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> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;
>
> (7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;
>
> * * *
>
> (14) Violation of any professional trust or confidence;

## Joint Stipulation of Facts and Conclusions of Law

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

## Parties and Licenses

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

6. Mizell Undertaking Company, Inc. is a Missouri corporation in good standing and has registered its address with the Board at904 W. Washington, Cuba, Missouri 65453.

7. Mizell Undertaking Company, Inc. operates in Missouri under the properly registered fictitious name of Mizell Funeral Home.

8. Mizell Funeral holds establishment license number 2005022755. This license was current and active at all times relevant to this Settlement Agreement, except for when the license lapsed due to non-renewal from December 31, 2013 until it was reinstated on January 14, 2014.

**Conduct Giving Cause for Discipline**

*Unlicensed Practice as an Establishment*

9. Mizell Funeral failed to renew its establishment license on or before December 31, 2013, the renewal deadline.

10. By letter dated January 10, 2014, the Board notified Mizell Funeral that its license had lapsed and that it could not lawfully operate as an establishment until it completed the process for reinstatement. The Board included the forms and an explanation of the reinstatement process.

11. Mizell Funeral signed its "Reinstatement" on January 13, 2014 and submitted it to the Board.

12. The Board received the Reinstatement on January 13, 2014.

13. The Board issued a renewed establishment license to Mizell Funeral on January 14, 2014.

14. The Board conducted an investigation to determine whether Mizell Funeral acted as a establishment during the time when its establishment license lapsed.

15. Mizell Funeral continued to advertise and hold out to the public as a licensed establishment during the time it was not so licensed.

16. Mizell Funeral provided final disposition services for 5 consumers while its license was lapsed.

*Cause to Discipline*

17. Mizell Funeral practiced as an establishment and held out to the public that it was so licensed during a period when it held no valid license to do so.

18. The Board has cause to discipline Mizell Funeral's establishment license pursuant to Section 333.330.2, (6), (7), and (14), RSMo.

**Jointly Stipulated Disciplinary Order**

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

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

Terms and Conditions of the Disciplinary Period

20. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its funeral director in charge;

b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately.

f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with any revenue law of the state; and

h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period.

21. 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.

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

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

24. 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).

25. 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 the Disciplinary Period occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

26. Licensee, together with its heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that

this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

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

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

29. 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.

30. 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 | Board |
|---|---|
| By CHARLES D. MIZELL, PRESIDENT | Sandy Sebastian |
| Mizell Undertaking Company, Inc. | Executive Director |

State Board of Embalmers and Funeral Directors

Dated: _____

Dated: 8.18.14

☐ By checking this box, I, _____, certify that I am authorized by Mizell Undertaking Company, Inc. to enter into this Settlement Agreement on its behalf.

Approved:

_____

8/4/14

Sharon K. Euler # 42950
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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
9.2.14
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS