SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND ST. LOUIS CREMATION SERVICE, INC.
(Seller License)

The State Board of Embalmers and Funeral Directors (the "Board") and St. Louis Cremation Service, Inc. ("Licensee" or "St. Louis Cremation") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and St. Louis Cremation Service, Inc." (the "Settlement Agreement") to resolve the question of whether St. Louis Cremation's seller 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 Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."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 333.320, RSMo, requires a seller license and states, in relevant part:

> 1. 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.
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> 3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:
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> (1) File an application for renewal on a form established by the board by rule;
>
> (2) Pay a renewal fee in an amount established by the board by rule; and
>
> (3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

2. Section 333.330.2, RSMo, authorizes discipline on 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:

(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;

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

3. Section 436.460, RSMo, requires each seller to file an annual report with the Board and states:

1. Each seller shall file an annual report with the board which shall contain the following information:

(1) The contract number of each preneed* contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;

(2) The total number and total face value of preneed contracts sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;

(5) The date the report is submitted and the date of the last report;

(6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;

(7) The name and address of each provider with whom it is under contract;

(8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;

(9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;

(10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and

(11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by subsection 1St. Louis Cremation of this section:

(1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;

(2) The trust fund balance as reported in the previous year's report;

(3) The current face value of the trust fund;

(4) Principal contributions received by the trustee since the previous report;

(5) Total trust earnings and total distributions to the seller since the previous report;

(6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;

(7) Total expenses, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A seller that sells or who has sold joint account-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;

(2) The amount on deposit in each joint account;

(3) The joint account balance as reported in the previous year's report;

(4) Principal contributions placed into each joint account since the filing of the previous report;

(5) Total earnings since the previous report;

(6) Total distributions to the seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The status and total face value of each policy;

(3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and

(4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

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

4. 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.

5. St. Louis Cremation Service, Inc. is a Missouri corporation in good standing and has registered its address with the Board at 2135 Chouteau Avenue, St. Louis, Missouri 63103.

6. St. Louis Cremation holds seller license number 2010001534. 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 November 1, 2013 through November 19, 2013.

7. St. Louis Cremation has registered Timothy M. Cusick with the Board as its manager in charge.

Conduct Giving Cause for Discipline

Unlicensed Practice as a Seller

8. St. Louis Cremation signed its "2013 Renewal Notice/Annual Report Preneed Seller" (the "Seller Renewal") on October 11, 2013 and submitted it to the Board. The Board received the Seller Renewal on 10/21/2013.

9. On October 22 and on October 29, 2013, the Board sent a letter via fax to St. Louis Cremation and noted the deficiencies in the Seller Renewal and advised that the license could not be renewed until the deficiencies were corrected.

10. By letter sent via fax on November 1, 2103, the Board again notified St. Louis Cremation of the deficiencies in its Seller Renewal.

11. By letter dated November 12, 2013, the Board notified St. Louis Cremation that its seller license was suspended as of per Section 436.360, RSMo.

12. On November 15, 2013, St. Louis Cremation corrected the deficiencies in the Seller Renewal.

13. The Board issued a renewed seller license to St. Louis Cremation on November 19, 2013.

14. The Board conducted an investigation to determine whether St. Louis Cremation acted as a seller during the time when its seller license lapsed.

15. St. Louis Cremation continued to practice as a seller on its existing preneed contracts while its license was suspended.

Cause to Discipline

16. St. Louis Cremation practiced as a seller and held out to the public that it was so licensed during a period when it held no valid license to do so.

17. The Board has cause to discipline St. Louis Cremation's seller license pursuant to Section 333.330.2, (6), (7), (14), and (19) 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:

18. Licensee's license to practice as a seller 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 a seller, subject to the following terms and conditions:

Terms and Conditions of the Disciplinary Period

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

a. Licensee shall keep the Board informed of Licensee's current 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 manager 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 conditions of discipline.

20. 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.

21. 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.

22. 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.

23. 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).

24. 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.

25. 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.

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

27. 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(s). 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.

28. 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.

29. 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
Timothy M Cu	Sandy Sebastian
By Timothy M. Cull, Manager	Sandy Sebastian
St. Louis Cremation Service, Inc.	Executive Director
	State Board of Embalmers and Funeral Directors

Dated: 10-15-2014 Dated: 10.27.14

☒ By checking this box, I, Timothy M. Cusick, certify that I am authorized by St. Louis Cremation Service, Inc. to enter into this Settlement Agreement on its behalf.

Approved:

Sharon K. Euler # 42950
Division of Professional Registration
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Kansas City, Missouri 64106
(816) 889-3687 (voice)
(816) 889-2345 (fax)
Sharon.euler@pr.mo.gov

COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
11.11.14
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS