

Minutes of Meeting
Louisiana Cemetery Board
October 21, 2011

The regular meeting of the Louisiana Cemetery Board was held October 21, 2011, at 111 Veterans Memorial Boulevard, Heritage Plaza, Eighteenth Floor Conference Room, Metairie, Louisiana, pursuant to notice. Chairman Melancon called the meeting to order at 9:05 A.M.

Present were: Gerald W. Melancon, Chairman
Marilyn Leufroy, Vice-Chairman
Shelly M. Holloway, Secretary/Treasurer
Charles H. Fauchaux, Board Member
F. Anton Wilbert, Board Member
Stacey L. Patin, Board Member
Louise F. Saenz, At-Large Board Member
Lucy L. McCann, Director
Anna H. Aucoin, Assistant to the Director
Sharon C. Mize, Special Counsel to the Board
Ryan M. Seidemann, Assistant Attorney General

Also present at the meeting were Regina S. Wedig, Attorney At Law, representing Legacy Funeral Holdings, LLC d/b/a Resthaven Gardens of Memory, Baton Rouge, Louisiana; Michael Soper, President and CEO of Legacy Funeral Holdings, LLC d/b/a Resthaven Gardens of Memory, Baton Rouge, Louisiana; Harry Drew, Taylor Green, and Bill Wimberly, Legacy Funeral Holdings, LLC d/b/a Resthaven Gardens of Memory, Baton Rouge, Louisiana; Debbie Holmes and Gary A. Moore, Argent Trust, Ruston, Louisiana; Esther Bateman and Angela Lacor, Stewart Enterprises, New Orleans Louisiana; Edward N. George, Chaffe McCall, L.L.P., representing Stewart Enterprises, Inc.; L. Paul Raymond, Acme Mausoleum, New Orleans, Louisiana; Michael Boudreaux, Archdiocese of New Orleans; and Jimmy Patin, Greenwood Memorial Park, Pineville, Louisiana.

Ms. Leufroy made a motion to take the Agenda out of order to accommodate any guests in attendance. The motion was seconded by Mr. Wilbert and unanimously approved.

Legacy Funeral Holdings of Louisiana, LLC d/b/a Resthaven Gardens of Memory, Baton Rouge, LA – Request for approval of proposed allocation of excess funds in Merchandise Trust Fund. The Director stated at the May 13, 2011 meeting, the Board discussed the documented over funding within the merchandise trust fund of Resthaven Gardens of

Memory and requested the Director and Special Counsel to the Board, Sharon Mize, work with Resthaven to address this matter. The Director stated she reviewed the trust records on file with the Board from 1996 forward to determine how much of the over funding represented principal and how much represented income as of December 31, 2010. After meeting with Resthaven earlier this summer, they are proposing to allocate the principal and income over funding to pre-acquisition contracts in trust as of December 31, 2010. At the time of acquisition, the seller (SCI) had identified the over funding. Resthaven has performed internal test of the cemetery records to verify all pre-need contracts have been trusted and can produce accurate trust records from the time of acquisition forward. The Director advised a spreadsheet showing the proposed allocation of the over funding in principal and income to pre-acquisition contracts had been provided by Resthaven, and reviewed by the Board.

Ms. Wedig addressed the Board stated the excess will be allocated to the pre-acquisition contracts and will remain in trust until the contract is delivered then they will be withdrawn with the other funds in trust for that contract.

Ms. Mize stated the money in the merchandise trust fund, after this allocation, would be withdrawn as the contracts are delivered and the documentation is provided to the trustee in accordance with the statutory provisions of Title 8.

Mr. Soper stated ideally I would like to come to the Board and say this is an over funding can I take it all out, but we know the law and we know what is best for the contract owners and the security, in the long term, of the trust. I think this is a very fair way to do it, just sprinkle it out among all of the existing contracts that were there prior to acquisition. It may take us twenty years to withdraw this but it will stay in trust and grow with the rest of the contracts.

Chairman Melancon asked if Resthaven had found any unfunded contracts since acquisition. Mr. Drew said they have performed test on the data and continue to monitor to see if any contracts have matured that were not trusted. All contracts that have matured have been identified and found to be trusted.

Chairman Melancon asked going forward how would Resthaven handle any unfunded contract and what assurances can be given to the Board that unfunded contracts would be provided by your company or any company who purchases your cemetery in the future. Mr. Drew said they would service any unfunded contracts and if another company purchased them, they hoped they would do their due diligence. We have put in place some very good record keeping mechanisms and that is why we are very comfortable that what should be in trust is in trust. The Director stated Resthaven's records appear to be sufficient and detailed. Nothing is ever 100% guaranteed, and that is the purpose of testing the records. The Director stated the records have been tested several time through this process, and there were no red flags or concerns in the tested records.

Ms. Wedig stated sprinkling the over funding and withdrawing the fund over time should alleviate the Board's concerns.

After discussion Ms. Leufroy made a motion to approve the allocation of over funding in the merchandise trust fund as presented. The motion was seconded by Ms. Holloway and unanimously approved.

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City of Baker Cemetery Commission d/b/a Hillcrest Memorial Gardens, Baker, LA – Status Report regarding On-site Examination of Merchandise Trust Fund. The Director gave a brief overview of the examination, and a brief history of the cemetery stating the cemetery filed bankruptcy in the late 1980's when it was privately owned. The City of Baker acquired the cemetery out of bankruptcy and at that time, the bankruptcy court dissolved the perpetual care and merchandise trust funds, which were both under funded. To the best of our knowledge, the funds were used to pay the trustee and various other debts. When the City of Baker took over the cemetery they ceased selling with a provision of perpetual care. However, the City of Baker continued to sell pre-need merchandise and services and the Board required them to establish and maintain a new merchandise trust fund for new pre-need sales. The Director stated Mr. Soper owns the funeral home next to the cemetery and is considering purchasing the cemetery from the City of Baker and making the cemetery a perpetual care cemetery.

Mr. Soper addressed the Board stating they own and operate Baker Funeral Home, which sits contiguous with the cemetery. They get a lot of complaints from the community about how the city is keeping up the cemetery. The city is not in the cemetery business and they don't want to be in the cemetery business. They know it's a better fit for us to take care of the cemetery, and we would like to do it, it makes sense for us business wise. The problem we are having is the trust fund issue. We wanted to talk with the Board and get an idea as to how we would structure something with the City of Baker that could work so that property owners would be protected long term and the cemetery could be maintained by us long term. The city is very open to suggestions, they want to do business with us, its something they lose money on every year. We feel like if we can get the right program in place we can break even or make a little money, but we are not going to knock the ball out of the park with this little property. We feel like it enhances the value of the funeral service we can provide at the Baker Funeral Home. The good news is that when the City took over this cemetery the Board required them to establish a merchandise trust fund. The issue we are having is two fold.

One is the previous merchandise funds are not trusted and what happens is when a family shows up the city pulls money out of their general fund and pays for the merchandise. The city proposes this would continue to happen, there is a record of those contract holders and a report can be generated. As these people die, the city would write Legacy or the cemetery a check to perform that service and provide the merchandise. We could get some form of surety from the city that they would continue to do that for us, which I think legally can be done.

The second part is the perpetual care fund since that does not exist, how do we address that. We would start a new perpetual care trust fund with future sales. The cemetery went out of business in 1986 and the trust funds were used to pay the bankruptcy trustee, approximately \$90,000. We are thinking that if you go back and look at the sales since then we estimate the trust should be approximately \$120,000, and the cemetery is probably not worth that. We are prepared to maintain the cemetery even without a trust fund in place. We would set up a new trust and continue to maintain the entire cemetery, but if we, or the city, would have to fund the old trust, it is cost prohibitive from a business standpoint. At the end of the day, I think the city and the citizens of Baker are going to be better off if this property is maintained by a cemeterian rather than the city long term.

The Director asked if the merchandise trust fund established for sales made by the city would be transferred in a sale. Mr. Soper said yes, it is only the unfunded contracts that the city would continue to fund as they are delivered. The Director asked if they had information regarding the amount of the outstanding unfunded liabilities. It is their understanding, the outstanding unfunded liabilities are approximately \$300,000 based on the contract price. The Director expressed concern that if the city loses the revenue stream from the cemetery how can we be sure they will have the funding necessary to cover the unfunded liabilities. Mr. Soper said he hoped to structure something where they can guarantee these unfunded contracts and sign something that commits them to forever pay us or whoever owns the cemetery when they come due. Our risk and the Board's risk is the balance sheet of the City of Baker.

Mr. Fauchaux asked if they had an estimate of the annual maintenance cost for the cemetery. Mr. Wimberly said they do not because the financials encompass other city work. The Director inquired about the size of the cemetery and stated, based on an old map in the Board records, the property looks to be approximately forty-five acres with only eighteen developed. Mr. Wimberley stated that was correct, however, a large portion of the property is wooded and considered to be in the flood plain. There is sufficient space within the eighteen acres for expansion.

Ms. Mize asked if their business plan to make the cemetery at least break even would require that the new sales be with a representation of perpetual care. Mr. Soper said yes, they have done a proforma and we have it breaking even, and to do that we need to ramp up pre-need sales.

Chairman Melancon asked how the Board would monitor the pre-need obligations that would remain with the city. The Director stated she believed that would be a contractual obligation between the seller and purchaser. Chairman Melancon asked if there were a dispute between the seller and purchaser, would the purchaser continue to deliver the pre-need contracts. Mr. Soper said yes, they would make a commitment to the Board that regardless of the financial condition of the city they would deliver all products. It would be up to me to do our due diligence on the financials of the city to make sure that long term they could continue to pay us and fulfill their contractual obligations. Chairman Melancon asked if they would put that in to a contract if they sold the cemetery to a third

party, they would have to be responsible. Mr. Soper said absolutely, and the pre-need is not as big an issue as the perpetual care trust fund. Mr. Soper said he has no problem putting up the initial \$50,000, but any amount over and above that would be cost prohibitive. The Director asked if they had a long term plan to fund the perpetual care trust to bring it up to where it needs to be, whether that be from increased deposits above the 10% minimum or some other way. Mr. Soper said it would be difficult from a financial standpoint if we trusted above what the statute provides. Mr. Soper was asked if they could open a new section that would be perpetual care only. Mr. Soper said that was a great idea and he would have to look at the option. Also, he will look at operating the cemetery as a non-perpetual care cemetery.

Mr. Soper stated the information provided today was helpful and he will hopefully have a plan to present to the Board at the next meeting.

The Chairman thanked everyone for their attendance and participation.

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Stewart Enterprises: Lake Lawn Park, LLC d/b/a Lake Lawn Park; S.E. Cemeteries of Louisiana, LLC d/b/a Metairie Cemetery; Mt. Olivet Cemetery, St. Bernard Memorial Gardens; and St. Vincent de Paul Cemetery (“Stewart”) – Status Report regarding On-site Examinations of Perpetual Care and Merchandise Trust Funds.

The Director stated, at the May 13, 2011 meeting, the Board determined perpetual care was due on Tombs and Copings pursuant to the statute and that perpetual care was due on grave spaces prior to discount and we were sending out a Policy Statement to that effect. Since that time, we have received correspondence from Edward N. George at Chaffe McCall, L.L.P. outlining Stewart’s position as to why they do not believe perpetual care is due on tombs and copings. The Director reviewed the documents in the meeting binders regarding this topic, including but not limited to the old property Title, old Maintenance Care Agreement, and a proposed new Title. The Director said based on her conversations with Ms. Bateman, it is her understanding that Stewart is not changing the representations they will make to the consumer or the level of care that they will give to these structures, but they do not believe that Title 8 supports the Board’s position that perpetual care is due on these structures.

Mr. George addressed the Board stating that there are three issues. One is with respect to the copings. Mr. George passed around photographs to make sure we are all talking about the same thing. Mr. George stated a coping is the curbing that frames interment spaces. Our starting point, as always, is the specific language of the statute. The language of the statutes deals with interment spaces sold with a representation that the space is entitled to perpetual care. We first have to decide whether that coping, which is the curb, is an interment space. There are no human remains inside that concrete structure at all. It is in the nature of a monument, it is in the nature of an embellishment to the actual interment space, which in these photos is the grass area on which we pay the appropriate amount of perpetual care. We do not trust with respect to those copings any

more than what we would trust with respect to the monument, it is not required by the law. It is not a burial space it is outside the purview. With these burial spaces that you are looking at we sell them both with the coping or without the coping, it's the customers choice. For that reason, the copings do not fall within the initial threshold of the applicability of the statute. The copings are not a burial space.

The second issue is the mausoleums and the mausoleums come into the issue of whether they are going to be sold or have been sold with the representation of perpetual care. Where they have been sold with the representation of perpetual care we have trusted on those mausoleums. Going forward, the representation of perpetual care will not be given on those properties, and that was the second sheet (Maintenance Care Agreement) that had been given with the old contracts. Stewart is saying they are not going to do that in the future. These building, these structures, the families will be responsible for taking care of them. So those structures that do not fall within the second part of the definitional threshold, that is to say that they have to be burial spaces, and they have to be sold with a representation of perpetual care. You have to have both pieces of that, copings fail the first test and mausoleums, in the future, fail the second test. When you have a situation for example, a third party vendor selling a mausoleum and installing it on the family's plot, obviously we will not sell that with a representation of perpetual care. The third party vendor has no obligation to put the trust up. If you say anytime you build a mausoleum on your property, whether or not you are making representations of perpetual care, you have to trust on the price of that mausoleum, you are putting every cemetery at a competitive disadvantage with the third party vendor, who does not have that obligation. The third party vendor is able to undercut your sales by at least ten percent every time because he does not have that perpetual care obligation.

The last issue is indeed the discount issue. We have had extensive discussions on that issue, and I would like to make two points. What we understand and certainly appreciate this Board's attempt to maximize the amount of funds that should be put into a perpetual care fund. However, if it wants to re-write the laws it needs to go to the legislature. The rule that was promulgated this summer essentially re-writes the law by changing the words. The statute says receipts - you will pay on receipts. The ordinary sense of receipts is money in the coffer – what comes in. This Board through the rule has said receipts means undiscounted asking price. It has deviated by saying receipts means undiscounted price, it has re-written the statute and I respectfully submit that is beyond this Board's authority - that is a legislative function. Moreover, in promulgating the rule that it put out it did not follow the Administrative Procedures Act ("APA"). The APA is very clear, it sets out when you are going to establish a rule of common application throughout your industry then you have to go through certain steps prescribed by the APA. Those were not followed. It is clear why we would have that kind of a rule. It is the same reason that these kinds of decisions are left to a legislature. You get input from various points of view. The input from someone with an old established cemetery about discounting and what the proper practice is may be very different from someone trying to build a new heritage. As the gentleman here said, we have to do some pre-need sales, we have to be a little more aggressive with pre-need sales, we have to stimulate that so we have to offer discounts. Someone who is selling a lot of pre-construction mausoleums

may have a different view. My appreciation of the rule is; if I have a mausoleum and I'm going to ultimately sell that crypt for \$3,000 but I say pre-construction I'm going to sell it for \$2,000 I am going to owe \$300 in perpetual care in spite of the fact that my receipts are only \$2000 with the ten percent being \$200. There are many other issues. For example, your discounting rule operates against consumers in two ways, and maybe there needs to be some consumer input. The first is by charging an extra amount of money that is not received, you take away incentives, and you reduce the incentives to charge a discount, which increases the prices in general or makes them less flexible to the consumer. You have taken away the owner's or limited the owner's ability to properly match his pricing to the customer that he deals with, by creating an artificial and unwarranted or unsupported by the statute, surcharge. You are making prices less flexible, and you are discouraging the use of a price list.

The best reason in the world, there is a family in need that needs this and cannot afford to pay for it, you buried mother up on the hill last year son wants his wife to be buried next to her mother but son cannot afford that. For good reasons you say you will do that and I will knock \$1,000 off the price to make it work, well if I have a price list now I'm charging that customer more to put into the perpetual care fund then if I didn't have a price list. My price list is what I charge that date for it. There is no statutory requirement that one we have a price list, and two that we keep it for any particular time. We can change it daily, weekly, or hourly, and that really points out the problem with this. We are changing one piece of the law without changing every piece of the law. If we are going to have a rule on discounting you had better have a rule that says you have to keep a price list so you can tell what you discounted, you have one side but you do not have the other. Ultimately if you believe the minimum trusting requirements under the law are insufficient then you go to the legislature, there are lots of other ways to do this. Texas for example, has a minimum deposit on a space and goes by price. Other states go by square footage with a minimum deposit per space. Our legislature has chosen one way to do it and it is this Board's obligation, I respectfully submit, to enforce the law as the legislature has written it, not to achieve a purpose by means the legislature has not chosen.

Mr. Seidemann stated before we go any further, he asked Mr. George if we have issued a notice for a hearing under the APA on the Board's activity on this Policy Statement or if he has asked for a hearing in this regard. Mr. George said not at this time. Mr. Seidemann said, at this point, we appreciate the insight. Boards, Agencies and Commissions are allowed to issue guidance that they think might be helpful to the industry that they regulate. It has been the Board's position, as I understand it, is that this is what that Policy Statement is. We do not have a challenge from you or from Stewart on the Agenda as to the way this was promulgated under the APA, whether this was done properly or not done properly. Therefore, I think any discussion of whether or not this thing is proper under the law or proper interpretation of the law today is not properly before this Board.

Mr. George said he understood what he was saying particularly with respect to the APA. It is helpful for the Board to understand, and I am sure counsel has advised the Board,

that this Board has to comply with the APA. I think it is helpful for them to understand that at least there is an argument out there. I do think it is something they should consider, that there is at least an argument out there that we have a non-compliance rule and I think it is directly relevant to the Policy or position taken by this Board. It is in the opinion of one of the companies to which it applies; it is not consistent with the statute.

Mr. Seidemann said that is noted in the record through your discussion here today, at a previous meeting, and in numerous writings between us and with the Board officially. We appreciate that perspective; we have taken the position that this is guidance and it does not constitute a rule and rule making under the APA. Certainly, if raised as a challenge under the APA we would consider that, but it is not a matter that has been raised before the Board today. Certainly, I think the insight and representations are helpful to any future consideration of the Policy Statement. Being a guidance document, the Board can revoke it if they want. It is not rule; we do not have to go through rule making to revoke it. Just as I do not believe, we have to go through rule making to say what we think. In terms of the substantive issue of whether or not this is a violation of the APA as rule making is not before the Board today.

Ms. Bateman asked if it is just guidance does that mean, in the next audit, it will not be inspected. Mr. Seidemann said it is what we think the law means. Ms. Mize stated it is how the Director will enforce it. Mr. Seidemann said as Mr. George has noted everyone is entitled to his or her opinions as to what a particular law means. The Board is entitled to enforce the law consistent with how they think the law should be enforced, as the legislature intended it, whether that comports with what you'll think or not is a different matter. I think that is something properly raised as a challenge. Whether this was a Policy Statement, guidance document, or rule, and/or what the law says.

Mr. George said the conclusion in the Policy Statement that receipts means undiscounted price, that is not common usage that's not what you are taxed on you are not taxed on what the merchant ask you to pay, but what you actually pay. Receipts do not mean, in any sense or common usage, undiscounted price. My suggestion here is this is not within the framework of proper interpretation and application of the law. We are not understanding what words mean in the common usage. We are changing that; receipts is now a code word in the cemetery statute to mean undiscounted price. If section one on the definitional section says receipts means undiscounted price then we would be absolutely right and we would have no objection. But what we have here is receipts is not defined with particularity in the statute, so you rely on its common meaning, and there is no basis for the common meaning of receipt to be undiscounted price.

Ms. Mize stated she had a factual question on the issue you referred to as number two, mausoleum; I am assuming that is a private mausoleum or tomb. Mr. George indicated that was correct. Ms. Mize said if her notes were correct, Mr. George indicated that in the future the private tombs would not be sold with any representation of perpetual care. The new title that Stewart provided the Board copies the representation to furnish maintenance care in perpetuity for tombs into their new title. Mr. George said that had not been issued and finalized and that will not be the final language.

Chairman Melancon said Stewart contends that the land where the mausoleum sits is the interment space where the burial is and what you pay perpetual care on, is that correct. Mr. George said that was correct. Chairman Melancon stated are you saying there are no burials in the structure only burials in the earth below the structure. Mr. George said no, there are burials in the tomb certainly. We are not representing in the future that we will provide perpetual care for that above ground tomb. Chairman Melancon said Mr. George's correspondence indicates that no burials are in the structure only in the ground. Mr. George said he apologizes if he misstated that or mislead anyone, I was speaking in terms of the coping having no interment space but the tombs certainly have burials. Chairman Melancon said then the tombs do qualify as an interment/cemetery space under Louisiana Law. Mr. Faucheaux said interment space is not defined in the law but cemetery space and interment is defined and asked Mr. George is interment space not the same as cemetery space. Mr. George said he would have to set them side by side the definition of interment and cemetery space. Mr. Faucheaux said under the definition of cemetery space a coping would fall under "any other property used or intended to be used for the interment of human remains". Mr. George said no, there is no human remains interment in the concrete coping. The Chairman requested we keep the discussion limited to mausoleums for now.

Mr. Faucheaux asked if we were discussing community mausoleum or private mausoleums. The Director said she thought they were the same, if you are in a perpetual care cemetery, she did not view them differently, and a crypt is a crypt whether in a community or private mausoleum. Mr. Faucheaux said there is no argument that a community mausoleum is perpetual care automatically. Mr. George said yes, those are sold with a representation of perpetual care and those are cared for. Chairman Melancon said the law is clear if we agree that there are burials inside that tomb above ground that is an interment space then the law says you put up ten percent of the cost of the interment space and that is clear. Mr. George says there are two pieces in 454 that you have to do, you have to have an interment space there is no question about that, and the second thing that you have to have is that it is sold with a representation of perpetual care. That is the difference, I can sell the tomb with interment space and say family this is your responsibility you care for this in perpetuity. I have an obligation to mow the grass around it and to keep the road, but as to the tomb itself, unless I say I am selling those interment spaces with a representation of perpetual care, I do not have that obligation. When you think about it, if a third party vendor builds the mausoleum on the property that you sold to a family what are the obligations that you have accepted with respect to that. The Chairman stated you do not have to let them build in your cemetery if you do not want, I think you can sell the property with a developed mausoleum on it already. Mr. George said you certainly can but I believe the anti trust laws are such that you cannot block a third party vendor from coming in and building that tomb or mausoleum in your cemetery. Chairman Melancon said that is correct if you have already sold the property, but if you sell it as a unit you do not have to sell just the property you can sell the whole package. Mr. George said sure, but I have a family that comes in 2010 and says I want these sixteen spaces you sell it and put your ten percent in perpetual care fund and then in 2012 they come and say I have contracted with Alfortish and they are going

to build this wonderful mausoleum. I do not think a cemetery can properly say Mr. Alfortish you cannot come in and build, family you cannot bring in a third party contractor. Chairman Melancon said he disagrees with the statement that you cannot charge the family that ten percent. If you charge perpetual care on your mausoleums, I think you can charge the family ten percent into the trust fund to maintain that mausoleum. I do it in my cemetery all the time, if someone buys from a third party a headstone I put ten percent of whatever I would charge for that headstone. Mr. George said you are not required to trust on headstones. Chairman Melancon said that is correct it is a business decision, but it is the same scenario as a mausoleum. You can also put in your cemetery rules and regulations specifications on how that mausoleum must be built. Mr. George said you are talking about the policy within your cemetery and we absolutely understand that but what we have to decide is what is the requirement of the law not what is a prudent policy. Again, if we do not think the law is a prudent policy we go to the legislature to change it.

Ms. Mize asked regarding the new title, how is it going to read. Mr. George said they have not issued a new title it is a work in process. Ms. Mize asked if there was going to be a representation of perpetual care for the ground underneath the mausoleum. Mr. George said he did not know, we have not finished drafting the new title. The Director asked if she buys in a tomb section and I chose not to build a tomb could I bury in the ground. Mr. George said he believed so, but he was not exactly sure what the policies are in the cemetery. Ms. Bateman was also not sure.

The Director said we are getting into the arguments of the points of law and that is fine I just want to make the Board aware that what was on the agenda was to report on the on-site examinations and what information we had received to date on the examinations. Most of the items are outstanding, one of them is of course what we are discussing their disagreement with our decision at the last meeting, and I think it is important to know what the options are for the Board. The Director asked legal counsel for advice. We have done an examination and the examination revealed they are not putting up perpetual care on the price prior to the discount; they are not, in the future and in some instances, putting up perpetual care on tombs and copings. The Board at the last meeting determined those things needed to be done and they are appearing today and saying they are still of a different opinion. The Director asked what the options are and what decisions the Board needs to make today.

Mr. George said the first title in the meeting books is the deed for the interment space and perpetual care is provided; the second document is the maintenance care agreement that is provided to the customer. This particular one deals with a coping and we do exactly what Chairman Melancon has described. When we have sold a coping with perpetual care we deposit it, so we do both, but there is no legal requirement that we provide the perpetual care for the coping and if we do not offer the perpetual care for the coping then we have no obligation to trust for it. If we offer it with perpetual care, we do trust. The Director said her only comment to that would be that if a perpetual care cemetery is going to sell some interment spaces with a representation of perpetual care and some without then we have the checkerboard situation that we have tried to avoid over the years.

Chairman Melancon said on the coping issue how far down is the casket buried underneath the coping. Mr. George said he did not know if they buried to grade or the top of the coping.

The Director gave a status report on all of the issues outlined in the perpetual care and merchandise trust fund on-site examinations. All issues are being addressed, with the exceptions of those items that there is a controversy. The issues at controversy are the perpetual care amounts due on discounts and on tombs and copings.

Ms. Mize outlined the Board's options. The Board can view the issues as three separate issues, which is the way Mr. George has presented them, discounts, tombs, and copings. The Director views it as two issues, discounts, and the tombs and copings as one issue. With respect to each issue, it is up to the Board whether they separate tombs and copings into separate issues. We now have a cemetery that says it disagrees with the policy statement and disagrees with depositing perpetual care on tombs and copings although for different reasons. The Board alternatives are; they can do nothing on all or some of the issues; they can ask the Attorney General to issue a cease and desist order on some or all of the issues; or they can instruct the Director to convene an Administrative Hearing.

Mr. George asked if it would be an option for this Board to reconsider its policy on the discounting. Ms. Mize stated, as she understands Mr. Seidemann's advice, your arguments on the Policy Statement are not on the agenda or under consideration today, but having said that I think in an indirect way the Board could reconsider the Policy Statement. Mr. Seidemann stated that a fourth option would be do nothing at this time and reconsider the policy statement. It is not on the agenda today and I do not think anyone is prepared to address that today; it could be postponed until the next meeting for formal consideration, if that is what the Board is inclined to do.

There was a discussion about possible legislation and the Board's issuance of the Policy Statement.

After discussion, Mr. Wilbert made a motion to allow the Policy Statement to stay in place and to gather the information of whether or not Stewart will comply. The motion was seconded by Ms. Leufroy and unanimously approved.

The Chairman thanked everyone for their attendance and participation.

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Ms. Saenz made a motion to return to the regular order of the Agenda. The motion was seconded by Ms. Patin and unanimously approved.

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Since copies of the Minutes of Meetings held May 12, 2011 and May 13, 2011, had been previously mailed to each Board Member, the Chairman asked if there was any

discussion and/or amendments. Ms. Leufroy made a motion to approve the Minutes of the May 12, 2011 and May 13, 2011 meetings as presented. The motion was seconded by Mr. Wilbert and unanimously approved.

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Report of Officers

The Director reviewed the Statement of Operations January through September 2011; Cash & Investments as of September 30, 2011; the Budget vs. Actual January through September 2011. After review and discussion Ms. Leufroy made a motion to accept the financial statement as presented. The motion was seconded by Mr. Wilbert and unanimously approved.

The Director reviewed the 2011 Proposed Budget Amendment. After review and discussion, Ms. Leufroy made a motion to accept the 2011 Proposed Budget Amendment as presented. The motion was seconded by Ms. Patin and unanimously approved.

The Director reviewed the 2012 Proposed Budget outlining estimated income and expenses. At this time there was a discussion regarding expenses exceeding income, and the effect low interest rates and the reduced number of interments has had on income. After a discussion, Ms. Leufroy made a motion to increase the 2012 interment fees from nine dollars (\$9.00) to ten dollars (\$10.00) per interment. The motion was seconded by Mr. Fauchaux and unanimously approved.

Mr. Fauchaux made a motion to amend the 2012 Budget to reflect the increased interment fees and approve the 2012 Budget as amended. The motion was seconded by Ms. Patin and unanimously approved.

The Director advised the Legal Litigation Escrow Account and Long Term Liabilities and Extra Ordinary Expenses Account certificates of deposit would not mature until March 19, 2012.

There was a discussion regarding the state travel card. After discussion, Ms. Patin made a motion authorizing the Director to apply for a corporate credit card in the name of the Louisiana Cemetery Board. The motion was seconded by Mr. Fauchaux and unanimously approved.

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Ms. Leufroy made a motion to adjourn for lunch at 11:50 A.M. The motion was seconded by Mr. Fauchaux and unanimously approved.

The meeting reconvened at 1:30 P.M.

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Report of Director

Sand Hill Cemetery Association, Inc. d/b/a Sand Hill Cemetery, Ponchatoula, LA – Pending Application for Certificate of Authority changing from an Exempt status to a Non-Exempt status. The Director reminded the Board the cemetery is involved in a civil dispute which is pending in court. The Director advised that a new application has been sent to the cemetery and she anticipates revised application to be submitted.

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Garden of Memories of Alexandria, Inc. d/b/a Garden of Memories of Alexandria, Alexandria, LA – Pending Application for Certificate of Authority for the change in ownership. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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St. John the Baptist Church d/b/a St. John the Baptist Cemetery, Crowley, LA - Pending Application for Certificate of Authority changing from an Exempt status to a Non-Exempt status. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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Alfortish Cemetery Management, Inc. d/b/a False River Memorial Park, New Roads, LA - Pending Application for Certificate of Authority for the change in ownership. The Director advised the Application for Certificate of Authority is incomplete. However, the cemetery has advised they will be submitting a revised application because they have dissolved this corporation, Alfortish Cemetery Management, Inc., and established a new corporation.

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Christensen Properties, L.L.C. d/b/a DeQuincy Memorial Park, DeQuincy, LA – Pending Application for Certificate of Authority for a change in ownership. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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Jigger Garden of Memories Cemetery Corporation d/b/a Jigger Garden of Memories, Winnsboro, LA – Pending Application for Certificate of Authority for the establishment of a new cemetery. The Director advised the Application for Certificate of Authority is

incomplete and reviewed the outstanding documentation needed to complete the application.

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Pleasant Valley Missionary Baptist Church d/b/a Pleasant Valley Missionary Baptist Church Cemetery, Loranger, LA - Pending Application for Certificate of Authority changing from an Exempt status to a Non-Exempt status. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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Walters Funerals, L.L.C. d/b/a Greenlawn Memorial Gardens, Lafayette, LA – Pending Application for Certificate of Authority for the change in ownership. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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Church of Jesus Christ of Tangipahoa d/b/a Church of Jesus Christ of Tangipahoa Cemetery, Amite, LA – Pending Application for Certificate of Authority for the change in ownership. The Director advised the Application for Certificate of Authority is incomplete and reviewed the outstanding documentation needed to complete the application.

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The Director reviewed Topic #3, Oak Lane Memorial Park, L.L.C. d/b/a Oak Lane Memorial Park, Prairieville, LA – 2011 On-site Examination of Perpetual Care Trust Fund, along with Topic # 21, Oak Lane Memorial Park, L.L.C. d/b/a Oak Lane Memorial Park (“Oak Lane”), Prairieville, LA - Administrative Hearing #2011-002

The Director stated the 2011 On-site Examination, covering the second year of sales at Oak Lane, was conducted September 1, 2011, in accordance with the conditions set by the Board on the license issued to Oak Lane. The Director reviewed the findings of the 2011 On-site Examination, which included copies of Schedules A-D. A copy of the complete examination was before each Board Member. Regarding the Giles Private Family Burial Garden referred to in the examination, the Director advised some information was received late Wednesday, October 19, 2011, and was still in the process of being reviewed.

Regarding the 2010 On-site Examination, the Director stated at the May 13, 2011 meeting the Board: accepted the findings of the 2010 On-site Examination of Oak Lane; directed the Attorney General and Board to jointly issue a Cease and Desist Order to Oak Lane; and determined Oak Lane must bring its perpetual care trust fund current pursuant

to law. According to the 2010 On-site Examination an additional \$118,324.89 was due the perpetual care trust fund on sales of interment spaces through May 31, 2010, based upon payment in full of all contracts.

On July 25, 2011, the Attorney General issued the Cease and Desist Order to Oak Lane. A request for hearing, pursuant to R.S. 8:66.2, was received from Oak Lane's counsel of record, Chaffe McCall, L.L.P., on or about August 11, 2011. In accordance with that request, on September 23, 2011 a Notice of Hearing (#2011-002) was issued to Oak Lane and a hearing was scheduled for October 20, 2011. The hearing was continued without date based on our negotiations with Oak Lane to reach a settlement agreement.

At this time, a proposed Consent Agreement was distributed to Board Members for discussion and consideration.

Mr. Seidemann stated the proposed Consent Agreement is limited to perpetual care issues for the years 2010 and 2011 only. Further, Mr. Seidemann indicated that Mr. George requested that the Board be advised that he is recommending that his client, Oak Lane, accept this draft and his client has indicated he would settle on the terms in this draft. Mr. Seidemann reviewed the proposed Consent Agreement and answered any questions the Board had regarding its terms. The proposed Consent Agreement resolves the 2010 and 2011 On-site Examination issues relating to perpetual care, with some exceptions, and it does away with the need for a hearing, and does away with the Cease and Desist Order. Those are the substantive issues; it also reserves our right to deal with issues that we do not know about, and reserves some issues that have not yet been resolved in the 2011 On-site Examination. Mr. Seidemann said it is his recommendation that the Board accept the Consent Agreement.

There was a discussion regarding the options the Board has if they do not accept the proposed Consent Agreement.

After discussion, Mr. Fauchaux made a motion to accept the findings of 2011 On-site Examination of Oak Lane as presented. The motion was seconded by Ms. Leufroy and unanimously approved.

There was a discussion regarding minor technical edits to the proposed Consent Agreement.

Ms. Holloway made a motion to accept the Consent Agreement with the revisions discussed today and a possible technical edit to the Oak Lane signature block. The motion was seconded by Ms. Patin and unanimously approved.

Mr. Fauchaux made a motion the Board dismiss the hearing, if Oak Lane accepts the Consent Agreement as amended. The motion was seconded by Ms. Leufroy and unanimously approved.

Mr. Fauchaux made a motion in the event Oak Lane does not accept the Consent Agreement as amended the Board reset the hearing. The motion was seconded by Ms. Leufroy and unanimously approved.

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Lamar Cemetery, Inc. d/b/a Lamar Cemetery, Delhi, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund. The Director reviewed the examination findings and advised this was on the Agenda for informational purposes. The owner Mr. Higdon is elderly and not in good health and is having trouble keeping up with the paperwork of the cemetery. The cemetery is drawing against the initial deposit, therefore, no deposits are due the perpetual care trust fund. The cemetery does not sell cemetery related merchandise and services.

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Rose Lawn Development Association, Inc., d/b/a Roselawn Memorial Park, Baton Rouge, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

The Director reviewed the June 20, 2011, On-site Examination findings stating that initially there were concerns that the mausoleum on the property had some structural issues. On October 6, 2011, the Board received information from the cemetery and Architectural Concrete Products, Inc. indicating the mausoleum was structurally sound and in good condition. Cosmetic repairs were made to the areas addressed in the examination and photographs of the repairs were passed around.

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Roselawn Memorial Gardens, Inc. d/b/a Roselawn Memorial Gardens, Calhoun, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

The Director reviewed the July 13, 2011, On-site Examination findings that included delinquent deposits, one deed issue, deficiencies in their pre-need vault and liner storage, and some needed road repairs. The Director advised information was received recently indicating that all perpetual care deposits were now current, and the one deed issue has been resolved. The pre-need storage is still delinquent by (9) vaults and (24) liners. According to information received from the owner, Mr. Fortenberry, they are not in a financial position to purchase the delinquent inventory but they are working to resolve the issue. The Director stated since the July 13, 2011 examination the cemetery had deposited over \$9,000 into its perpetual care trust fund to bring it current, and appears to be making an effort to resolve the outstanding issues.

After discussion Ms. Leufroy made a motion that all pre-need inventory must be current, pursuant to law, no later than (30) days prior to the next meeting or Mr. Fortenberry must attend the next meeting. The motion was seconded by Ms. Patin and unanimously approved.

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Kilpatrick’s Rose-Neath Funeral Homes, Crematorium and Cemeteries, Inc. d/b/a Rose Neath Cemetery, Bossier City, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

Kilpatrick’s Rose-Neath Funeral Homes, Crematorium and Cemeteries, Inc. d/b/a Round Grove Memorial Gardens, Shreveport, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

The Director reviewed findings of the On-site Examinations conducted July 14, 2011, on the above noted cemeteries, which are subject to a Consent Agreement entered into with the Board in 2007. The Consent Agreement requires that the cemeteries maintain sufficient developed grave spaces to meet its obligations under all existing and future Option to Purchase Agreements. In accordance with the Consent Agreement, Rose Neath Cemetery has reserved (816) spaces, and Round Grove Cemetery has reserved (192) spaces. As of the date of the examination, none of the reserved spaces have been used.

The examination revealed that Rose Neath Cemetery had (346) outstanding Option to Purchase Agreements and is in compliance. However, Round Grove Cemetery had (235) outstanding Option to Purchase Agreements, but only (192) reserved developed grave spaces. We have requested Round Grove Cemetery notify the Board when sufficient spaces have been designated to cover all existing and future Option to Purchase Agreements.

After discussion, the Board recommended the Director follow-up with the cemetery and report at the next meeting.

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Forest Park East Associates, Inc. d/b/a Forest Park Cemetery, Shreveport, LA – Status Report regarding On-site Examination of Perpetual Care and Merchandise Trust Fund.

Forest Park West Associates, Inc. d/b/a Forest Park West Cemetery, Shreveport, LA – Status Report regarding On-site Examination of Perpetual Care and Merchandise Trust Fund.

Forest Park East Associates, Inc. d/b/a Forest Park Cemetery, Shreveport, LA & Forest Park West Associates, Inc. d/b/a Forest Park West Cemetery, Shreveport, LA – Status Report regarding Consent Agreement and maintenance issues.

The Director reviewed the findings of the August 24-25, 2011 Perpetual Care On-Site Examinations of Forest Park Cemetery and Forest Park West Cemetery including the reconciliation of receipts; sequential versus proportional trusting within the HMIS trust

system; and maintenance issues. The Director reviewed the response received by Forest Park indicating they will respond to each issue by November 30, 2011.

The Director reviewed the findings of the August 24-25, 2011 Merchandise Trust Fund On-Site Examinations of Forest Park Cemetery and Forest Park West Cemetery including the reconciliation of receipts; delinquent deposits; and funding of contracts within seven years. Forest Park is in violation of the Consent Agreement entered into with the Board in 2009, which requires Forest Park to prospectively make timely deposits of all monies collected from consumers on pre-need merchandise and service contracts, and at-need merchandise and service contracts not delivered within one hundred twenty (120) days of final payment on contract, as required by law.

The Director also reviewed last quarterly report regarding the maintenance issues at Forest Park Cemetery and Forest Park West Cemetery. According to information provided final (aesthetic) repairs to the Chapel Mausoleums in Forest Park Cemetery and Forest Park West Cemetery are pending. The cemetery is still seeking bids to the work suggested by the engineers to address the irrigation issues in Forest Park Cemetery.

After discussion, Ms. Holloway made a motion to accept Forest Park's proposal to resolve all violations noted in the perpetual care and merchandise trust fund On-site Examinations, excluding the maintenance issues, by November 30, 2011; and if satisfactory written proof of compliance is not received by November 30, 2011, in accordance with the Consent Agreement dated May 1, 2009, an Administrative Hearing will be called pursuant to La. R.S. 8:75. The motion was seconded by Ms. Saenz and unanimously approved.

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Richwood Gardens, Inc. d/b/a Richwood Gardens, Monroe, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

The Director reviewed the findings of the September 15, 2011 Perpetual Care On-Site Examination advising the cemetery owed an additional \$105 to its perpetual care trust fund on receipts for the year examined; the corporation was not in good standing with the Secretary of State; and the pre-need storage was delinquent by (9) pieces of granite and (5) vases.

Ms. Holmes, Argent Trust, indicated they had received the \$105 deposit and she would send confirmation for the Board.

After discussion, the Board recommended the Director follow-up with the cemetery and report at the next meeting.

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Woodlawn Mausoleum, Inc. d/b/a Woodlawn Mausoleum, Ferriday, LA – Status Report regarding On-site Examination of Perpetual Care Trust Fund.

The Director reviewed the findings of the September 16, 2011 Perpetual Care On-Site Examination advising the cemetery could not produce interment records. The Cemetery is currently sold out, but they are considering building a new mausoleum.

After discussion, the Board recommended the Director follow-up with the cemetery and report at the next meeting.

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The Director reviewed the Applications for Pre-Construction Sales Projects received since the last meeting, copies of which were before each Board Member.

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Ratification of Certificates of Authority issued

The Chairman asked for a motion to ratify the licenses issued since the last Board Meeting. Ms. Leufroy made a motion to ratify the 2011 Non-Exempt (New/Transfers) #11-506 - #11-515; 2011 Non-Exempt (Renewals) #11-505; and Exempts (New) #1290E - #1294E. The motion was seconded by Mr. Wilbert and unanimously approved.

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On-site Examinations performed since last Board Meeting

The Director stated (23) Perpetual Care and (4) Merchandise examinations since the last Board Meeting. Further, ongoing SCI Examination include (8) Perpetual Care and (5) Merchandise Trust Funds.

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The Board scheduled the 2012 Meetings for May 17 & 18, 2012 and November 8 & 9, 2012.

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After discussion Ms. Leufroy made a motion to increase the legal contract for Special Council to the Board, Sharon C. Mize, from \$35,000 to \$40,000 per year to cover legal fees associated with administrative hearings and litigation. The motion was seconded by Ms. Patin and unanimously approved.

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After discussion Ms. Leufroy made a motion to renew the CPA contract with Griffin & Company, LLC, for an additional three years at the proposed rate of \$1,500.00 per year to conduct the agreed-upon procedures as designated by the Legislative Auditor; and \$500 per year to prepare the Annual Financial Report (AFR) for submission to the Legislative Auditor and Division of Administration. The motion was seconded by Ms. Patin and unanimously approved.

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Evangeline Memorial Park Incorporated d/b/a Evangeline Memorial Park (“EMP”), Ville Platte, LA – Status Report regarding Order issued in Administrative Hearing #2010-001 Reconvened.

The Director advised at a hearing held May 12, 2011, the Board determined that the Certificate of Authority of EMP would remain suspended, with the exception of necessary operation, sales of burial spaces, and at-need sales of merchandise and services until satisfactory written proof of compliance with Title 8 and the Rules and Regulations of the Board was received. Further, if satisfactory written proof of compliance was not received by Saturday, October 15, 2011, a fine in the amount of \$10,000 be imposed on EMP for willful violation of Title 8.

The Director reviewed a written request received from EMP and sent to the Board October 20, 2011, requesting additional time to provide proof of compliance. In addition to the request, the Board received reimbursement of \$744 in hearing expenses, and copies of checks for bronze memorials. Since the data was received yesterday, the information has not been reviewed and compared to the outstanding pre-need liabilities. However, EMP has advised and acknowledges they are still not in compliance regarding pre-need liabilities.

After discussion, Ms. Leufroy made a motion to deny the request for extension of time and reconsideration of the Order issued at the May 12, 2011 hearing. The motion was seconded by Ms. Saenz and unanimously approved.

Ms. Leufroy made a motion to authorize the Attorney General’s Office to take whatever legal action necessary to enforce the Board’s Order. The motion was seconded by Mr. Wilbert and unanimously approved.

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Alexandria Garden of Memories, Inc. (“AGM”) – Status Report regarding Order issued in Administrative Hearing #2008-002 Reconvened.

The Director advised at a hearing held May 12, 2011 the Board determined that the Certificate of Authority of AGM would remain suspended, with the exception of at-need sales and operations, until satisfactory written proof of compliance with Title 8 and the Rules and Regulations of the Board was received. The Board also imposed a fine of

\$1,500 and assessed the hearing costs to AGM. At the hearing AGM presented exhibits that required review to determine compliance. On June 30, 2011, the Board notified AGM, certified mail return receipt request, that it had completed its review of the exhibits and determined additional information was needed to determine proof of compliance.

The Director advised AGM has not responded to the Board's June 30, 2011 correspondence, and the last deposits made to the perpetual care and merchandise trust funds of AGM was on May 11, 2011, the day before the hearing. Additionally, AGM has not paid the hearing expenses or the fine imposed for violations of Title 8 and the Rules and Regulations of the Board.

After discussion, Mr. Fauchaux made a motion to authorize the Attorney General's Office to take whatever legal action necessary to enforce the Board's Order. The motion was seconded by Ms. Saenz and unanimously approved.

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Arcola Roseland Cemetery Association d/b/a Arcola Roseland Cemetery, Roseland, LA – Cease & Desist Order.

The Director reviewed the Cease & Desist Order issued by the Board and the Attorney General's Office. Further, the Director advised the Board has not received a request for a hearing within thirty days of the issuance of the Cease & Desist Order, as provided law. Therefore, the Cease & Desist Order is final and in force.

The Board recommended the Director continue to monitor the cemetery.

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Attorney General Opinion #10-0280 regarding impact of Act 707, Louisiana Historic Cemetery Preservation Act, on conclusions set forth in Attorney General's Opinion #08-0135.

The Director reviewed AG Opinion #10-0280, which indicates Act 707 does not change any of the opinions expressed in AG Opinion #08-0135.

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Alfortish Cemetery Management, Inc. d/b/a False River Memorial Park, New Roads, LA – Administrative Hearing #2011-0001.

The Director advised the hearing scheduled for October 20, 2011 had been continued without date. The Board received confirmation of delivery of the vaults needed to satisfy the pre-need vault liabilities. The only outstanding item is the Application for Certificate of Authority for a change in ownership.

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Executive Session

Ms. Leufroy made a motion to go into Executive Session for the purpose of discussing pending Litigation, State of Louisiana and the Louisiana Cemetery Board vs. Lymus W. Washington; and review of staff performance. Mr. Wilbert seconded the motion and a roll call vote was taken: Mr. Melancon – yea; Ms. Leufroy – yea; Ms. Patin – yea; Mr. Wilbert – yea; Ms. Saenz – yea; Mr. Fauchaux – yea; and Ms. Holloway – yea.

There were no motions made at the conclusion of the Executive Session.

The Board stated that although the Board could not approve any raises in salary, they want the record to reflect the Board’s satisfaction with the performance of the Director and Assistant Director in the past year.

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Ms. Saenz advised the Board she received notification from the Board of Ethics that indicated she had not violated any ethics laws.

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Since there was no further business, Ms. Leufroy made a motion to adjourn at 4:55 P.M. The motion was seconded by Ms. Holloway and unanimously approved.

Shelly M. Holloway, Secretary/Treasurer

Attested To:

Gerald W. Melancon, Chairman