

**SETTLEMENT AGREEMENT BETWEEN THE MISSOURI
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND
PHILLIPS FUNERAL HOME, INC**
(Seller License)

Phillips Funeral Home, Inc. (hereinafter "Licensee" or "Phillips Funeral") and the State Board of Embalmers and Funeral Directors (hereinafter "Board") enter into this Settlement Agreement Between the Missouri State Board of Embalmers and Funeral Directors (hereinafter "Settlement Agreement") for the purpose of resolving the question of whether the seller license held by Licensee, shall be subject to discipline for the allegations at issue in the Board's Complaint filed with the Administrative Hearing Commission on July 5, 2012, Case No. 12-1226EM ("AHC Case"). Licensee enters this Settlement Agreement for the purposes of settlement only and to avoid the additional expense of litigation. This Settlement Agreement shall fully and finally resolve all issues related to the AHC Case. However, nothing herein shall prevent the Board from taking additional action against Licensee on any matter unrelated to the matters addressed in this Settlement Agreement.

Licensee and the Board jointly stipulate and agree that the final disposition of the AHC Case may be effectuated as described below pursuant to Chapters 536, 621, 333 and 324 of the Revised Statutes of Missouri and the regulations promulgated thereunder. The parties specifically stipulate and agree to disposition of the AHC Case as set forth in this Settlement Agreement pursuant to Section 536.060, RSMo. For the purposes of settling the dispute in the AHC Case, Licensee and the Board stipulate to all facts and conclusions of law in this Settlement Agreement in accordance with the provisions of

Chapters 536, 621, 333 and 324, RSMo., and agree to abide by the terms of this settlement agreement.

Pursuant to 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 the terms of this Settlement Agreement.

Licensee acknowledges that it understands the various rights and privileges afforded 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 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 and the Board waive these rights and agree to abide by the terms of this document which is a legally enforceable contract.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. All references to statutes repealed as of August 28, 2009 are also designated as "(old law)".

I. JOINT STIPULATION OF FACTS

The Board and Licensee jointly stipulate to the following facts as true:

The Parties

1. The Board is an agency of the State of Missouri, established and existing pursuant to Section 333.151, RSMo, and charged with enforcing the provisions of Chapter 333, RSMo, and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. Phillips Funeral is a Missouri corporation, in good standing, with its principal place of business at 5 South Oak Street, Eldon, Missouri 65206.

3. Licensee holds two funeral establishment licenses numbered 002487 (located at 5 South Oak, Eldon, Missouri) and 002488 (located in Eugene, Missouri) issued by the Board. These licenses are and have been current and active at all times relevant to this Settlement Agreement.

4. Licensee holds seller license number 2009039238 issued by the Board. This license is and has been current and active at all times relevant to this Settlement Agreement.

5. Kevin Simpson serves as manager in charge of the Licensee's seller's business.

6. Licensee holds provider license number 2009039237 issued by the Board. This license is and has been current and active at all times relevant to this Settlement Agreement.

7. Prior to August 28, 2009, the effective date of the current provisions of Chapter 436 related to preneed contracts, Phillips Funeral registered with the Board as a preneed seller and held seller registration number S00646. This registration became void by operation of law on August 28, 2009.

8. Prior to August 28, 2009, the effective date of the current provisions of Chapter 436 related to preneed contracts, Phillips Funeral registered with the Board as a preneed provider and held provider registration number P01183. This registration became void by operation of law on August 28, 2009.

9. At all times relevant to this Agreement, Phillips Funeral has been authorized as a seller and provider of preneed funeral contracts in Missouri, either by registration or by license.

The Financial Examination

10. By letter dated August 9, 2011, the Board notified Phillips Funeral that the Board would conduct a financial examination of Phillips Funeral as a seller per Section 436.470.2, RSMo, and requested that Phillips Funeral provide specified records to the Board for the examination.

11. Phillips Funeral subsequently provided records to the Board.

12. On October 17 and October 18, 2011, the Board's examiner visited the premises of Phillips Funeral to physically examine the seller's books and records of Phillips Funeral.

13. On October 17, 2011, Kevin Simpson, on behalf of Phillips Funeral, signed and dated a "Financial Examination Attestation" that stated, among other things:

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.

14. On November 17, 2011, Board staff submitted to the Board a Financial Examination Report on Phillips Funeral (the "Examination Report").

15. The Examination Report found one exception discovered in the examination: "1) Forty-four insurance policies for consumers lacked preneed contracts." Exhibit 1 to the Examination Report listed the consumers with no written preneed contracts referenced as the noted exception in the Examination Report.

16. As part of the examination process, Phillips Funeral provided the Board with its records regarding the insurance policies referenced in Exhibit 1 to the Examination Report.

17. By letter dated November 18, 2011, the Board mailed to Phillips Funeral a copy of the Examination Report with a request for response of verification that the deficiencies had been corrected or with a plan to correct the deficiencies within 30 days from November 18, 2011.

18. By letter dated December 13, 2011, Kevin Simpson, on behalf of Phillips Funeral, responded to the Board's Examination Report with a carbon copy to Mr. Donald Otto, Jr., and stated:

Based on my understanding of the law which I feel was confirmed at the recent State Board meeting in Kansas City, no preneed contract is required on the identified insurance assignments. Further, I would note that almost all of them (37 of the 44) were before the changes to the law created by Senate Bill 1.

19. By letter dated December 29, 2011, the Board requested additional information from Phillips Funeral including a response as to why Phillips Funeral believed the insurance assignments fell outside the requirements of the preneed contract statutes.

20. By letter dated January 24, 2012, Kevin Simpson, on behalf of Phillips Funeral, responded to the Board's December 29, 2011 letter, with a carbon copy to Mr. Don Otto, Jr., with a letter explaining that Phillips Funeral believed that the statutes required no preneed contract for the consumers cited in the Examination Report.

21. By letter dated February 10, 2012, the Board requested response within thirty days regarding the forty-four consumers for whom Phillips Funeral was listed as the owner of insurance policies in violation of Section 435.450.7, RSMo.

22. On July 5, 2012, the Board filed its Complaint with the Administrative Hearing Commission, Case number 12-1226EM, seeking discipline against Licensee's seller's license for failure to provide pre-need contracts for the forty-four consumers listed in Exhibit I to the Examination Report.

23. At the time the Board filed its complaint in the AHC Case, the allegations in the Board's complaint were substantially justified.

24. After considering additional information submitted by Licensee to the Board, the Board has determined that this Settlement Agreement appropriately resolves the question of whether Licensee's seller license should be subject to discipline for the issue and events at issue in Case No. 12-1226EM.

II. RELEVANT STATUTES AND REGULATIONS

25. Section 333.320.1, RSMo, authorizes the board to issue seller licenses and states, in relevant part:

No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

26. Section 333.330.2, RSMo, authorizes discipline against seller 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:

* * *

(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;

* * *

(14) Violation of any professional trust or confidence;

* * *

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

Post August 28, 2009 statutes and regulations

27. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

- (1) "Board", the state board of embalmers and funeral directors created by this chapter;
- (2) "Embalmer", any individual licensed to engage in the practice of embalming;
- (3) "Funeral director", any individual licensed to engage in the practice of funeral directing;
- (4) "Funeral establishment", a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;
- (5) "Funeral merchandise", caskets, grave vaults, receptacles, and other personal property incidental to the final disposition of a dead human body, including grave markers, monuments, tombstones, and urns;
- (6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

* * *

- (9) "Preneed agent", any person authorized to sell a preneed contract for or on behalf of a seller;
- (10) "Provider", the person designated or obligated to provide the final disposition, funeral, or burial services or facilities, or funeral merchandise described in a preneed contract;
- (11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

28. Section 333.061.2(1), RSMo, requires that each funeral establishment shall be "under the general management and supervision of a duly licensed funeral director."

29. Regulation 20 CSR 1.040(14) defines the term "Funeral director-in-charge"

as:

[a]n 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.

30. Regulation 20 CSR 2120-3.200(C) states:

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.

31. Section 436.405, RSMo, states, in relevant part:

1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

(1) "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities, or merchandise described in a preneed contract;

(2) "Board", the board of embalmers and funeral directors;

(3) "Guaranteed contract", a preneed contract in which the seller promises, assures, or guarantees to the purchaser that all or any portion of the costs for the disposition, services, facilities, or merchandise identified in a preneed contract will be no greater than the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

(4) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or a deferred annuity contract that is not classified as a

variable annuity and has death benefit proceeds that are never less than the sum of premiums paid;

(7) "Nonguaranteed contract", a preneed contract in which the seller does not promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a preneed contract will be limited to the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

(8) "Preneed contract", any contract or other arrangement which provides for the final disposition in Missouri of a dead human body, funeral or burial services or facilities, or funeral merchandise, where such disposition, services, facilities, or merchandise are not immediately required. Such contracts include, but are not limited to, agreements providing for a membership fee or any other fee for the purpose of furnishing final disposition, funeral or burial services or facilities, or funeral merchandise at a discount or at a future date[.]

32. Section 436.412, RSMo, 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.

33. Section 436.415, RSMo, states:

1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

34. Section 436.425, RSMo, states:

1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

- (1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;
- (2) Identify the name, address, phone and license number of the provider and the seller;
- (3) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested;
- (4) Identify whether the contract is trust funded, insurance funded, or joint account funded;
- (5) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;
- (6) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;
- (7) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;
- (8) Prominently identify whether the contract is revocable or irrevocable;
- (9) Set forth the terms for cancellation by the purchaser or by the seller;
- (10) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;
- (11) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

(12) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;

(13) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;

(14) Include any applicable consumer disclosures required by the board by rule; and

(15) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event;

(16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with this section or not issued by a seller licensed under chapter 333, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

3. A beneficiary who seeks to become eligible to receive public assistance under chapter 208 or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any moneys from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

4. All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.

5. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

35. Section 436.450, RSMo, states:

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

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer; provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or annuity sold with a preneed contract; provided, however, the provisions of sections 436.400 to 436.520 shall not apply to annuities or insurance policies regulated by chapters 374, 375, and 376 used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri.

36. Section 436.465, RSMo, states, in relevant part:

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.

37. Section 436.470, RSMo, states, in relevant part:

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

3. Upon determining that an inspection, investigation, examination, or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination, or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.

4. The board shall not appoint or authorize any person to conduct an inspection, investigation, examination, or audit under this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination, or audit under chapter 333 or sections 436.400 to 436.520.

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

8. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office

of the attorney general in any inspection, investigation, examination, or audit brought under this section.

10. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee or registrant with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

38. Section 436.525, RSMo, states:

The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

Statutes Prior to August 28, 2009

39. Prior to the enactment of Senate Bill 1, effective August 28, 2009, preneed contracts were governed by provisions of Section 436.005 through 436.071 (2000) (the "Old Law").

40. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

41. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

- (1) It is in writing;
- (2) It is executed by a seller who is in compliance with the provisions of section 436.021;
- (3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
- (4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
- (5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
- (6) It contains the name and address of the seller and the provider.

* * *

4. Subject to the provisions of subdivision (5) of section 436.005, the provisions of sections 436.005 to 436.071 shall apply to the assignment of proceeds of any contract of insurance for the purpose of funding a preneed contract or written in conjunction with a preneed contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance sold with a preneed contract.

42. Section 436.021, RSMo (2000) of the Old Law required each seller to maintain its records and stated, in relevant part:

2. Each seller under one or more preneed contract 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;

III. JOINT CONCLUSIONS OF LAW

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

43. The Board and Licensee jointly stipulate that this Settlement Agreement and the actions compelled herein are authorized by law in that the Board has authority under Chapters 621 and 333, RSMo, to informally resolve the issue of whether a license should be subject to discipline.

44. Licensee is entitled to continued licensure without discipline in Missouri, subject to the terms of this Settlement Agreement.

IV. CONSIDERATION AND SETTLEMENT TERMS

Based on the foregoing, and upon sufficient consideration described herein, the parties mutually agree and stipulate that the parties shall perform the following contractually binding requirements:

45. Based upon Exhibit 1 to the Examination Report, the parties have compiled a Preneed List that details the consumers for whom Phillips Funeral was named as

owner, beneficiary or assignee of an insurance policy and for which there was no accompanying written preneed contract. The parties agree that the Preneed List is accurate and acknowledge that each party has a true and accurate copy of the Preneed List. The Preneed List is not attached to this agreement and shall remain a closed record of the Board pursuant to Section 436.525 and Section 324.001.8, RSMo.

Obligations of Phillips Funeral

46. Licensee shall make good faith efforts to memorialize into a written preneed contract, in compliance with the provisions of Chapter 436, RSMo, the agreement between Licensee and each of the customers identified on the Preneed List. If an individual listed on the Preneed List is determined to be deceased, Phillips Funeral shall so notify the Board, per the terms of this Settlement Agreement, and that name shall be removed from the Preneed List.

47. Licensee shall, within 30 days of notice from the Board that this Settlement Agreement has been executed by the Board, make good faith attempts to contact all customers on the Preneed List and request that they enter into a preneed contract, guaranteed or nonguaranteed, in compliance with the provisions of Chapter 436, RSMo. This good faith effort shall consist of mailing a letter and a proposed preneed contract to each customer on the Preneed List. This letter and contract shall be mailed to the best address Licensee can obtain for each customer. If a customer does not respond to the request for contract, Licensee shall make reasonable efforts to contact each customer by telephone, electronic communication, and/or personal contact to request that the consumer enter into a written agreement with Licensee.

48. Licensee shall make a good faith effort to obtain from each consumer on the Preneed List verification that the consumer has received the letter and offer to enter into a written preneed contract. This verification shall consist of a “green card” showing receipt of certified mail, a copy of an executed preneed contract, a written verification signed by the consumer that they received the letter and offer to enter into a preneed contract or any other written verification in which the consumer acknowledges receipt of the letter and offer to enter into a preneed contract.

49. Phillips Funeral shall provide the Board with a written report, due on the first day of every month, that contains a status report as to which customers have been contacted, and the responses from each customer. These status updates shall also include copies of all correspondence from consumers and all documents related to the preneed contract transaction including copies of all fully executed preneed contracts. In the event a customer cannot be located, no customer is identified or it is determined that the customer is deceased, Phillips shall so notify the Board as part of its status reports. These status reports shall continue to be made until the Board notifies Licensee that it may cease the reports which will be issued when Licensee has in good faith satisfied the requirements set forth in Section IV, of this Settlement Agreement.

50. Any consumer listed on the Preneed List who is deceased, shall be removed from the Preneed List upon Phillips Funeral’s provision of documentation of the death (a copy of a published obituary, death certificate, or other reliable written documentation of death).

Obligations of the Board

51. The Board will timely review all status reports and submissions from Licensee which are tendered to the Board pursuant to this settlement agreement. If the Board has objection to any submission or requires additional information from Licensee regarding any submission, the Board shall notify Licensee within 30 days from the date of submission. Licensee shall thereafter have 30 days to provide the additional information requested or to correct any objection to which the Board has advised Licensee. So long as the additional information is provided as requested by the Board or otherwise corrected by Licensee within 30 days, the terms of this Settlement Agreement shall be satisfied.

52. The Board will notify Licensee in writing when it has determined that Phillips Funeral has complied with its obligation to make good faith efforts to enter into written preneed contracts with each customer on the Preneed List and that such notice shall not be unreasonably withheld. The Board will issue this notice to Phillips Funeral upon submission by Phillips Funeral that it completed the following, in accord with the terms of this Settlement Agreement: 1. Made best efforts to contact each customer on the Preneed List and 2. Received back a response from each consumer such as a signed preneed contract, or a response that the consumer does not desire to enter into a preneed contract or, after 60 days from the date of the delivery of the request from Phillips Funeral to enter into a preneed contract, the consumer has not responded. Such notice shall be issued by the Board within thirty (30) days of Licensee's submission to the

Board of his final status report asserting that Licensee has completed of the terms of this Settlement Agreement.

53. The Board will dismiss the pending AHC Case, case number 12-1226EM, filed with the Administrative Hearing Commission, with prejudice, upon Licensee's satisfaction of the terms of this Settlement Agreement as set forth in Section IV of this Settlement Agreement. The Board shall file such dismissal with prejudice within thirty (30) days of the Board's notification to Phillips Funeral's of its acceptance of Phillips Funeral's completion of the terms of this Settlement Agreement as provided in the preceding paragraph.

54. If Licensee fails to comply with its obligations under this Settlement Agreement, the parties acknowledge and agree that the Board may pursue action to seek and impose discipline on Licensee's seller license notwithstanding this Settlement Agreement and may base its cause for discipline upon any conduct alleged in the Complaint filed in the AHC Case. If the Board determines that Licensee has failed to comply with this Settlement Agreement, the Board shall provide Licensee with written notice of the Board's determination of violation and shall give Licensee thirty (30) days within which to cure the violation. If Licensee fails to cure the violation within thirty (30) days from the date of the notice of breach letter, the Board may then exercise its right to seek and impose discipline upon the seller license of Licensee either by settlement agreement or by pursuing its pending complaint with the Administrative Hearing Commission.

Additional Agreements

55. The parties agree to seek a joint continuance of any hearing scheduled before the Administrative Hearing Commission as necessary to allow Licensee and the Board time to comply with their respective obligations under this Settlement Agreement.

56. The parties agree that, in the event the Board seeks discipline in any action against Licensee, including but not limited to the current AHC Case, the Board will not use as evidence any documents prepared by Phillips Funeral to comply with the terms and conditions of the this Settlement Agreement including, but not limited to, any letter, proposed preneed contract, written statement, return receipt, or other documentation contemplated in Section IV of this Settlement Agreement (jointly referred to herein as “Protected Documentation”), against Licensee in any case seeking discipline or other relief related to matters included in this Settlement Agreement.

57. The Board states affirmatively that it has no pending cases or investigations related to Kevin Simpson’s personal licenses (funeral director, embalmer and preneed agent) related to matters contained in this Settlement Agreement and further state that no discipline is sought against any license personally held by Kevin Simpson including his funeral director, embalmer and preneed agent licenses. The Board further states that all references to Kevin Simpson in this Settlement Agreement and in the Complaint filed with the Administrative Hearing Commission refer to him in his role as agent of Phillips Funeral and not for any personal conduct of Kevin Simpson.

58. 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.

59. In return for the dismissal of the AHC Case No. 12-1226EM, and the Board's agreement to refrain from taking disciplinary action against Licensee, 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.

60. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation so long as the terms of this Settlement Agreement are in force and complied with and the AHC Case is dismissed with prejudice by the Board as provided in this Settlement Agreement. Nothing herein, however, shall prohibit Licensee from seeking attorney's fees and costs of litigation under Section

536.087, RSMo, or any other claim for compensation to which it would otherwise be entitled as a prevailing party in a case before the Board, should the Board proceed forward with disciplinary action against Licensee.

61. 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. 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.

62. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order. 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.

63. 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.

64. All written notices contemplated in the terms of this Settlement Agreement shall be issued to counsel for each respective party and also directly to the Board, as appropriate. Specifically, written notice shall be given by Licensee to the Board via Sharon K. Euler, legal counsel, by electronic mail at Sharon.euler@pr.mo.gov and facsimile at (816) 889-2345 and shall also be given to the Board via e-mail to embalm@pr.mo.gov and by fax to 573-751-1155 and may also be delivered to State

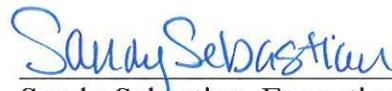
Board of Embalmers and Funeral Directors, 3605 Missouri Boulevard, Jefferson City, Missouri 65109; written notice shall be given by the Board to Licensee via Nicole Sublett by electronic mail at Niki.s@ncrpc.com and facsimile at (573)636-3306.

Licensee

Board



Kevin Simpson, President
Phillips Funeral Home, Inc.



Sandy Sebastian, Executive Director
Missouri State Board of Embalmers and
Funeral Directors

Date: 7/30/13

Date 8.9.13

By checking this box, I, Kevin Simpson, certify that I am authorized by Phillips Funeral Home, Inc. to enter into this Settlement Agreement on behalf of Phillips Funeral Home, Inc.

COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD



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