

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING
AND REGULATION BEFORE THE STATE PERPETUAL CARE
CEMETERY BOARD MEETING MINUTES
10:00 A.M., NOVEMBER 3, 2011
SYNERGY BUSINESS PARK, KINGSTREE BUILDING
COLUMBIA, SOUTH CAROLINA

BOARD MEMBERS PRESENT:

J.W. Russ, Chairman

Russell Floyd, Vice Chairman

Roger D. Finch

Jaqueline Petty

John E. Bartus

Rick Riggins

LLR BOARD STAFF:

Doris Cubitt, Administrator

Wendi Elrod, Program Assistant

Amy Holleman, Administrative Specialist

Jeanie Rose, Administrative Specialist

Bobby Taylor, Office of Investigations

Dean Grigg, Advice Counsel

Christa Bell, Division of Legal Services

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1 10:20 a.m.

2 MR. CHAIRMAN: This meeting is
3 called to order. Public notice of this meeting
4 was properly posted at the South Carolina
5 Perpetual Care Cemetery Board office, Synergy
6 Business Park, Kingstree Building, and provided to
7 all requesting persons, organizations, and news
8 media in compliance with Section 30-4-80 of the
9 South Carolina Freedom of Information Act, and a
10 quorum is present.

11 If you would, please stand while we
12 give the pledge of allegiance.

13 (Pledge of Allegiance)

14 MR. CHAIRMAN: At this time, I want
15 to introduce the Board to everybody and, in turn,
16 have each of you stand and tell us who you are.
17 And I'll start with our advice attorney.

18 MR. GRIGG: I'm Dean Grigg. I'm
19 advice counsel for the Board.

20 MR. CHAIRMAN: J.W. Russ from
21 Conway, South Carolina, Chairman.

22 MR. FLOYD: Russell Floyd, Vice
23 Chairman, Spartanburg, South Carolina.

24 MS. PETTY: Jackie Petty, Union,
25 South Carolina.

1 MR. RIGGINS: Rick Riggins,
2 Lancaster.

3 MR. FINCH: Roger Finch. I'm a
4 member from Honea Path in Greenville County.

5 MR. BARTUS: John Bartus from
6 Malden.

7 MS. ELROD: Wendi Elrod, LLR.

8 MS. ROSE: Jeanie Rose, LLR.

9 MS. CUBITT: Doris Cubitt, LLR.

10 MS. HOLLEMAN: Amy Holleman, LLR.

11 MR. TAYLOR: Bobby Taylor, LLR.

12 MR. HARRELL: Ralph Harrell, Garden
13 of Devotion, Hemingway.

14 MR. HOLLOWAY: I'm Jim Holloway.
15 I'm, I guess, a consultant to the Board.

16 MS. HUFF: I'm Janet Huff from
17 Easley, South Carolina, Greenlawn.

18 MR. GAFFNEY: Bill Gaffney,
19 Greenville, South Carolina.

20 MR. LINDSAY: John Lindsay,
21 Greenville, South Carolina.

22 MS. RANDOLPH: Tamara Randolph,
23 Greenville, South Carolina.

24 MR. COLEMAN: Doug Coleman,
25 StoneMor Parks.

1 MR. BAILEY: I'm Ralph Bailey. I'm
2 an archeologist with Brockington & Associates out
3 of Charleston.

4 MR. CHAIRMAN: And Laura?

5 COURT REPORTER: Laura DeCillis.
6 I'm the court reporter.

7 MR. CHAIRMAN: I thank all of you
8 and I thank you for coming. It was a little bit
9 chilly on the way over here this morning. We are
10 going to have probably a fairly lengthy meeting,
11 and what I would propose to do is, we'll amend our
12 agenda. Russell, if you'll --

13 MR. FLOYD: Mr. Chairman, I'd like
14 to propose we move items 6, 7, 8C to the end of
15 the agenda.

16 MR. CHAIRMAN: Okay. I have a
17 motion that we amend the agenda.

18 MR. RIGGINS: Second.

19 MR. CHAIRMAN: All right. I have a
20 second. All those in favor say aye.

21 (Response)

22 MR. CHAIRMAN: All those opposed?

23 (No response)

24 MR. CHAIRMAN: And to those of you
25 who are here, you are welcome to stay through the

1 whole meeting and hear what these reports are,
2 okay? We're not trying to deprive you of
3 anything.

4 Again, thank you for coming. At
5 this time, we would ask -- we don't have any
6 absences this morning. Board, have y'all studied
7 the minutes? Do we have any corrections or
8 alterations?

9 MR. FLOYD: Yes, sir. I have a
10 few. I'm starting on -- can pull those up? On
11 line 113, does this show the edits I sent you or
12 did you already make the changes?

13 MS. CUBITT: This will not show the
14 edits, but I have already made the changes that
15 you sent me.

16 MR. FLOYD: Oh, you did?

17 MS. CUBITT: And I did send an
18 updated copy to all Board members.

19 MR. FLOYD: I haven't had a chance
20 to compare. So you agree with those changes that
21 are mostly a matter of -- I think I had two
22 additional, if I can find it. Bear with me,
23 please. Let's go to 414. So you took my
24 strike-outs, my red strikes out --

25 MS. CUBITT: Yes, sir.

1 MR. FLOYD: On 417, it states,
2 Mr. Floyd stated that specific disclosure -- let's
3 see. Mr. Daniels asked if Mr. Floyd had reviewed
4 the separate disclosures regarding out of barrel
5 containers and Mr. Floyd stated the specific
6 disclosure -- and this sentence needs to be
7 reworked. It's on 417.

8 I think the sentence that says,
9 Mr. Floyd stated a specific disclosure is because
10 Dunmore practices to barrel lost. I think that
11 should be deleted and replaced with, Mr. Floyd
12 affirmed that he had reviewed the specific
13 disclosure document.

14 On 771, I assume everybody agreed
15 with the edits that I had made? Well, let's go to
16 481. That first word minor, have you changed that
17 at 481? Can you blow that up?

18 MS. CUBITT: I believe I did change
19 that.

20 MR. FLOYD: What did you change it
21 to?

22 MS. CUB: Hang on.

23 MR. FLOYD: I think it was minimum.
24 Does anybody else remember 481 to be minimum fee,
25 or what else was that?

1 MR. RIGGINS: I would think that
2 should be right.

3 MR. FLOYD: You would?

4 MR. RIGGINS: I would think, yeah.

5 MR. FLOYD: So, Wendi, you could
6 see my deletions and then my insert -- that little
7 insert figure? All right. 771.

8 MS. CUBITT: 481 was already
9 corrected.

10 MR. FLOYD: Do what? It had been
11 made minimum?

12 MS. CUBITT: Uh-huh.

13 MR. RIGGINS: Okay. What's the
14 next one?

15 MR. FLOYD: 771. On line 771, it
16 says document was overlooked. I think it should
17 be document was in violation of the statute. Does
18 that make sense J.W.?

19 MR. CHAIRMAN: (Nods head).

20 MS. CUBITT: Would you repeat that
21 again, please?

22 MR. FLOYD: Instead of overlooked,
23 it should be in violation of the statute. Dean,
24 what is the practice or procedure if we find the
25 minutes later on and they hadn't been corrected

1 properly, can we come back and amend those at a
2 later meeting?

3 MR. GRIGG: I mean, sure. If you
4 approve the minutes today, that's going to be
5 considered the final version.

6 MR. FLOYD: Right.

7 MR. GRIGG: But, sure. If at some
8 point you found out there was something else you
9 needed to look at, you could make a motion to
10 reopen a review of the minutes and to do it again.

11 MR. CHAIRMAN: Okay.

12 MR. FLOYD: Mr. Chairman, that's
13 all the changes I had.

14 MR. CHAIRMAN: Does anybody else
15 have any changes?

16 (No response)

17 MR. CHAIRMAN: Do I have a motion
18 to accept the minutes as amended?

19 MR. RIGGINS: So move.

20 MR. CHAIRMAN: I have a motion. Do
21 I have a second?

22 MR. FINCH: Second.

23 MR. CHAIRMAN: Okay. All those in
24 favor of accepting the minutes as amended say
25 aye.

1 (Response)

2 MR. CHAIRMAN: All those opposed?

3 (No response)

4 MR. CHAIRMAN: I'm not going to
5 have any remarks because I've already remarked,
6 okay? Doris?

7 MS. CUBITT: We're going to defer
8 my remarks until later.

9 MR. CHAIRMAN: Okay. Bobby Taylor,
10 are you willing to do an investigative report?

11 MR. TAYLOR: Just briefly. From
12 January 1 until November 2nd, we had received 21
13 cases. As of yesterday at five o'clock, we had
14 closed seven of those. For Board approval today,
15 we have four dismissals; 20119, 201110, 201111 and
16 201115. Those are the four brought before you for
17 Board consideration.

18 MR. FLOYD: Mr. Chairman, would you
19 like a motion to accept from the Board?

20 MR. CHAIRMAN: Yes.

21 MR. FLOYD: Mr. Chairman, I make a
22 motion to accept the IRC report by the Board.

23 MR. BARTUS: Second.

24 MR. CHAIRMAN: I have a motion to
25 accept the report. Do I have a second?

1 MR. BARTUS: Second.

2 MR. CHAIRMAN: I have a second.

3 All those in favor of accepting the report say
4 aye.

5 (Response)

6 MR. CHAIRMAN: All those opposed?

7 (No response)

8 MR. CHAIRMAN: Okay. Thank you,
9 Mr. Taylor. Doris, is Ms. Wolfe here?

10 MS. CUBITT: Sir?

11 MR. CHAIRMAN: Is Ms. Wolfe here to
12 give a report?

13 MS. CUBITT: No. That was the
14 report that Bobby Taylor gave.

15 MR. CHAIRMAN: Oh.

16 MS. CUBITT: That was A and B.

17 MR. CHAIRMAN: Okay. Then that was
18 both of them?

19 MS. CUBITT: Yes, sir.

20 MR. CHAIRMAN: All right. Thank
21 you. Is Christa -- she's here. Good morning.

22 MS. BELL: Good morning,
23 Mr. Chairman and other Board members. I'm
24 Christa Bell and I'm with the Office of General
25 Counsel. Mr. Bartus, if you wouldn't mind taking

1 one and passing it on down.

2 There are currently, in the Office
3 of General Counsel, six cases open. Of those, one
4 is a pending action, meaning that there needs to
5 be some type of action, pleadings drawn up on that
6 case.

7 There are two that are pending
8 Memorandum of Agreements, which hopefully will be
9 resolved before you today. There are three cases
10 which are pending hearings. We've drafted the
11 formal complaints and those should be brought
12 before you in March at your next Board meeting.
13 And nine cases have been closed since January of
14 last year and you all probably remember, most of
15 those dealt with the reporting cases where the
16 cemeteries had not done their annual reports as
17 required.

18 And that's my report for you all
19 today. If you have any questions, I'll be glad to
20 answer them.

21 MR. CHAIRMAN: Does anybody have
22 any questions for her?

23 (No response)

24 MS. BELL: Thank you.

25 MR. CHAIRMAN: Thank you, very

1 much. Okay. Garden of Devotion. Is it Harrell?

2 MR. HARRELL: Yes, sir.

3 MR. CHAIRMAN: Okay. If you would
4 come forward, please. If you would, for the
5 record, identify yourself, please.

6 MR. HARRELL: Ralph Harrell, Garden
7 of Devotion, Hemingway, South Carolina.

8 MR. CHAIRMAN: Refresh me as to
9 what we're doing. Is this a change of ownership?

10 MR. HARRELL: A change of
11 management.

12 MR. CHAIRMAN: A change of
13 management?

14 MR. HARRELL: Yes, sir.

15 MR. CHAIRMAN: Okay.

16 MS. CUBITT: Mr. Chairman, it's to
17 appoint him manager of the cemetery. He's
18 inherited the cemetery from his parents and he's
19 worked with the family over the years and whatnot,
20 but --

21 MR. HARRELL: Maybe I could give
22 you a brief rundown of what --

23 MR. CHAIRMAN: Okay. If you don't
24 mind, sir.

25 MS. CUBITT: Thank you,

1 Mr. Harrell.

2 MR. HARRELL: My father, Chan
3 Harrell, you may have known him, Mr. Russ.

4 MR. CHAIRMAN: Uh-huh.

5 MR. HARRELL: And Merv Morris who
6 started Morris Funeral Home. Daddy went to work
7 for him in '47 and they began this idea of the
8 Garden Devotion in '67 and they incorporated in
9 '68. I was there from the get-go. I helped them
10 mark off the graves. I dug graves, I've marked
11 graves and closed graves, worked funerals there
12 all our lives. We were in the funeral business.

13 Both of them died in '91. My
14 mother ran the Garden of Devotion out of the
15 kitchen until two years ago and she died. Aunt
16 Nell, Mr. Morris' wife, she's 95, she took it over
17 and moved it to her kitchen. Myself and
18 Ms. Morris' daughter, we ran everything until we
19 reached the point where Aunt Nell could not do it
20 any longer. So we hired McKenzie Funeral Home to
21 open and close graves. He does the selling of
22 everything for us.

23 Mr. McKenzie wanted to be the
24 manager, but there were problems. Fortunately, I
25 came up in June and met with Ms. Doris, Ms. Amy, I

1 also met with Ms. Jenny, and they were a
2 tremendous help.

3 Hopefully, I've sent everything
4 that we had to do in. We did the new trust
5 agreement, all the -- the accountant did all his
6 thing that he had to do, you know. I'm not smart
7 enough to do all that. I'm smart to hire good
8 accountants and good lawyers.

9 So it was, we thought in the best
10 interest for me to take over the management
11 completely, and that's why I'm before you today.

12 MR. CHAIRMAN: Now, will McKenzie
13 still be your sales manager?

14 MR. HARRELL: He does the sales.

15 MR. CHAIRMAN: Okay.

16 MR. FLOYD: This is a change of
17 ownership, then, isn't it?

18 MR. HARRELL: No, sir. We still
19 own every stock. Well, the Harrell family and the
20 Morris family owned it completely.

21 MR. CHAIRMAN: It's just a change
22 of management.

23 MR. FLOYD: But your mother is
24 deceased?

25 MR. HARRELL: Yes, sir.

1 MR. FLOYD: So she no longer owns
2 the cemetery?

3 MR. HARRELL: I am. I own it along
4 with my two sisters, and Ms. Morris owns 50
5 percent.

6 MR. FLOYD: I guess I'm confused
7 because this package, if it suggests it's a change
8 of ownership, well, why would you have to provide
9 all of this if it's just a change of management?

10 MR. HARRELL: I don't know. I just
11 did as they said.

12 MS. CUBITT: He did. He did what
13 we told him to do.

14 MR. RIGGINS: It would be a change
15 of ownership, too, then, wouldn't it?

16 MR. FLOYD: None of the
17 stockholders have changed.

18 MR. RIGGINS: Right. I mean, if
19 his mother has passed away and she owned it and
20 now he and his sisters own it, it's a 50 percent
21 change of ownership; is that not correct?

22 MR. HARRELL: That has been
23 identified for the last couple of years to the
24 Board.

25 MR. RIGGINS: So it is a change of

1 ownership.

2 MR. CHAIRMAN: It changes
3 stockholders. Doris, did you and your staff
4 review these documents? Was everything in order
5 as far as y'all knew?

6 MS. CUBITT: Yes, sir.

7 MR. FLOYD: Well, on page seven,
8 item 4, there's a reference to excess income being
9 kept in the trust and reinvested and then being
10 available to be distributed later, and that's a
11 practice that the statute doesn't allow. It's on
12 page seven, it's item 4, it's the last sentence.

13 MS. CUBITT: Is it on page seven of
14 the trust?

15 MR. FLOYD: It's on page two of the
16 trust. It's page seven of the package and it's
17 item 4. It's page seven of the PDF.

18 MR. RIGGINS: And what are you
19 saying, Russell?

20 MR. FLOYD: It's the last sentence
21 of item 4. It says any of the net income may be
22 entitled -- that it's entitled to, but if it's
23 less than with the trustee, it may be invested and
24 managed as invested income which can then be
25 demanded and received from the trustee at any

1 time. And my understanding is, the statute
2 doesn't really allow that. We see this from time
3 to time in these old trust documents.

4 MS. CUBITT: Do you think if we
5 make it clear to Mr. Harrell and that that could
6 be amended? Because it is an old trust and --

7 MR. FLOYD: Well, it needs to be
8 amended.

9 MS. CUBITT: Yeah.

10 MR. FLOYD: It's in violation and
11 it probably always has been and it's never --

12 MR. RIGGINS: This trust was drawn
13 in June.

14 MR. FLOYD: Of this year?

15 MR. HARRELL: Yes, sir.

16 MR. FLOYD: Well, they copied a bad
17 trust, then, I would assume. I would also
18 suggest, since you're going to have to amend this
19 on page -- item 9, page nine, this trust shall be
20 irrevocable and shall not be amended, altered or
21 opposed or terminated by the Garden of Devotion.

22 It seems to have been a
23 misconception. The irrevocability refers to the
24 principal and not to the trust agreement itself.
25 And that's between you and your lawyers to draw

1 this up. It's fairly limiting to make the
2 document itself irrevocable. And I'm not a lawyer
3 and I'm not going to practice law, but -- and
4 Dean's not your lawyer either.

5 The documents itself have to be
6 able to be amended from time to time. It's the
7 principal that's irrevocable. That's what the
8 statute is about. You cannot invade the
9 principal. Is that right, J.W.?

10 MR. CHAIRMAN: That's correct.

11 MR. FLOYD: And that seems to be a
12 misconception from time to time. When we talk
13 about revocability, we're referring to the
14 principal, not the document itself. You make it
15 hard on yourself to do it like this. I'm just
16 passing a problem down the road.

17 MR. HARRELL: Yeah. This has been
18 a problem for a couple of years. The first time
19 we sent the trust agreement, the wording
20 irrevocable was not in there. When they put it in
21 there, I guess they put it in the wrong place.

22 MR. FLOYD: And you can leave it in
23 there. I mean, you could leave it that way. But
24 the irrevocability refers to the principal.

25 MR. HARRELL: The principal,

1 though, I think --

2 MR. FLOYD: The last sentence, the
3 Garden of Devotion relinquishes absolutely and
4 forever all of its possessions, employment of like
5 to the principal of the trust. I guess that's
6 what we're interested in seeing. I haven't seen
7 it worded that way lately, but -- but that was
8 just a note I had made.

9 Does anybody else have a question
10 or a comment about the trust document itself?

11 (No response)

12 MR. FLOYD: Okay. It looks like my
13 next question was in regard to the Agreed Upon
14 Procedures. J.W., did we answer the question
15 about a change of ownership or is it just a change
16 of management?

17 MR. CHAIRMAN: Well, it's both,
18 really.

19 MR. FLOYD: Well, the name of the
20 cemetery is still -- I mean, the owner is still
21 the same, so --

22 MR. CHAIRMAN: It's just the
23 stockholders.

24 MR. FLOYD: Does the statute
25 require a transfer of the license in that regard?

1 MR. CHAIRMAN: I'm not sure.

2 MR. FLOYD: I mean, the license is
3 in the name of the entity and the entity stayed
4 the same.

5 MR. GRIGG: My guess is that's
6 probably why he was given the guidance that he was
7 given. Because the stock, the ownership from the
8 mother to the heirs transferred by way of will.
9 But like you've pointed out, there's nothing
10 changing the name on the ownership side. I think
11 what Doris had set up as far as it being more
12 about management than ownership is correct based
13 on that.

14 MR. BARTUS: Well, on page 14,
15 doesn't it talk about probate -- transferring
16 equal ownership?

17 MS. CUBITT: 50 percent of it
18 didn't change. 50 percent of it is exactly like
19 it was and the other 50 percent is still in the
20 same family but just different members in the
21 family.

22 MR. GRIGG: Right. By way of
23 Ms. Harrell's will.

24 MS. CUBITT: You're right.

25 MR. BARTUS: Actually, the Probate

1 Court said, okay, we're transferring ownership, so
2 this little notation on page 14 there, it
3 specifically says transferring ownership. So it's
4 an ownership change, not a management change.

5 MR. RIGGINS: A management change,
6 too.

7 MR. HARRELL: Well, it's a
8 management change, too.

9 MR. FLOYD: Well, it's a management
10 change, too, but that's something we can give Dean
11 a chance to look at, I mean, to give an opinion
12 on, or to give us an opinion. And while you're
13 here, we can go ahead and address everything you
14 gave us.

15 On the Agreed Upon Procedures, I
16 guess, we had some questions and I think Jim is
17 here to maybe comment on that, but -- and this is
18 from 2007, '08 and 2009. So those three years?

19 MR. CHAIRMAN: Uh-huh.

20 MR. FLOYD: I assume, Doris, we've
21 had Agreed Upon Procedures in the initial. And
22 the first Agreed Upon Procedure, has that been
23 turned in?

24 MR. CUBITT: We're looking it up,
25 sir, to give you a definitive answer.

1 MR. FLOYD: My concern about these
2 Agreed Upon Procedures as they're written, it's
3 not clear to me that they were done properly. The
4 point of Agreed Upon Procedures is to, number one,
5 determine their liability and then verify that the
6 deposit was made properly to the trust account,
7 and then you can verify that the trust account
8 balances matched up with the LLR report and was
9 turned in annually.

10 The way this is written, it just
11 sounds like the beginning and ending balances for
12 the trust account and the LLR reports were right.
13 And that is necessary, but it's not primary.
14 Primary, you must determine that the liabilities
15 is accurately calculated and then that those
16 amounts were deposited. That's the purpose of the
17 AUP.

18 Now, that's not how -- this doesn't
19 read to have done that in my opinion. I don't
20 know how anybody else would read it, J.W.

21 MR. RIGGINS: Would you like me to
22 read it?

23 MR. CHAIRMAN: Yeah. If you would,
24 if would you address that and tell us --

25 MR. RIGGINS: Well, I wrote the

1 Upon Procedures. I'm the author of that. I had
2 composed the first set of three and then the most
3 recent set of three. And the most recent set of
4 three, the focus was, okay, I have found out that
5 some of the cemeteries are not preparing the
6 report based on fact.

7 Believe it or not, I had one lady
8 tell me that, well, we do our report based on the
9 way it should be, not the way it is. And I said,
10 I don't know what should-be accounting is. And so
11 this time, I said, okay, we're going to try and
12 correct that. I'm going to get the CPA to tell me
13 if you're lying.

14 So I'm getting the CPA to say,
15 okay, did last year's number, the ending number,
16 agree with this year's beginning number? Did they
17 really sell this amount of stuff? Is that the
18 amount that should have been put into the trust?
19 Was that amount put into the trust? Can you see
20 it in the bank statement? And does the ending
21 number agree with the bank statement? And so if
22 that's what his CPA said and went through those
23 procedures, then they did it correctly.

24 Now, based on some liability -- and
25 I've seen nobody that computes the liability

1 except on a annual or biannual basis. Once it
2 gets put in there and once people put money in
3 investments that go up and down, you just lost
4 that liability, so -- but, I mean, I'd be glad to
5 read the procedures if you'd like me to.

6 MR. CHAIRMAN: Well, I'm thinking
7 what Russell is saying, and I kind of agree with
8 him, our concern is what was the liability if
9 those deposits were actually made as they should
10 have been, so --

11 MR. FLOYD: We understand once it
12 gets in the trust account, the values go up and
13 down.

14 MR. RIGGINS: Well, it shouldn't,
15 but they do.

16 MR. FLOYD: Well, they're invested
17 so they do.

18 MR. RIGGINS: Well, they shouldn't
19 be invested in things that go up and down, but
20 they do, so --

21 MR. FLOYD: Well, the law -- the
22 statute allows them to do it that way, so that's a
23 different issue. But the primary issue is --

24 MR. RIGGINS: So what I'm saying
25 is, is that every year you decide what the

1 liability is for that year and based on that
2 year's sale and with that amount of money put into
3 the trust. And if it was, then, yeah, it was
4 satisfied. If I'm making sense.

5 MR. CHAIRMAN: Well, what I'm
6 looking at is, they're showing a \$77,000 balance
7 and then it's showing a deficiency. Was the
8 deficiency because the bank balance was lower or
9 was it because the deposits weren't made?

10 MR. RIGGINS: Probably because the
11 deposits weren't made, in my experience. And I
12 could probably tell you if I read it. But, for
13 the most part, there's a long time gap between the
14 time when they sell the property and the money
15 actually goes into the account. Sometimes it can
16 be as much as six months, although there was one
17 cemetery that waited five years.

18 MS. CUBITT: He is current on all
19 of the filings prior to this.

20 MR. FLOYD: Well, I make a motion
21 that we table this and give Jim a chance to read
22 the actual report and we can address it at the
23 next meeting. But, again, I'm hoping that the
24 AUPs correctly state what our concern is, that the
25 liability was calculated properly and then it was

1 then deposited.

2 MR. RIGGINS: Yes.

3 MR. FLOYD: And what happens from
4 there out is market fluctuation.

5 MR. RIGGINS: Correct.

6 MR. FLOYD: And going from the
7 trust account balances ending and beginning to the
8 LLR report's beginning and ending, that's as much
9 clerical as anything else.

10 MR. RIGGINS: Well, it is, but I
11 just want to make sure they're not lying.

12 MR. FLOYD: Well, we do, too. We
13 want to first be assured that the liabilities were
14 calculated properly and that the right amount was
15 deposited. That's the --

16 MR. RIGGINS: Because it's done on
17 a year by year. How much was sales and you'd take
18 that back to the book and then do your math and
19 then that amount gets deposited.

20 MR. FLOYD: Okay. Mr. Chairman, I
21 make my motion.

22 MR. CHAIRMAN: Okay.

23 MS. CUBITT: Mr. Chairman, could we
24 maybe defer this to a little bit later in the
25 meeting and us get a hard copy of that and let Jim

1 look at it? And then if that answers your
2 question, then you wouldn't have to hold it up.

3 MR. FLOYD: All right. If you want
4 to, that's fine. Do you have time to study it
5 sufficiently --

6 MR. HOLLOWAY: It won't take long.

7 MR. GRIGG: Do you want to change
8 your motion to that?

9 MR. FLOYD: Yes. I will amend my
10 motion to move this to the end of the agenda to
11 give Mr. Holloway a chance to --

12 MR. CHAIRMAN: Okay. I have a
13 motion to defer it to the end of the agenda. Do I
14 have a second?

15 MS. PETTY: Second.

16 MR. CHAIRMAN: All those in favor
17 say aye.

18 (Response)

19 MR. CHAIRMAN: All those opposed?

20 (No response)

21 MR. CHAIRMAN: Are we prepared to
22 proceed with the MOAs?

23 MS. CUBITT: Yes, sir.

24 MR. CHAIRMAN: Okay. And the first
25 one on the agenda would be Heritage?

1 MS. BELL: Yes, sir. And I think
2 we could probably handle them at the same time
3 because it involves the same individuals.

4 MR. CHAIRMAN: Okay. You want to
5 do both of them at the same time?

6 MS. BELL: Yes, sir. That would be
7 great.

8 MR. CHAIRMAN: We have Greenhaven
9 and --

10 MS. BELL: And, just for the
11 record, Mr. John Elliott Rogers, II is here on
12 behalf of the Iglehearts and Greenhaven Gardens
13 and Heritage Memorial Gardens.

14 MR. CHAIRMAN: Could you speak a
15 little louder, please?

16 MS. BELL: Sure.

17 MR. CHAIRMAN: I'm having trouble
18 hearing.

19 MS. BELL: I'm sorry.

20 MR. CHAIRMAN: No problem.

21 MS. BELL: Mr. Elliott Rogers, John
22 Elliott Rogers, II, is here on behalf of the
23 respondent/applicants, Mr. Igleheart and
24 Greenhaven Memorial Gardens and Heritage Memorial
25 Gardens.

1 And just by way of background,
2 these matters were initially scheduled to be
3 before you today as only licensure application
4 hearings. However, as you all probably know from
5 your previous presentations from the Iglehearts, I
6 think they've been before you before, these two
7 cemeteries in particular were transferred and
8 there were statutory violations that stemmed from
9 that transfer, and that there were also reports
10 that were not filed as required by statute, so
11 there was a disciplinary case open on both
12 cemeteries.

13 So for judicial economy and just
14 for continuity sake, it seems like it makes good
15 sense to try to handle the disciplinary matter
16 today and get that resolved and then move into the
17 licensure application issues and any questions
18 that you may have regarding that as well and try
19 to handle it in one kind of hearing, maybe
20 bifurcate it but in one hearing. And we talked
21 with Mr. Grigg about that as well in advance.

22 Therefore, we have entered into a
23 Memorandum of Agreement and Stipulations between
24 the LLR and Heritage Memorial Gardens and
25 Greenhaven Memorial Gardens. The verbiage on the

1 Memorandum of Agreement and Stipulations,
2 factually they're the same for each cemetery
3 because the violations were the same, so it's just
4 that the names have been changed. And I don't
5 know, before I go any further, do you have any
6 opening remarks that you do or a script that you
7 have?

8 MR. GRIGG: Not unless the Board
9 has questions about what you've just said. I
10 think you've summed it up pretty good. Mr. Rogers
11 and Ms. Bell and myself did speak the other day
12 and it is a little different animal in that we do
13 have kind of two parts. We've got to deal with
14 the disciplinary part and then the licensure part,
15 and I think she summed up a good way to approach
16 it. So if there are any questions, I'll be glad
17 to try to help the Board understand that a little
18 better.

19 MR. FLOYD: And Christa is here
20 representing the State?

21 MR. GRIGG: She represents the
22 State, yes, sir.

23 MR. FLOYD: And that would be about
24 the disciplinary issues?

25 MR. GRIGG: About the disciplinary

1 issues. She's still going to be present, is my
2 understanding, during the application part since
3 these are so intertwined. But, yes, sir, she's
4 here for the disciplinary issues and Mr. Rogers is
5 here on behalf of his clients for all of it. At
6 least, that's my understanding.

7 MS. BELL: And the way I thought we
8 would proceed and what has been my experience is
9 that, I know each side typically is given an
10 opportunity to make an opening statement. I would
11 just publish the memorandum of agreement in the
12 record and then give Mr. Rogers an opportunity to
13 make any presentations he had as far as mitigating
14 evidence as it relates to the memorandum and
15 agreement of stipulations. And, also, you all
16 obviously have an opportunity to ask the
17 Iglehearts any questions that you deem appropriate
18 as it relates to the issues that are before you
19 today.

20 MR. FLOYD: Ms. Bell, could you sum
21 up for us what was stipulated?

22 MS. BELL: Certainly.

23 MR. FLOYD: We really haven't had a
24 chance to read it.

25 MS. BELL: Certainly. And I

1 apologize. We were just able to get it signed
2 today, this morning. So why don't I just quickly
3 and just for the record say -- not that you all
4 can't read through it -- but in the past, I think
5 people have actually published it; is that
6 correct?

7 MR. GRIGG: It could be done by
8 both. But, yes. I mean, normally, you're
9 correct.

10 MS. BELL: Okay. Whereas, Heritage
11 Memorial Gardens -- and I'm going to say also
12 Greenhaven Memorial Gardens -- are both perpetual
13 care cemeteries duly licensed by the South
14 Carolina Perpetual Care Cemetery Board to engage
15 in the business of operating perpetual care
16 cemetery companies in South Carolina and both were
17 licensed at all times relevant to the matters
18 before you today;

19 Whereas, the Board has not received
20 those certain financial reports from both Heritage
21 Memorial Gardens and Greenhaven Memorial Gardens
22 as required by statute, and that's 40-8-110;

23 Whereas, the respondent cemeteries
24 were encumbered by an outstanding mortgage through
25 Provident Community Bank in violation of

1 40-8-120(A) as part of a transfer of the ownership
2 of the cemetery which was done without the proper
3 notification or prior approval of the Board as
4 will be further described below;

5 Whereas, an investigation was
6 conducted and based upon the respondent's failure
7 to comply with the statutory requirements for all
8 perpetual care cemetery companies in South
9 Carolina, it was determined that sufficient
10 evidence existed to bring formal charges against
11 the respondent cemeteries for misconduct in
12 violation of 40-8-150, 40-8-110, 40-8-120(A),
13 40-8-90(B) and South Carolina Code of Regulations
14 21-52;

15 Whereas, the respondent admits that
16 certain facts, as further described below,
17 constitute grounds for finding of misconduct and
18 had advised that it wishes to waive formal hearing
19 procedures and the filing and service of the
20 formal complaint and dispose of this matter
21 pursuant to Administrative Procedures Act
22 1-23-320, subsection F, in lieu of a formal
23 contested hearing before the Board.

24 And, factually, these are pretty
25 much the facts that -- oh, I'm sorry. James

1 Hayden Igleheart and Sheena Igleheart have made
2 application to the Board to own and operate a
3 cemetery and agreed to combine the disciplinary
4 matter and the application hearing process into
5 one hearing for the purpose of resolving
6 disciplinary matters and at the same time, it's
7 addressing the application licensure issues;

8 Whereas, the respondent, by and
9 through its authorized representative, will
10 participate in a hearing pursuant to the authority
11 granted the Board of 40-1-70, 40-1-90, 40-8-70 and
12 40-8-160 with today's date, for the purpose of
13 determining an appropriate sanction for the
14 disciplinary issues as agreed and stipulated to by
15 the parties.

16 At this hearing, the Board will
17 also address the application submitted by the
18 Iglehearts and the respondent shall consent to the
19 Board drafting one order, while deemed
20 appropriate, to address both the disciplinary
21 issues and the application issues.

22 During the hearing, the respondent
23 may present mitigating evidence as to the
24 disciplinary matters presented herein, as well as
25 to the licensure issues that will also be

1 presented at the hearing.

2 And these are the factual
3 stipulations that the parties submit to, that the
4 Board has jurisdiction over the respondent and the
5 subject matter contained herein, that in 2007, 90
6 percent of each of these cemeteries, both
7 Greenhaven and Heritage, were sold to the
8 Iglehearts by owner, Terry G. Lanford, without the
9 Board's prior notification or approval, and that
10 as part of that transaction, the cemetery was
11 encumbered by a mortgage as collateral as part of
12 the transaction, all in violation of South
13 Carolina Code Annotated 40-8-120(A), 40-8-90(B)
14 and South Carolina Code of Regulations 21-52.

15 At this time, I'm led to believe
16 that Lanford retained a 10 percent ownership
17 interest in the cemetery. In April of -- and
18 that's actually April of this year. I did not say
19 that. But in paragraph 4, it states that in 2011,
20 Lanford pled guilty to Federal criminal drug
21 conspiracy offenses and was subsequently sentenced
22 to 40 months. Lanford is currently serving an
23 active prison sentence in a Federal penitentiary
24 located in Kentucky.

25 Paragraph 5, since the 2007 sales

1 transaction involving the cemetery, the Iglehearts
2 have been responsible for the day-to-day
3 management of the respondent cemetery. And I'll
4 just kind of add right there that I believe they
5 have a representative, Ms. Poteat, who is here
6 today who has actually been the manager of record
7 for both of these cemeteries.

8 Paragraph 6, in 2009, the
9 Iglehearts brought a civil suit against Lanford
10 and Lanford Memorial Park, LLC in regard to
11 respondent cemetery alleging, among other
12 particulars, that -- and you all can read these,
13 but I'll put it in the record -- that Lanford
14 presented false, misleading and/or inaccurate
15 accounting and financial records to induce the
16 Iglehearts to purchase the cemetery for an
17 inflated purchase price and that the -- it should
18 be cash flow -- and profits were less than Lanford
19 represented; that Lanford refused to transfer the
20 trust accounts maintained for the respondent
21 cemetery;

22 And, B, Lanford failed to have
23 proper audits conducted for respondent cemetery
24 prior to the transfer or sales of the respondent
25 cemetery; and that, C, Lanford converted monies

1 invested in the respondent cemetery trust account
2 for Lanford's personal use after the sales
3 transaction;

4 7, that the respondent failed to
5 furnish the Board adequate financial reports with
6 respect to the respondent's care and maintenance
7 trust fund for the years 2007, 2008, 2009, and
8 2010 as required, in violation of 40-8-110(D) and
9 40-8-100(A). And that the respondent failed to
10 submit to the Board the Agreed Upon Procedures
11 Report for the respondent's care and maintenance
12 trust fund as required, in violation of
13 40-8-110(D).

14 Paragraph 9, that the respondent
15 failed to file with the Board a financial report
16 signed by a licensed accountant for the
17 respondent's merchandise account fund for the
18 calendar years 2007, 2008, 2009 and 2010 as
19 required, in violation of 40-8-110(G).

20 And paragraph 10, that the
21 respondent has failed to submit to the Board the
22 Agreed Upon Procedures Report for the respondent's
23 merchandise account as required, in violation of
24 40-8-110(G);

25 And the respondent admits that the

1 aforementioned acts of the respondent present
2 grounds that constitute violations of 40-8-150,
3 40-8-120(A), 40-8-90(B) and 40-1-110.

4 The respondent agrees that at the
5 final order hearing, a representative shall appear
6 and, under oath, answer questions, if any, by
7 members of the Board concerning Heritage Memorial
8 Garden's and Greenhaven Memorial Garden's
9 operations as perpetual care cemetery companies in
10 South Carolina.

11 The Board, in rendering its
12 decision, may consider the respondent's answers.
13 The respondent may present mitigating testimony
14 and other evidence to the Board regarding an
15 appropriate decision concerning the disciplinary
16 issues as stipulated to in this agreement and that
17 the Board may also use this information to
18 determine the licensure issues that will be
19 presented.

20 And that becomes the bases for the
21 agreement today as to the disciplinary issues.
22 It's my understanding that there is a
23 representative here from Provident Bank. There's
24 actually two attorneys, I think, here on behalf of
25 the bank, if I understand correctly. I'm not sure

1 if there's a representative from the bank as well
2 to address maybe some movements that -- I know
3 that you all were aware that there was some civil
4 action going on as mentioned in the Memorandum of
5 Agreement. The bank was also named in that civil
6 matter.

7 There has been, as I understand,
8 some movement with the civil litigation and a
9 post-settlement agreement, and I will let the
10 respondents deal with that aspect of it, but I
11 just wanted to let you know that there are
12 representatives here from the bank.

13 It's my understanding that as far
14 as trust accounts, that there have been some
15 audits done of that and there's some information
16 to relate to you all in that regard. I know that
17 has more to do with the licensure issue, but it is
18 relevant to for disciplinary matters I think for
19 you to consider as well. And then Mr. Holloway is
20 also here and present, and it's my understanding
21 that he has looked at information that's been
22 submitted to him by both the bank representatives
23 and the Iglehearts, and we'll be glad to address
24 you in any regards as far as questions you may
25 have about the accounts.

1 It's my understanding that he
2 looked primarily at the perpetual care accounts
3 and not as much at the maintenance accounts. And
4 I guess, though, before I sit down and don't have
5 much more to say unless you have some other
6 questions for me, the concerns, of course, that
7 the State would have -- and I've communicated them
8 as well -- is that for the protection of the
9 public, whatever you decide to do today, that from
10 the State's perspective, that the accounts are
11 adequately audited, adequately funded, and that
12 any reports are in place for the accounts, and
13 that there be proof that the cemetery, of course,
14 is not encumbered by a mortgage.

15 I think that they will be able to
16 present that information to you today, or any
17 other type of security interest that obligates the
18 cemetery. That Terry Lanford not have any control
19 over the operations of the cemetery. And probably
20 both of these parties would agree that that would
21 not be a good thing based on the history that
22 occurred in the past with the way these accounts
23 of not having the proper operation, and preferably
24 that Mr. Lanford had no ownership interest.

25 But I don't know how much control

1 you all have in that regard. But, certainly, I
2 think you all can have some control about
3 requiring that he not be involved in any
4 operations of the cemetery and that any change,
5 should you determine that licensure is
6 appropriate, that any change in management of the
7 cemetery, of course, should, for instance, a
8 current manager has to be that they come before
9 the Board for prior approval.

10 But those are things, obviously,
11 you, in your infinite wisdom, have much more
12 insight into than I do, but those were just a few
13 of the things that obviously would concern the
14 State. Thank you. And I'll be glad to answer any
15 questions as well that you all may have.

16 MR. CHAIRMAN: Thank you, Ms. Bell.
17 Does anybody have any questions for her before the
18 respondent?

19 (No response)

20 MR. CHAIRMAN: Okay.

21 MR. ROGERS: Thank you. John
22 Rogers, the Ward Law Firm, Spartanburg, on behalf
23 of the respondents. I appreciate your time and
24 consideration here today. I appreciate you
25 working with my clients as they've struggled with

1 these issues over the past several years.

2 I've been representing them
3 regarding these matter in a civil lawsuit since
4 2009, and it was actually the LLR that told my
5 clients they needed to go get an attorney and to
6 come see me when it was ascertained that Terry
7 Lanford and others were involved in the scheme to
8 defraud my clients, and I appreciate the LLR
9 informing my clients that they needed to do so and
10 seek legal counsel regarding this matter.

11 A lawsuit was filed in 2009, a case
12 filed in Spartanburg County Court of Common Pleas.
13 For the record, it's case number 2009-CP-42-5257.
14 And in this lawsuit, my clients sued both Terry
15 Lanford, the bank involved in loaning them the
16 money associated with the purchases of these
17 cemetery businesses, and the real estate appraiser
18 involved with appraising the businesses for the
19 basis of the bank's underwriting requirements.

20 A little background. A
21 well-publicized criminal case in Spartanburg
22 County involving Terry Lanford, Mark Kitchens, our
23 ex-Clerk of Court and John Puhl, the bank's loan
24 officer involved in this case. There was a drug
25 conspiracy wherein drugs were stolen out of the

1 Clerk of Court's office, the storage room there,
2 and sold by Terry Lanford, John Puhl, the bank's
3 loan officer involved in this transaction, and
4 Mark Kitchens, our ex-Clerk of Court.

5 In turn, we've sued all parties and
6 some of the things we've alleged in the lawsuit
7 have been alluded to by Ms. Bell. They presented
8 wholly fraudulent and incomplete financial
9 records, Terry Lanford did, as a basis for the
10 loan that was issued by the bank in conjunction
11 with this transaction.

12 Terry Lanford pocketed 1.4 million
13 dollars on this bank loan that was issued by
14 Provident. Provident's officer, loan officer
15 involved, was their vice-president, John Puhl, who
16 is serving 18 months in a Federal prison in
17 Georgia right now on these charges, and he
18 basically worked hand in hand with Terry Lanford
19 to push this loan through to get his buddy this
20 money and to defraud my client.

21 My client was 24 years old at the
22 time of this transaction. He trusted the bank.
23 John Puhl and Provident made representations to my
24 client that they would ensure that these
25 financials were sound, secure and sufficient to

1 fund the business and that my client was going to
2 be okay after this transaction.

3 In addition, one key action we have
4 against the bank is that they failed to inform my
5 clients of a very important statute that Ms. Bell
6 alluded to. You can't get a license in South
7 Carolina and operate a perpetual care cemetery if
8 there's a mortgage encumbering the cemetery.
9 Clearly, the bank had a duty to disclose this to
10 my client. And very arguably, most banks, as the
11 practice should be, will not issue a loan that
12 encumbers that mortgages a perpetual care
13 cemetery. So that was a big issue as well.

14 And it turned out after the fact,
15 obviously, Terry Lanford had his hand in the
16 cookie jar and these trust accounts for a long
17 time before he conveyed these cemeteries to my
18 client and the bank loan officer, John Puhl, knew
19 about it or should have known about it.

20 We have entered into a valid and
21 binding settlement agreement in this underlying
22 case that I've shared with you, an overview of the
23 allegations. This settlement agreement that's
24 been entered into -- and I've provided a copy to
25 Ms. Bell -- the bank has agreed to release the

1 mortgage encumbering the cemetery, so there will
2 be no more mortgage.

3 The bank has also agreed to restore
4 the merchandise and perpetual care trust accounts
5 to whatever level the LLR deems should be
6 deposited into these accounts based on the LLR's
7 view of what should be in the accounts. And Terry
8 Lanford will be out. As soon as the LLR approves
9 the licensure, Terry Lanford, as terms of the
10 settlement agreement, has to sign over all
11 interest, ownership, control, any affiliation with
12 these businesses.

13 So it takes care of all of the
14 concerns, the binding settlement agreement takes
15 care of all the concerns that Ms. Bell said the
16 State had, and that we have. We're really on the
17 same page in this matter. And all of the issues
18 that my clients have regarding this disciplinary
19 action are directly results of the fraud that was
20 perpetrated upon them. They've been working for
21 the last several years to provide accurate,
22 complete, detailed accounting data to the LLR.
23 They've finally got their house pretty much in
24 order.

25 After these proceedings go forward

1 today, what we're asking the LLR to do is to grant
2 licensure to my clients regarding these cemeteries
3 pending the deposit of the amount of money that
4 the LLR deems appropriate into these trust
5 accounts. Also, a requirement needs to be that,
6 obviously, Terry Lanford have no influence or
7 ownership in these businesses. That's really
8 already been taken care of in the settlement
9 agreement.

10 But for the settlement agreement to
11 be complete, to get the mortgage off of the
12 cemeteries to get the bank to deposit the monies
13 into these trust accounts that would protect the
14 public, the people that are going to be the
15 beneficiaries of these trust accounts, the LLR has
16 to grant licensure to my clients. If not, the
17 settlement agreement is nixed. These trust
18 accounts won't be restored and my clients will
19 ultimately be insolvent, probably, and the LLR
20 will have to come in and operate these cemeteries
21 and use taxpayer funds to make these trust
22 accounts good.

23 So we would ask the LLR, you know,
24 to grant that provisional, that licensure to my
25 clients, with the understanding that the LLR, to

1 get the license, mandates that the amount of
2 monies necessary to restore both the perpetual
3 care and the merchandise accounts be deposited
4 into these accounts before the license is granted.
5 That needs to be a prerequisite.

6 And let me explain to you the
7 biggest issue. The bank has got two attorneys
8 here to talk to you today about the amount of
9 money needed to restore these merchandise and
10 perpetual care trust accounts. The bank obviously
11 has an incentive to give you as low a number as
12 they can because they're going to be the ones that
13 are putting the money in these trust accounts, and
14 they're already contractually obligated pursuant
15 to the settlement agreement to put whatever you
16 tell them to put in there. So they're going to
17 want to present to you as low a number as
18 possible.

19 We've got Ms. Poteat here that's
20 gone through every file in that room. It took her
21 and her staff six weeks to do this. They've got
22 exact figures to give you regarding how much money
23 the LLR should say needs to be deposited into
24 these trust accounts before the license is
25 granted.

1 Our numbers, the bank's numbers,
2 our numbers, there's a big gap between them. Our
3 position is that the bank used a lot of
4 assumptions. They didn't look in every file, they
5 low-balled the numbers and their number is not
6 accurate regarding what needs to be put into these
7 trust accounts.

8 Now, what's going to happen if the
9 LLR puts a lower number in these trust accounts
10 than should be in here, what could happen down the
11 road is that the public could be at risk. Down
12 the road, if the adequate amount of money is not
13 in these trust accounts to fund the obligations of
14 the trust accounts, the bank could very well be
15 insolvent.

16 Provident Community Bank, their
17 holding company is trading at about 40 cent a
18 share. They could be seized by the FDIC any
19 minute. So there's a letter of credit agreement
20 that's there, but until the LLR tells them that
21 they've got to do this before the licensure is
22 granted, they're not going to put the money in the
23 accounts and down the road they may not be there
24 to put the money in the accounts.

25 So we feel like to protect the

1 public to make these cemetery businesses viable
2 entities going forward, the LLR needs to really
3 thoroughly analyze these trust account figures to
4 ensure that the adequate funding is put in these
5 trust accounts as a provision in the licensure
6 agreement that the LLR will hopefully grant to my
7 clients today. I would like to give Ms. Poteat
8 time to discuss the numbers, what she did, her
9 conclusions regarding the numbers that should be
10 put into these trust accounts and what they should
11 be.

12 We're here to answer any questions
13 the LLR has. We appreciate your time and
14 consideration. We would say that Ms. Poteat, we
15 believe, has a very good reputation as an operator
16 in cemetery businesses in South Carolina. She's
17 going to be the one running these cemetery
18 businesses going forward if the LLR grants the
19 licensure. She's been doing it, you know, since
20 my clients have had ownership and we think that
21 she's the best person out there to run these
22 businesses and my clients are giving her all the
23 latitude she needs to the run these businesses to
24 the best of her ability.

25 I'm here to answer any questions

1 you have regarding the underlying lawsuit. My
2 clients are here as well to answer your questions.
3 Like I said, I would like Penny Poteat to have the
4 opportunity to address her accounting of the
5 numbers that we're recommending that the LLR
6 require be put in these trust accounts, either now
7 or after the bank presents. But that would be
8 what I'd have to say to you unless somebody has
9 any questions for me.

10 MR. CHAIRMAN: Does anybody have
11 any questions?

12 MR. FLOYD: So clarify how the
13 title is going to be cleared up?

14 MR. ROGERS: The mortgage is going
15 to be removed from the cemeteries by the bank. If
16 the LLR grants licensure, they're going to release
17 the mortgage.

18 MR. FLOYD: So the Iglehearts will
19 have clear title?

20 MR. ROGERS: Correct.

21 MR. FLOYD: They won't owe anything
22 on the cemeteries?

23 MR. ROGERS: They don't owe
24 anything on the mortgage encumbering the
25 cemeteries, correct.

1 MR. STILLWELL: Mr. Floyd, if I
2 could address this, based on what he just said,
3 none of this is going to happen. None of this is
4 going to happen.

5 MR. ROGERS: And if I could, in
6 response to that, we will move to enforce the
7 settlement agreement --

8 MR. STILLWELL: We'll take that up
9 in the Circuit Court and --

10 MR. ROGERS: Let me finish. In the
11 underlying case, if the LLR tells the bank to put
12 an amount of money in these trust accounts and
13 they don't do it, we'll have a judge order them to
14 do it. They've already agreed to do it in writing
15 and if they say they're not going to do it, that's
16 fine. We'll get a Circuit judge to order them to
17 do so.

18 MR. CHAIRMAN: Go ahead, sir.

19 MR. STILLWELL: Mr. Chairman, I'm
20 Rivers Stillwell and I represent Provident Bank.
21 I've been practicing law about 18 years. I've
22 rarely been sandbagged any worse. I didn't know
23 we were coming here today to make jury arguments
24 in a case that we tried to settle.

25 But what they're -- they came in

1 here today, we've been working for three or four
2 months figuring out what the balances are in these
3 accounts. They showed up here today with a number
4 that was \$200,000 greater than what we were
5 holding. And the way he just represented to you
6 that we're supposed to stroke a check into this,
7 mind you, this bank has lost a million dollars on
8 this thing already. This settlement agreement is
9 not going to go through based on what he's trying
10 to ram through today.

11 Mr. Holloway and we have looked at
12 these numbers for three or four months. He's
13 never seen the numbers that Ms. Poteat is about to
14 give you. So I would suggest, for the economy of
15 this Board, that this application for a license be
16 tabled because it is in no way ready to go forward
17 this morning.

18 MR. FLOYD: And Table A in the
19 package, is that -- who's Table A? Where did
20 these numbers come from on page 61? Are those
21 Penny's numbers or are they --

22 MR. ROGERS: No, sir, your Honor.
23 I don't --

24 MR. FLOYD: Are they Jim's
25 numbers?

1 MR. ROGERS: No. It's the bank's
2 numbers, I believe.

3 MR. FLOYD: The bank's numbers?
4 Okay.

5 MR. STILLWELL: We've done this
6 with Mr. Holloway.

7 MR. FLOYD: Okay. So Table A is
8 the bank's numbers.

9 MR. ROGERS: If I could clear it
10 up, Mr. Holloway has never been to my client's
11 businesses. He's basically relying upon
12 communications with the bank for his work that
13 he's done in the case. But we'd approach that the
14 application process go forward. If the bank has
15 got a problem with the number that the LLR
16 requires to be put in the trust accounts, that's
17 something we can take up with the Circuit Court.

18 MR. STILLWELL: This is all a game
19 where they're trying to get the bank to stroke a
20 big old check into their account, which is not
21 what the settlement agreement says. It talks
22 about a letter of credit. I don't know what
23 they're trying to do, but this is not ready for
24 the LLR to address, for this Board to address at
25 all.

1 MR. FLOYD: So you are describing,
2 or what Mr. Rogers was describing is not the
3 irrevocable cite demand letter of credit that's in
4 this package?

5 MR. STILLWELL: The amounts that
6 they're talking about that need to be in here for
7 the letter of credit are \$200,000 greater than
8 what we and Mr. Holloway did. He's right. We
9 don't want it to be any higher. No one has ever
10 seen the numbers they just came up with or have
11 any idea where they came from. It's not ready for
12 this Board's consideration.

13 MR. ROGERS: But Provident is
14 willing to put something in the account. We just
15 don't know how much.

16 MR. STILLWELL: We were into the
17 letter of credit. But this idea that it's
18 supposed to be stroked directly in there is
19 completely -- the letter of credit is there if
20 they're short, not to just stroke a check and to
21 fund it. What he said there was made out of hole
22 cloth. I will point out, he's the only one that's
23 been paid in this. The part of the agreement
24 that's been performed is he got paid.

25 MR. ROGERS: I don't know which

1 agreement. I have not been paid in the case. I
2 don't know where he's getting -- I don't get paid
3 until the settlement is concluded so I don't know
4 where he gets that language.

5 MR. STILLWELL: I'm relieved to
6 hear that.

7 MR. ROGERS: But I'll read to you
8 in the settlement agreement what it says exactly,
9 and I think is part of the package. It says that
10 the bank agrees to provide a standby letter of
11 credit for the amount agreed to by the LLR to
12 restore trust accounts to appropriate levels, the
13 current appropriate levels, to be repaid by the
14 bank.

15 It's a binding obligation. This
16 really isn't for us to discuss today whether or
17 not that the bank has to do what they've agreed to
18 do. What we're here to do today is for the LLR to
19 tell us to get a license, the amount that needs to
20 be put into these trust accounts, and then we can
21 go forward with the Circuit Court to determine if
22 the bank has an obligation to do so. That's
23 really not the LLR's call, that'll be the Circuit
24 Court's call.

25 But what we would like from the LLR

1 is to tell us what amount that we need to put into
2 these trust accounts to get a license to operate
3 these cemetery businesses. Once the LLR tells us
4 that, Mr. Stillwell and I can take up all these
5 other issues with the Circuit Court. But we're
6 here today to ask for licensure. And as a part of
7 that licensure, we're asking that the LLR tell us
8 to get the license, how much needs to be put into
9 these trust accounts to make them whole. And
10 we're prepared to present accounting data as to
11 what that number should be.

12 MR. FLOYD: And, Mr. Stillwell,
13 Provident Bank is going to give them clear title?

14 MR. STILLWELL: If this deal could
15 go ahead. Right now, your proposed licensee has
16 two million dollars of unpaid debt that he and his
17 wife, who is Mr. Lanford's daughter, have
18 personally guaranteed. And based on what he's
19 saying of, let me throw a number in here and let
20 you bite on it, that debt is not going to wipe
21 away. There's going to be a pending lawsuit in
22 Spartanburg because this settlement agreement is
23 not done yet. And I don't care what he wants to
24 do about going ahead on, but Mr. Holloway has
25 never seen these numbers. I wouldn't think this

1 Board would want to sit here and referee that
2 dispute that Mr. Holloway has never looked at.

3 MR. FLOYD: Where did y'all come up
4 with Table A? How did y'all come up with Table
5 A?

6 MR. RUSTIN: Yes, your Honor --

7 MR. STILLWELL: Mr. Rustin can talk
8 about it. He's the one that's been working with
9 Mr. Holloway.

10 MS. BELL: And before Mr. Rustin,
11 can I intercede for a moment because maybe -- we
12 may need to revamp on the disciplinary matter
13 because, in my humble opinion, based on what we've
14 heard independent of the licensure issue, trying
15 to do it all at one time seemed like a prudent
16 thing to do. But it appears to me that the
17 disciplinary issues are pretty straight forward
18 and I'd like to try to get those resolved today if
19 we can.

20 It would be nice to get them
21 resolved, attached with the licensure if it can
22 happen, but there may be too many unknown
23 variables at this time, I don't know.

24 So in light of that, I guess,
25 Mr. Rogers, would you have a problem with us

1 dealing with the disciplinary matter and getting
2 that resolved, being that it's probably going to
3 have to be resolved before any licensure issue can
4 be dealt with anyway?

5 MR. ROGERS: Let me tell you my
6 concerns about not doing this together. This case
7 has been pending since 2009. We're going to be
8 forced to go through with the court process if we
9 can't get this concluded before the LLR. We need
10 to conclude everything as quickly as possible.

11 We've got the settlement agreement
12 in place. It needs to be effectuated. If not,
13 we're going to have to -- we'll nix the settlement
14 agreement that we feel is beneficial for the
15 citizens of South Carolina, the people that have
16 these obligations that need to be funded. And if
17 that doesn't happen, we're going to have to go
18 through the jury trial situation in the case, the
19 bank may become insolvent and not be able to fund
20 these obligations that they've agreed to. We feel
21 like it's important to move forward on this as
22 expeditiously as possible.

23 My recommendation would be for the
24 LLR Board today to hear my client, Ms. Poteat,
25 tell how she came to these numbers and give the

1 Board her numbers, let the bank tell you how they
2 got to their numbers, and then if the LLR needs
3 time for their accountant to reconcile the numbers
4 between my client and the bank, there's no reason
5 we can't hear the evidence today and let the LLR
6 accountant do the work for the LLR Board and then
7 the LLR issue an order but hear all the evidence
8 today regarding the amounts of the numbers. That
9 would be my recommendation.

10 MR. CHAIRMAN: And has an AUP been
11 done on the Agreed Upon Procedures? Mr. Holloway,
12 do you know?

13 MR. HOLLOWAY: I'm not aware of the
14 Agreed Upon Procedures being done.

15 MR. CHAIRMAN: It seems to me that
16 that needs to be done.

17 MR. HOLLOWAY: It probably does --
18 well, it does need to be done.

19 MR. FLOYD: So the numbers we've
20 been given, Table A, came from --

21 MR. RUSTIN: Yes, sir. If I can
22 present to the Board, I'll be happy to kind of
23 explain what we did. We, on behalf of the bank,
24 we worked with Ms. Poteat and her folks. We went
25 out and audited --

1 MR. GRIGG: Sir, who are you?

2 MR. RUSTIN: I'm sorry. I'm Brad
3 Rustin. I'm an attorney from Greenville who
4 represents Provident Community Bank, and I
5 actually was the individual who's working with
6 Mr. Holloway in order to come up with a method of
7 reconciling these trust accounts and merchandise
8 account.

9 I went out and worked with
10 Ms. Poteat and her team, and along with a number
11 of attorneys and folks from my office, went
12 through these records and did a backwards
13 reconstruction using the methods of determining
14 minimum trust contributions that Mr. Holloway had
15 instructed me on. And that's what I did work on,
16 probably about four months now or so, using
17 Mr. Holloway's guidance on how the Board in the
18 past has reconstructed trust accounts to determine
19 minimum amounts that should be funded into those
20 trust accounts, and that's how my group of folks
21 came and arrived at those particular numbers that
22 were presented to the Board.

23 About ten minutes before coming in
24 here, I was made aware that there is apparently a
25 different reconciliation that Ms. Poteat has now

1 performed. Members of the Board, I wanted to tell
2 you, I don't know anything about the accuracy or
3 details of that. But, as I say, I haven't even
4 seen the accounting.

5 So the method that we had done with
6 Mr. Holloway was the one that he had recommended
7 to determine minimum contributions, and then where
8 I had records, to bring those forward in order to
9 determine those trust account numbers. And that's
10 the records that we had presented to the Board as
11 part of that financial package.

12 MR. GRIGG: And this is Table A,
13 right?

14 MR. RUSTIN: Yes, sir. That is
15 that package with the red hard stock back that you
16 have on your desk that was passed out earlier.

17 MR. FLOYD: Is that Table A in our
18 Board package?

19 MR. RUSTIN: This has
20 Mr. Holloway's numbers as well. And so the Table
21 A in your Board package was my early attempt at a
22 reconstruction. This has my numbers as well as
23 Mr. Holloway's numbers of minimum amounts to be
24 funded into the trust accounts.

25 MR. FLOYD: And then there's also

1 Ms. Poteat's numbers?

2 MR. RUSTIN: I don't know if that's
3 been presented to the Board or not. As I say, it
4 was kind of sprung on me this morning.

5 MR. FLOYD: It looks like she's
6 getting ready to.

7 MR. RUSTIN: Yes, sir. That would
8 appear to be the case. One thing I would also
9 point out to the Board just for clarification,
10 what the bank agreed to is, whatever number the
11 Board decides is short is not going to be paid and
12 funded by the bank.

13 Under the settlement agreement, we
14 have agreed to put forth a standby letter of
15 credit, allow these folks the opportunity to repay
16 those amounts, fund those trust accounts. But if
17 they should go negative, in order to protect the
18 public there would be that cite demand standby
19 letter of credit in order to backstop those losses
20 if, for any reason, those accounts went negative.

21 So that's solely for clarification
22 purposes. I believe Mr. Rogers can give you a
23 copy of the settlement agreement and you can read
24 that yourself, but just for clarification
25 purposes.

1 MR. ROGERS: Right. For
2 clarification on that, really, it's essentially
3 the same thing. Whatever amount the LLR
4 determines is short, that's going to be the amount
5 of the guaranteed letter of credit. So if y'all
6 say 20,000, the bank won't put any more than
7 20,000 into these things. If the LLR says
8 200,000, the bank has got to do a letter of credit
9 saying we'll give at least 200 guarantee, you
10 know, if it's needed to replenish these trust
11 accounts. So the amount available to these trust
12 accounts is going to be determined by the LLR.

13 MS. CUBITT: Mr. Chairman, just as
14 a point to clarify, in your package we have given
15 you some numbers, but the numbers were adjusted, I
16 believe, and they're reflected in this packet; is
17 that correct?

18 MR. RUSTIN: That's correct.
19 Mr. Holloway pointed out to me that from 1954 to
20 1984, there was a minimum contribution on burial
21 plots. And when I did the reconciliation
22 originally, it did not include those numbers, and
23 so Mr. Holloway correctly pointed that out to me.

24 So the ones in the package that you
25 received this morning are the up-to-date with the

1 correct numbers for 1954 to 1984 reflecting that
2 minimum contribution for those grape sites back in
3 the '50s, '60s, '70s and '80s for the Greenhaven
4 Cemetery.

5 MR. CHAIRMAN: Ms. Poteat, how are
6 you this morning?

7 MS. POTEAT: I'm great, as always,
8 J.W. Mr. Chairman --

9 MR. GRIGG: Hold on, ma'am. You'll
10 need to be sworn in.

11 MR. FINCH: Mr. Chairman, I don't
12 see anywhere on this the disclaimer or who
13 produced this.

14 MR. RUSTIN: That was created by
15 the attorneys for Provident Community Bank.

16 MR. FINCH: Okay. There's nothing
17 noted on this. I don't know who this came from.

18 MR. RUSTIN: I apologize. Yes,
19 sir. Those were the --

20 MR. FINCH: I mean, I know who it
21 came from, but as far as the document, it doesn't
22 say anything, who it came from.

23 MR. RUSTIN: Yes, sir. Those were
24 my calculations based on records maintained by the
25 cemetery. I apologize for that.

1 MR. FINCH: And you're a CPA?

2 MR. RUSTIN: No, sir. I'm an
3 attorney who specializes in finance and banking or
4 folks who, I guess, specializes.

5 MR. CHAIRMAN: Anybody else?

6 MR. GRIGG: Ma'am, would you go
7 ahead and be sworn in?

8 Whereupon:

9 Penny Poteat, having been duly
10 sworn and cautioned to speak the truth, the
11 whole truth and nothing but the truth,
12 testified as follows:

13 MS. POTEAT: Mr. Chairman, members
14 of the Board and my fellow cemeterians, he keeps
15 referring -- Brad keeps referring to the fact
16 that he has not seen these numbers. Well, I
17 haven't seen those numbers. The only reference
18 when he came in today, he said that he updated the
19 numbers last night.

20 I did have some emails between him
21 and Mr. Holloway this past week. I could hardly
22 make heads or tails of it. I couldn't figure out
23 if they were talking about PC or merchandise
24 trust. There was some inaccuracies in it. It
25 stated that there was no records for Heritage

1 before 2000, which is not true. He referred to
2 putting money into the merchandise trust.

3 Now, it is true that when the
4 Iglehearts got the cemetery, there was only one
5 merchandise trust. There was not one for each
6 cemetery. Now, prior to him purchasing it in 2007
7 when Terry Lanford owned it, I was not the
8 manager, I was the sales manager. Tammy Nelson
9 took care of all of Terry's finances. So kind of
10 all this was new to me when I started out with the
11 Iglehearts and we came the first time before the
12 Board and we found out about this Agreed Upon
13 Procedures thing.

14 So after that, I went back and I
15 took my book where we logged every deed that is
16 made for perpetual care. I took those numbers
17 from 1984 through 2009 that was every PC penny
18 that was to be put in the trust and it came to
19 \$199,667. Now, what I did, I took the PC -- I
20 took the book and those numbers would have been
21 clear because once it's logged in the book, those
22 numbers are never going to change. That's what is
23 to go into the trust.

24 Now, for Greenhaven, I only had
25 deeds from 2001 through 2009 which came to

1 \$13,000. Now, the number has to be greater than
2 that, but I didn't have the deeds for those. And
3 I did not go through every file in Greenhaven.
4 But when we got to the merchandise trust, I went
5 back from '91 through 2009. I took my logbook
6 showing what merchandise had been deeded to the
7 customer. I pulled each file to see what
8 merchandise had already been furnished and what
9 was left in liability, and for Heritage I came up
10 with \$225,913.

11 Now, in some of the files, there
12 was a worksheet that showed the cost that should
13 have been trusted, but most of the files did not
14 have that. So I had to base it on my experience
15 from being in the business since 1988, what I
16 thought would have been the cost of that
17 merchandise at that time.

18 Now, in Greenhaven's merchandise
19 account, I have it from 2001 to 2009 should have
20 been \$17,559. It is not in a formal format as
21 Brad's is, but once I got this done, I forwarded
22 it to our accountant, Chuck Eubanks, and from
23 where it went from there, I do not know. But I
24 did not know I was going to have to pull these
25 numbers out.

1 He did come with one lady to my
2 office and he either stayed five or six days. He
3 told me this morning he went through every file.
4 Well, I've got over 2,000 buried at Heritage, plus
5 all other pre-needs. There's over 5,000 people
6 buried at Greenhaven and other pre-needs, so I'm
7 looking at about 10,000 files.

8 I don't seen how you can go through
9 that. It took myself and another lady, to go
10 through the Heritage merchandise it took us eight
11 weeks to do that. So I didn't know I was ever
12 going to have to compare numbers with the bank's
13 numbers. That's why this has never been pulled
14 out before. I think the bank's numbers are very
15 low-ball than what should be there. But I don't
16 know what's in the account.

17 But I would ask the Board this
18 question. As cemetery owners, would you have
19 known, if you didn't have it computerized, would
20 you have known of a better way than to go to your
21 deed book and your merchandise trusted book to
22 find what the liabilities was and then pull the
23 file?

24 MR. GRIGG: Ma'am, you don't get to
25 ask the Board questions.

1 MS. POTEAT: Oh, I'm sorry. It was
2 worth a try.

3 MR. GRIGG: It was.

4 MR. CHAIRMAN: Mr. Holloway?

5 MR. HOLLOWAY: Yes, sir?

6 MR. GRIGG: He has to be sworn in
7 as well.

8 Whereupon:

9 Jim Holloway, having been duly
10 sworn and cautioned to speak the truth, the
11 whole truth and nothing but the truth,
12 testified as follows:

13 MR. CHAIRMAN: It appears to me we
14 need somebody to do an independent AUP before we
15 could ever ascertain what needs to be done there.

16 MR. HOLLOWAY: To do the annual or
17 the Agreed Upon Procedures, you probably don't
18 want me to do that since I'm your consultant. But
19 with respect to providing them the same level of
20 cooperation that we provided for the bank, I think
21 I should.

22 When I was working with Nelson
23 Mullins' attorneys, it was represented to me that
24 no records existed before like 2001. And so when
25 I hear that, my default position is, well, what's

1 the minimum it can possibly be. And so based on
2 that, the answer became, okay, for the years that
3 it was six dollars, for that many sales then it's
4 got to be six dollars. It doesn't matter whether
5 you gave it away or you sold it for something, it
6 can't be any less than six dollars. For the years
7 that it was forty dollars, it can't be any less
8 than 40 because that's the absolute minimum and
9 for the years that it would be 50.

10 So that was the answer we came up
11 with. And then I found out there were some
12 records from 2001 and so I asked Brad, okay, if
13 you've got records, then you've got to adjust what
14 you've calculated for that.

15 Now, I had nothing -- I really did
16 not do anything with the merchandise account.
17 That's their liability, the owner's liability to
18 come up with that on demand. What I was looking
19 for was the perpetual care amount.

20 So what the bank has proposed is, I
21 guess you could say the absolute minimum that
22 should be in there for amounts for dates prior to
23 2001 and then for dates after 2001 is based on
24 actual. Now, I'll be more than happy at your
25 direction to provide the same assistance to the

1 Iglehearts.

2 MR. CHAIRMAN: The main thing here
3 is to protect the public, to make sure the
4 accounts are properly funded. And that's why we
5 do these AUPs anyway, is to make sure that the
6 figures and everything is correct.

7 MR. HOLLOWAY: Correct. I got you.
8 Mr. Chairman, I think what I'd do is, I'd make
9 part of this process having their outstanding
10 Agreed Upon Procedures be brought up-to-date.

11 MR. RUSTIN: We believe that there
12 are records, at least on one of these cemeteries,
13 '84 to 2000, that the bank didn't know were in
14 existence when they did their work that Ms. Poteat
15 has had access to that she did incorporate into
16 her numbers. And we would ask the LLR not -- the
17 bare minimum doesn't make sense to protect the
18 public. It should be the expected amount that
19 should be in there to fund the liability. Not the
20 bare minimum, the least it could potentially cost,
21 but what we expect the actual expenditure to be to
22 fund the obligation of the trust, not the bare
23 minimum. What's the least it could possibly be
24 under any given circumstances, but what the
25 expected expenditure would be, not the bare

1 minimum.

2 And, really, a lot of these, as
3 Ms. Poteat said, she used actual numbers that it
4 would take to fund these obligations, not bare
5 minimums. She has pinned on each one of these
6 years the cost for each one of these obligations
7 in her numbers.

8 MR. RIGGINS: Why would the bank
9 not have known from '84 to 2000?

10 MS. POTEAT: I have no idea. They
11 had access to every record.

12 MR. RUSTIN: In order to answer
13 your question, Mr. Holloway had actually posed
14 that question to me and said, are there records
15 that predate 2000? And so I forward that to the
16 cemetery and I got back this email that says,
17 here's an estimated number, we have no records
18 prior to 2000 -- in other words, I had put my
19 numbers in for 2000 to present. I had emailed the
20 cemetery and said, do you have records? Because
21 Mr. Holloway had asked me for those. And I got
22 back an estimated number, we have no records prior
23 to 2000.

24 So if that is -- if they've now
25 found those records, I apologize to the Board. I

1 was going off of what I had been provided and that
2 was the best information I had and I was trying to
3 fulfill Mr. Holloway's request to find records
4 before 2000.

5 MR. RIGGINS: Well, why were those
6 records not provided to the bank from '84 to
7 2000?

8 MS. POTEAT: They were. If that
9 email -- I don't know who sent you the email.
10 Maybe me. But there is no records for Greenhaven
11 before 2000, but nothing -- the records have
12 always been in the same location for Heritage
13 since 1984 when it was built. And he was in the
14 room. He said he went through every file.
15 Greenhaven and Heritage files were in the same
16 room.

17 MR. CHAIRMAN: I don't see how we
18 can move forward without an AUP.

19 MR. RIGGINS: We haven't got a clue
20 what's supposed to be there. I mean, if there's
21 \$200,000, I mean, we sure can't decide the top or
22 the bottom without an AUP.

23 MR. BARTUS: And, also, then
24 there's the potential, is there maybe something
25 that could go forward from here that we'd go to

1 another court of jurisdiction that would say,
2 well, it's two million dollars. Then the bank
3 goes under and then all of a sudden, we're stuck
4 with some cemeteries here.

5 But, again, how can I sit down here
6 and think about making a judgment with just a
7 verbal presentation and not seeing --

8 MR. HOLLOWAY: With everybody not
9 using the same information.

10 MR. RIGGINS: Yeah. Not everybody
11 using the same information. I don't know how I
12 can make that kind of a judgment.

13 MR. CHAIRMAN: Okay. I missed
14 that.

15 MR. RIGGINS: We were talking about
16 without all this information, there's no way that
17 we can make an honest opinion of which end is
18 which.

19 MR. ROGERS: If I could just
20 recommend maybe the LLR get an independent CPA to
21 review both sides, work with my client and work
22 with the bank's attorneys and get an independent
23 CPA to make a recommendation as far as what the
24 amount should be.

25 MR. CHAIRMAN: Well, that would be

1 the cemeteries' responsibility to that do, that
2 y'all should hire an independent CPA to come up
3 with figures. Those figures should be fair to
4 both sides, I would hope, because they should be
5 accurate.

6 MR. ROGERS: So there would be no
7 conflict perceived by my client picking and paying
8 the CPA? I just want to make sure there's no
9 conflict here.

10 MR. CHAIRMAN: Well, an independent
11 CPA is not going to be bound to the client to
12 reflect anything other than what's accurate.
13 That's my understanding.

14 MR. ROGERS: We'd be happy to do
15 that, to get a CPA to make a presentation to the
16 Board on behalf of our clients as to what the
17 appropriate amounts in both of these trust
18 accounts should be. It may take --

19 MR. RIGGINS: Mr. Stillwell, have
20 you got a problem with them getting a CPA?

21 MR. STILLWELL: I mean, these
22 figures may be fine if we could actually look at
23 them. And the silver lining to this whole thing,
24 the perpetual care balances for the two cemeteries
25 are inexplicably different, but it's not that far

1 apart. It's the merchandise thing where
2 there's -- I looked at it closer. There's a
3 quarter million dollar spread from what she said
4 and from what we looked at and that's got to get
5 reconciled. We've got to get together and look at
6 this.

7 But that's the thing in the
8 settlement agreement, we're supposed to be
9 cooperating with each other and here we are having
10 an adversarial proceeding in front of y'all. I'm
11 sorry we're down here. It should not be happening
12 like this.

13 MR. CHAIRMAN: So both parties
14 would agree to an independent CPA audit?

15 MR. ROGERS: Yes, sir.

16 MR. CHAIRMAN: Okay. Then I would
17 entertain a motion that we table this until we
18 have that report.

19 MR. HOLLOWAY: I also want to point
20 out that the merchandise accounts need to be
21 separated.

22 MR. ROGERS: Yes, sir. I think
23 that makes the most sense. We'll ask the CPA to
24 do that. And we'd just ask that the temporary or
25 provisional license that my clients are operating

1 under be continued until we can resolve these
2 issues.

3 MR. GRIGG: Ms. Bell might have
4 something to say about that. I don't know.

5 MR. ROGERS: Okay.

6 MR. CHAIRMAN: Ms. Bell?

7 MS. BELL: Thank you. I would ask
8 that you accept the Memorandum of Agreement
9 stipulations today. I think that as far as the
10 disciplinary matters are concerned, there's
11 certain sufficient evidence for you to accept this
12 today and deal with it. And then, also, if there
13 is additional things that you want in place before
14 you consider the licensure matter, maybe that
15 could be spelled out in the same order, but I
16 would ask that you accept the Memorandum of
17 Agreement and Stipulations today.

18 MR. BARTUS: Did you know the names
19 are spelled wrong? Igleheart, not Inglehard.

20 MS. BELL: I'm sorry.

21 MR. GRIGG: Ms. Bell, their license
22 is currently in good standing; is that -- I mean,
23 I know they've got an application, but they have a
24 valid license as of today, right?

25 MS. BELL: There is a license. The

1 license number is 1127 for Greenhaven Gardens and
2 for Heritage the license number is 1052. That's
3 the license number that was in operation under
4 Mr. Lanford.

5 MR. FLOYD: Well, that wasn't
6 Mr. Lanford's you're talking about. That's the
7 license --

8 MS. BELL: And that's the license
9 that they're operating under right now.

10 MR. ROGERS: We would just ask that
11 they be able to continue to do what they're doing
12 now, operate under these licenses until we have
13 time for the CPA to present the full data to the
14 Board.

15 MR. FLOYD: Well, we can accept
16 this for information.

17 MR. CHAIRMAN: Well, let's go into
18 Executive Session on that.

19 MR. FLOYD: Mr. Chairman, I move
20 that we go into Executive Session.

21 MR. CHAIRMAN: All right. I have a
22 motion to go into Executive Session to seek legal
23 advice. Do I have a second?

24 MR. RIGGINS: Second.

25 MR. CHAIRMAN: All those in favor

1 say aye.

2 (Response)

3 MR. CHAIRMAN: All those opposed?

4 (No response)

5 (Executive Session from 11:55 a.m. to
6 12:32 p.m.)

7 MR. CHAIRMAN: Are we ready?

8 MR. FLOYD: Mr. Chairman, I make a
9 motion we come out of Executive Session.

10 MR. CHAIRMAN: I have a motion. Do
11 I have a second to come out of Executive Session?

12 MS. PETTY: Second.

13 MR. CHAIRMAN: Okay. All those in
14 favor say aye.

15 (Response)

16 MR. CHAIRMAN: All those opposed?

17 (No response)

18 MR. CHAIRMAN: No motions were made
19 and no votes were taken during Executive Session.

20 MR. FLOYD: I have a question of
21 the Iglehearts on your application. The
22 application on page --

23 MR. GRIGG: You're asking
24 Mr. Igleheart?

25 MR. FLOYD: Well, whoever is

1 representing Heritage and Greenhaven.

2 MR. ROGERS: Yes.

3 MR. FLOYD: Okay. That's you, Mr.
4 Elliott?

5 MR. ROGERS: Mr. Rogers.

6 MR. FLOYD: Mr. Rogers. It's on
7 page five of the application package, item 22 asks
8 about, has any company officer or manager been
9 subject to any disciplinary action local, State or
10 national, I believe to Mr. Lanford's felony
11 conviction?

12 MR. ROGERS: Yes, sir.

13 MR. FLOYD: This is not answered
14 properly.

15 MR. ROGERS: We apologize --

16 MR. FLOYD: He is listed as a 10
17 percent owner. It just needs to be changed.

18 MR. ROGERS: We'll amend that,
19 Mr. Floyd. But the reason we probably put it that
20 way is because if the Board grants a licensure,
21 he'll be removed immediately. But, technically,
22 the way the application reads --

23 MR. FLOYD: Well, his name is still
24 on there as a 10 percent owner is kind of a catch
25 22, but until -- this is not accurate.

1 MR. ROGERS: Yes, sir. And it's
2 page -- you said page five?

3 MR. FLOYD: Page five. And that
4 may be -- it's probably that on both applications.
5 Number 22, 22 and 23, where they ask questions
6 about --

7 MR. ROGERS: We'll amend that.
8 Thank you.

9 MR. FLOYD: And 24 then would have
10 to be answered, you know.

11 MR. ROGERS: Okay.

12 MR. FLOYD: Just go back and look
13 at these two applications and --

14 MR. ROGERS: Yes, sir.

15 MR. FLOYD: -- make those changes.

16 MR. ROGERS: If I could make one
17 brief motion. I spoke with advice counsel and
18 Ms. Bell about this during the recess. We would
19 request that as part of the Board's -- the LLR's
20 order today that the LLR order that an independent
21 CPA perform a review of the trust accounts at
22 issue and make a recommendation to the LLR
23 regarding the additional amounts of monies needed
24 to restore the merchandise and perpetual care
25 trust accounts to the appropriate levels, and that

1 the independent CPA be ordered to perform all work
2 he deems necessary to conclude what number, as far
3 as that number goes, the amount of monies needed
4 to restore the trust accounts at the appropriate
5 levels. And we'd also ask that the Board continue
6 this application hearing and that the \$2500
7 application fee already paid by my clients not
8 have to be paid again before the next hearing.

9 MR. CHAIRMAN: Ms. Bell, are you in
10 agreement with that?

11 MS. BELL: I would ask that you
12 issue some order today and that part of that order
13 would deal with the disciplinary as well as
14 whatever you think is appropriate on the
15 application today. We can resolve the disciplines
16 today. Because I think most of the questions that
17 are outstanding that the Board may have have more
18 to do with the application issues versus the
19 disciplinary facts that have already been
20 stipulated to.

21 MR. CHAIRMAN: Mr. Stillwell?

22 MR. STILLWELL: We would consent to
23 the motion with the clarification that the
24 independent CPA chosen to be mutually acceptable
25 between the bank and the petitioner. Because I

1 heard a name tossed around that I think is going
2 to be problem right off. I think it was Mr. --

3 MR. GRIGG: Well, let's not get
4 into names or any of that at this point. But
5 you're asking that that be added to the request of
6 Mr. Rogers?

7 MR. STILLWELL: Right. That
8 independent means mutually acceptable.

9 MR. GRIGG: No problem with that,
10 Mr. Rogers?

11 MR. ROGERS: We don't have any
12 problem with that. I think we could both agree on
13 a CPA. That would just clarify his independence
14 in the matter if we both agree on him or her.

15 MR. GRIGG: One other thing I want
16 to make sure I understood. I think the end of
17 your request was a motion to continue the
18 application portion?

19 MR. ROGERS: Correct. It's my
20 opinion based upon what's been presented today
21 that we need an independent CPA. We haven't even
22 had a CPA look at these numbers. We've had
23 non-CPAs on both sides. I think it would give the
24 public more protection and the Board more
25 clarification if we had an independent CPA do an

1 independent investigation and evaluation of what
2 the figures regarding the trust account should be.

3 I think it makes more sense to
4 continue both the disciplinary action and the
5 application process because I think they go hand
6 in hand. I would defer to the Board on that. But
7 I think the issues kind of go hand in hand with
8 what the Board's dealing with on this matter.

9 MS. BELL: And I'm just wondering,
10 contemplating, could there not be an order that
11 states, we accept the memorandum of agreement
12 based on the admissions contained therein that
13 there are things that still have to be determined
14 as it relates to application and, therefore -- and
15 then put in the order kind of what Mr. Rogers
16 alluded to, that as part of this continuing
17 application process or whatever, that these
18 conditions be met before the Board would reconvene
19 to address the application issues. But that an
20 order flow that deals with the discipline today
21 and then picks up with the --

22 MR. BARTUS: Well, I guess when you
23 ask for disciplinary action in this thing, what do
24 you expect us to resolve as far as disciplinary is
25 concerned? In that instance, we can't even get to

1 the issue of putting out a, or extending, you
2 know, a new license based on an ownership change
3 when we -- and then make a disciplinary action to
4 the new owners without the information coming back
5 to us anyway to start out with, you know.

6 I don't know why we just can't
7 separate accepting the MOAs without a disciplinary
8 action attached to it. I don't know how I could
9 make some kind of a judgment now without that.

10 MR. GRIGG: All right. If I can
11 speak on behalf of the Board for a second, I think
12 there is a motion that needs to be made and I
13 think what the Board is contemplating -- let me
14 make sure I get the motion correctly put -- is to
15 basically grant the request of Mr. Rogers,
16 continue this matter in its entirety, the
17 disciplinary and the application parts of it,
18 until this mutually agreed upon independent CPA
19 can be obtained, and the AUP -- and what else does
20 he need to do? The AUP is all your motion was?

21 MR. CHAIRMAN: Within 30 days.

22 MR. GRIGG: Right. Within 30 days
23 from today. Well, let me say 30 days from the
24 date of the order. Let me say that. 30 days from
25 the date of the order. So as soon as an order is

1 prepared that reflects that, then you'll have 30
2 days from the execution date of that order to get
3 this mutually agreed upon CPA, to get the AUP
4 documentation turned in to the Board, and then a
5 hearing will have to be held reconvening all of
6 these matters at that time.

7 So, basically, this matter will be
8 continued until that's done, is my understanding
9 of the motion. Is that correct?

10 MR. CHAIRMAN: That's correct.

11 MR. GRIGG: Okay.

12 MS. BELL: Can I ask the Board to
13 consider accepting, though, for purposes so that
14 when we come back, this Memorandum of Agreement
15 and Stipulations, if it will be accepted today?

16 MR. GRIGG: So you're almost asking
17 to accept the MOA and just not rule on the same
18 --

19 MS. BELL: Correct.

20 MR. GRIGG: Any objection to that,
21 Mr. Rogers?

22 MS. BELL: Just hold that part in
23 abeyance but accept the findings of fact and
24 stipulations as laid out in the MOA.

25 MR. ROGERS: No objection to that.

1 MR. GRIGG: Would you want to amend
2 your motion?

3 MR. FLOYD: I will amend it.

4 MR. GRIGG: Okay. So everything I
5 just said and add that. And I know, Ms. Cubitt, I
6 know you have something you want to say.

7 MS. CUBITT: Did I understand the
8 motion to be that they would have, actually have
9 the report within 30 days? Because I think that
10 that would be difficult for a CPA to have it
11 within 30 days.

12 MR. GRIGG: They want them to try.
13 They can always ask for an extension if they can't
14 get it done. They can always contact you --

15 MR. RIGGINS: January the 1st, all
16 the CPAs are going to go crazy.

17 MR. POTEAT: They will and they
18 need to do it immediately, but I just don't know
19 that they can complete it within 30 days.

20 MR. GRIGG: Well, and if the Board
21 doesn't mind me explaining this, I think part of
22 their concern is just what you just said. But,
23 then, again, the Board's next meeting isn't until
24 after the new year and I think they're wanting to
25 try to get some resolution to this as soon as

1 possible. And I think part of the next -- the
2 next part of the conversation is going to be
3 trying to find a date that we all could agree upon
4 to deal with this issue, some sort of special
5 meeting of some sort. Obviously, we need the
6 attorneys to be able to come to a date that they
7 can come. And, Ms. Cubitt, you'll have to work
8 with the Board members to find a date that they
9 can do it and whatnot to get this resolved.

10 So I think the motion includes the
11 idea to try very hard to get this all done within
12 30 days. If there needs to be a request for an
13 extension, if it's just not possible, then they
14 can contact you and we can work that out. But I
15 think that's the hope of the Board.

16 MR. BARTUS: If we can't get the
17 Board -- I think if we can't get the Board
18 together before the 15th of December and everybody
19 else, then everything else is just about going to
20 be for not, unless we can get it in 30 days, have
21 a chance to do something about it and then be able
22 to make some kind of a decision and make some kind
23 of an agreement that we have there.

24 But I know it's short term.
25 Everything is short term the way I see it right

1 now. I mean, we just got involved in this and
2 this kind of level of detail. And this is short
3 term, so in order to keep this as condensed as
4 possible, if we let it go past the 1st of
5 December, it's going to be difficult to get
6 everybody back together again.

7 MR. GRIGG: So where we are now,
8 we've got a motion. Did I state the motion
9 correctly?

10 MR. FLOYD: Correct.

11 MR. GRIGG: All right. And is
12 there anyone that would like to second that?

13 MS. PETTY: I'll second it.

14 MR. GRIGG: Okay.

15 MR. CHAIRMAN: All those in favor
16 say aye.

17 (Response)

18 MR. CHAIRMAN: All those opposed?

19 (No response)

20 MR. CHAIRMAN: Thank you.

21 MR. ROGERS: Thank you, very much.

22 MR. CHAIRMAN: Thank you all.

23 Thank you, Ms. Bell.

24 MS. BELL: Thank you. Good seeing
25 you all.

1 MR. CHAIRMAN: Mr. Holloway?

2 MR. HOLLOWAY: Yes, sir?

3 MR. CHAIRMAN: You've had a chance
4 to review. If you would, tell us what your
5 findings are.

6 MR. HOLLOWAY: I read the report
7 and the report is properly written and properly
8 prepared. One of the things I asked them to do is
9 to recalculate the amount of the deposit and was
10 it made. And then at the end, I -- and that was
11 the procedure and they did that.

12 At the end, I asked him to say,
13 well, what is -- is there a deficiency in the
14 account and he pointed out there was a \$1810
15 deficiency. Somehow or another -- or what I'd
16 like to share with you is that, let's say if you
17 sell a plot in December, I think the Board
18 generally gives somebody 90 days to get them all
19 in. This was as of December 31st.

20 What I've asked him to do is to
21 call his bookkeeper and confirm or tell me that
22 they had written a check for that \$810 just in the
23 more normal course of business and he's
24 represented that to me.

25 So your concern should be -- you

1 had a concern of \$1800 of being deficient. He's
2 represented it's been made whole.

3 MR. FLOYD: And the concern was
4 that the AUP verified the liabilities matched the
5 deposit?

6 MR. HOLLOWAY: Yeah. That was in
7 there.

8 MR. FLOYD: Then the question was
9 whether the 1800 was a fluctuation in the
10 marketplace or whether it was short.

11 MR. HOLLOWAY: It was just short
12 and he said that they had made it up.

13 MR. CHAIRMAN: Do you have any
14 other questions?

15 MR. FLOYD: No. I would just
16 encourage him to amend his perpetual care document
17 to properly reflect what you can do with the
18 income. I think that was my --

19 MR. GRIGG: You also had a question
20 as to the nature of the application itself,
21 ownership versus --

22 MR. FLOYD: Right. And I don't
23 know if that's something you have to --

24 MR. GRIGG: Well, no. Here's my
25 problem on it. Looking at your statute -- and

1 there's nothing in the statute that's going to
2 just in bold letters tell us -- but the reason I
3 think what Ms. Cubitt did, as suggested in the
4 paperwork that has been turned in as correct, as
5 it being a management issue rather than an
6 ownership issue is, you're not changing
7 ownership -- he was an owner, correct?

8 MR. HARRELL: Yes, sir.

9 MR. GRIGG: He was an owner and
10 still is an owner. You've changed the amount of
11 ownership. And, again, through that will -- and I
12 know he uses the terms through that probate, that
13 summary we got. But all that's happening is like,
14 say, four of us here owned 25 percent each in
15 something and then one of us decided that we
16 wanted to sell, you know, 10 percent of it. You
17 know, you're still an owner. You haven't changed
18 the ownership. You've just changed the percentage
19 each owner owns.

20 So I think Ms. Cubitt was correct
21 in what she informed Mr. Harrell and what they
22 have submitted to you is that. To me, I see it as
23 a management issue and not a change of ownership
24 issue, and I don't see anything under your
25 statutes that would make that incorrect.

1 MR. FLOYD: Okay. J.W., I make a
2 motion that we approve Mr. Harrell as the manager
3 of the Garden of Devotion pending their amending
4 their perpetual care document to clarify that only
5 income can be distributed and a net capital gain
6 is not part of income.

7 MR. CHAIRMAN: Okay. I have a
8 motion. Do I have a second?

9 MR. FINCH: Second.

10 MR. CHAIRMAN: All those in favor
11 say aye.

12 (Response)

13 MR. CHAIRMAN: All those opposed?

14 (No response)

15 MR. CHAIRMAN: Thank you, sir. I'm
16 sorry we kept you waiting.

17 MR. FLOYD: Mr. Chairman, I make a
18 motion we adjourn for lunch.

19 MR. CHAIRMAN: All right. I have a
20 motion to adjourn for lunch. Do I have a second?

21 MR. BARTUS: Second.

22 MR. CHAIRMAN: All those in favor
23 say aye.

24 (Response)

25 MR. CHAIRMAN: All those opposed?

1 (No response)

2 MR. CHAIRMAN: We will break until
3 two o'clock.

4 (Recess from 12:50 p.m. to 2:10 p.m.)

5 MR. CHAIRMAN: This meeting is
6 called to order. I believe the first thing on our
7 agenda is Mr. Gaffney.

8 MR. GAFFNEY: Yes, sir.

9 MR. CHAIRMAN: We've reviewed your
10 application and we do have some questions about
11 your trust document. I think what you've done is,
12 you're just using the same trust document that
13 they had before you. Is that what you're doing?

14 MR. GAFFNEY: Yes, Mr. Chairman. I
15 have not seen the trust document. The trustee
16 would not share it with me because the Connellys
17 were not able to get together and provide him
18 information to allow me to look at it, so I just
19 had him submit it directly to the Board.

20 MR. CHAIRMAN: Okay. What we're
21 finding in a lot of those old trust documents,
22 they need to be revised and there will be some
23 revisions you'll need to do to it. Russell,
24 you've got something, I believe, on page 14.

25 MR. FLOYD: Well, I mean, do you

1 have your own trust -- well, you've go to update
2 the trust document. I guess at what point in time
3 would you get those to know what we're talking
4 about?

5 MR. GAFFNEY: I would assume, if
6 I'm given permission to take over the cemetery,
7 then today would be the day that I would be -- the
8 trust department would share it with me.

9 MR. FLOYD: Well, what we can tell
10 you, that the old document, for example, on page
11 14 of our package is item A, or is that two? It
12 talks about making contributions on a quarterly
13 annual period as opposed to, the statute says 60
14 days or 90 days after the space is paid out you
15 make your contribution, so that's an error. I
16 would suggest you could probably start all over
17 again with a new trust document and not use
18 theirs.

19 Their document also states on page
20 15, they include capital gains as part of their
21 income, and that's in violation of the statute.
22 And they also have -- they also retain unused
23 income or undistributed income to be reinvested
24 and then distributed later if they needed it,
25 which is not allowed by the statute. And that's

1 all on page 15.

2 For example, but, again, I suggest
3 you just start all over again and, you know, I'll
4 give you a copy of mine or you could get your
5 attorney to --

6 MR. GAFFNEY: Okay.

7 MR. FLOYD: And that's probably the
8 best thing to do. I wouldn't suggest taking
9 theirs. They do have the old statement, which is
10 correct, about the trustee shall be paid from the
11 income without invasion of the principal. Such
12 commissions, blah, blah, blah. But you heard me
13 earlier state that the irrevocability applies to
14 the principal, not to the document.

15 MR. GAFFNEY: Yes.

16 MR. FLOYD: And this document
17 should also state that any change in trustee or
18 change in this -- well, a change of trustee
19 requires approval of the Board. So that probably
20 needs to be in the document so that the trustee
21 knows that as well.

22 MR. RIGGINS: And, also, any
23 changes to the document.

24 MR. FLOYD: No. J.W., does the
25 statute -- well, we might have to look at that,

1 but --

2 MR. CHAIRMAN: Well, no. That
3 might be a question for Dean.

4 MR. FLOYD: We know that a change
5 of trustee requires approval by the Board, that's
6 clear. I don't know about the document itself.

7 MR. HARRELL: But as far as getting
8 a new document, I'm sure that there's no doubt
9 we're going to do that. And I would prefer to
10 come up with a new document and then at least
11 submit it to the Board. Whether or not you're
12 going to review it or not, I'd just as soon send
13 it to the Board so they'd have a copy of it.

14 MR. FLOYD: Well, we require that
15 you have a document.

16 MR. CHAIRMAN: Yeah. We'll need
17 the document.

18 MR. HARRELL: Okay.

19 MR. FLOYD: And we'll just have to
20 look at it. When your attorney reads the statute,
21 you'll find out whether it requires the Board's
22 approval and write the document accordingly.

23 MR. HARRELL: Very good.

24 MS. CUBITT: Mr. Chairman, if you
25 didn't require the Board's approval to make a

1 change to the document, that would allow people to
2 go in and maybe change the definition of that
3 income or something like that. So I would think
4 if there were changes to the document, it would
5 have to be approved by the Board.

6 MR. FLOYD: We'll ask that and I
7 guess until somebody says the statute doesn't
8 grant us authority to do that. But I think that's
9 a good idea for that very reason. That's all I
10 had on the trust document.

11 What's next over there, J.W.? Your
12 manager is Yvonne McKellar.

13 MR. GAFFNEY: And she's been there
14 20-plus years.

15 MR. FLOYD: According to this, you
16 have a free -- a mortgaged title, a free and clear
17 title?

18 MR. GAFFNEY: Yes.

19 MR. FLOYD: Is that the way you
20 found it?

21 MR. GAFFNEY: Yes, I sure did.

22 MR. FLOYD: Does anybody have any
23 questions about any of this, rules and
24 regulations?

25 MR. RIGGINS: I had some on the

1 regulations. I'm trying to find it here. I think
2 it's on page 47. I'm on page 49.

3 MR. FLOYD: It looks like a copy of
4 something familiar. These are their existing
5 rules and regulations, are they not?

6 MR. GAFFNEY: Yes.

7 MR. FLOYD: Okay.

8 MR. GAFFNEY: Which we will be
9 going through, and I don't have the authority to
10 change anything at this point in time.

11 MR. CHAIRMAN: Your rules and regs
12 will need to come before us once you change them.

13 MR. GAFFNEY: We're going to change
14 the contracts, the purchase agreements, we're
15 going to want to change the trust agreement and
16 the rules and regs once we take control of the
17 cemetery.

18 MR. CHAIRMAN: Okay.

19 MR. GAFFNEY: To which it all will
20 be submitted.

21 MR. RIGGINS: I wrote down 49.1,
22 but I don't know what I was --

23 MR. FLOYD: Well, then, as you
24 study the statute, you'll know what has to be
25 integrated and what not, so I guess we can address

1 that and when you submit it to the board.

2 MR. GAFFNEY: Yes.

3 MR. FLOYD: Right offhand, I don't
4 know if I saw any of these, but they're
5 third-party merchandise sales that are regulated
6 by the statute specifically.

7 MR. RIGGINS: One of the things I
8 had -- I see where I'm at now. On 49 down at the
9 bottom of page one, the insurance coverage on
10 outside memorial members has been changed from 300
11 to 500,000. Is that what you've got? Because it
12 has to be the same thing, whatever you make them
13 -- or have them is required is a --

14 MR. GAFFNEY: Well, once again, we
15 don't have insurance right now. We carry a
16 million dollars of liability insurance. And,
17 generally, in the rules and regs, we try to have
18 what we require for an outside lower than what we
19 actually carry.

20 MR. RIGGINS: It just can't be the
21 other way.

22 MR. GAFFNEY: Yes. I understand.

23 MR. FLOYD: The same thing with
24 your care, maintenance and installation charges.
25 And I know they do it differently in North

1 Carolina.

2 MR. CHAIRMAN: How about care and
3 maintenance fees? I'm looking at -- they
4 presently charge \$1.23 a square inch. Is that
5 something you plan to continue?

6 MR. GAFFNEY: I have no intention
7 of changing it at the present time.

8 MR. CHAIRMAN: Where it says
9 survey, ADJ, that's 67 cents --

10 MR. GAFFNEY: That's the
11 adjustment, survey adjustment and realignment.

12 MR. CHAIRMAN: Are you talking
13 about lifting and readjusting memorials later? Is
14 that what you're talking about?

15 MR. GAFFNEY: From time to time
16 over the years if you have to realign memorials,
17 yes, sir.

18 MR. CHAIRMAN: Plus, removal for a
19 second burial and that sort of thing?

20 MR. GAFFNEY: That's correct.

21 MR. CHAIRMAN: Okay.

22 MR. FLOYD: Are you in the process
23 of redoing your sales contract?

24 MR. GAFFNEY: Yes.

25 MR. FLOYD: And I would direct you

1 to the statute and there is the vault disclosures,
2 and then there's the -- and this contract that
3 they use doesn't seem to allow for the care and
4 maintenance and installation to be itemized, and
5 the amount in trust doesn't appear to be
6 disclosed. So we would not approve this contract
7 and I don't know how we're going to --

8 MR. GAFFNEY: I know on the website
9 there's a sample, and I have certainly printed
10 that out, and we are going to basically take all
11 the information that's there. But, previously, we
12 have always broken it out.

13 MR. GRIGG: You can use that one.
14 That makes it easy for everybody.

15 MR. GAFFNEY: Okay.

16 MR. FLOYD: Since that's what
17 they're doing, do y'all have any questions about
18 the sales contracts? Since they'll actually be
19 submitting -- they'll be appending the trust
20 agreement pending these contracts and probably
21 pending the rules and regulations.

22 Well, my question about your sales
23 agreement, I guess I want you to explain to us
24 your contract language. I don't know if Dean has
25 had a chance to look at this. You've talked about

1 assumed contracts covering assumed liabilities,
2 and then you have excluded liabilities and then
3 you have right to offset payments. I guess we
4 want to be clear on what liabilities you are
5 assuming. There's some language here that's kind
6 of --

7 MR. GAFFNEY: We assume all
8 contract liabilities for a sale of premium
9 merchandise. What we exclude is, the liabilities
10 that are not included would be something that we
11 run into unfortunately, is a lot of tax issues
12 that the current corporation has. So we are not
13 assuming any of those liabilities because we're
14 going to be setting up our own company, our own
15 corporation. We're not buying the Connelly's
16 corporation, but we're starting our own.

17 So we're excluding all of their tax
18 liabilities, IRS liabilities, things of this
19 nature. But as far as the contract, what we do
20 include is all contracts that the cemetery has, we
21 are taking over full responsibility for those
22 contracts and the liabilities for them.

23 MR. FLOYD: Well, let's look
24 specifically at the language. Go ahead.

25 MR. CHAIRMAN: Are there sales tax

1 liens on that property?

2 MR. GAFFNEY: No. No, no, no.

3 There had been. But at this point in time, there
4 are no liens.

5 MR. CHAIRMAN: Okay.

6 MR. FLOYD: And I may need Dean.
7 Look on page 87 of the package. Under 1.4 is
8 assumption of liabilities. At the closing, buyer
9 will assume and, thereafter, in due course, have
10 performed and discharged all liabilities and
11 obligations to the applicable seller arising in
12 the ordinary course of business under the assumed
13 contract, but expressly excluding the excluded
14 liabilities.

15 All right. So then you look at the
16 excluded liabilities. Except for assumed
17 liabilities, the buyer shall not assume the
18 liabilities, I guess, of the business with any
19 selling party. Included with that limitation is
20 the following, A, B, C and D. But down to E is
21 where my question arises. Liabilities for
22 breaches of assumed contracts, including any
23 liabilities for wrongful burial or wrongful deeded
24 burial spaces. If you're not liable for them, the
25 families then are hung out to dry.

1 MR. GAFFNEY: But if this is
2 between the buyer and the seller where we are not
3 assuming that as far as, it's a contract between
4 the cemetery company and the consumer. The
5 contract that we're looking at in reference to it
6 is between Citadel Management and the Connelly
7 family, and if there is a breach of that nature,
8 then we have a right to go back on the Connellys.

9 MR. FLOYD: So it doesn't really
10 address --

11 MR. GRIGG: All it is determining
12 -- and, ultimately, it's between him and his
13 attorney what he wants to assume and he doesn't
14 want to assume and what he's willing to sign his
15 name to. But all of this language is just simply
16 saying there's certain things that they're
17 assuming and there's certain things they're not.
18 If they're not, that liability remains with the
19 Connellys.

20 MR. FLOYD: So the family comes to
21 Bill and says, you've got my daddy buried in the
22 wrong space, how do you handle that?

23 MR. GAFFNEY: We're going to handle
24 it just like we would under any other
25 circumstances, take care of it and then whatever

1 the cost and expenses would be, then we'd have the
2 right to go back on the Connellys.

3 MR. FLOYD: Okay. Again, our
4 concern is the protection of the consumer. As
5 long as this isn't a way to skirt throwing up your
6 hands and saying, well, you know, that's tough.

7 MR. GAFFNEY: Under no
8 circumstances.

9 MR. FLOYD: Have the Connellys
10 pre-sold openings and closings, grave openings and
11 closings?

12 MR. GAFFNEY: Not much.

13 MR. FLOYD: Is that liability one
14 of those assumed?

15 MR. GAFFNEY: Actually, we
16 addressed that, that if anything has been
17 pre-sold, then that they would be responsible for
18 up to \$125. And this we can offset against that
19 on the payments.

20 MR. FLOYD: Okay. So you're
21 understanding you have that liability --

22 MR. GAFFNEY: Oh, yeah.

23 MR. FLOYD: I assume they didn't
24 fund whatever they pre-sold?

25 MR. GAFFNEY: That's right. So if

1 something does come up where a pre-sold grave
2 opening, instead of us trying to determine at that
3 time what is the cost, that we just came up with
4 \$125 and we would offset against that, but we
5 would perform the service.

6 MR. FLOYD: Dean, did you have a
7 chance to look at this contract?

8 MR. GRIGG: I'm looking at it right
9 now. But, no, I've not looked at it before this.

10 MR. FLOYD: Our concern is that the
11 buyer isn't able to exempt his responsibility to
12 perform for the public or withstanding how it
13 offsets payments to the sub.

14 MR. GAFFNEY: And we are fully
15 aware of that.

16 MR. FLOYD: You've got in here the
17 government law is the state of North Carolina.
18 It's 97, page 106. It says internal laws and
19 judicial procedures of the state of North Carolina
20 shall govern the execution, interpretation and
21 performance of this agreement. Is that
22 intentional?

23 MR. GAFFNEY: No. We will --

24 MR. FLOYD: Does that really relate
25 to us anyway?

1 MR. GAFFNEY: Excuse me. For that
2 contract, the selling party is in Georgia. We are
3 North Carolina. And so for governing that
4 contract, the purchased contract between the
5 Connellys and Citadel Management, it is under the
6 laws of North Carolina.

7 MR. FLOYD: I don't have any other
8 questions about the contract, per se. Is Doris
9 back yet?

10 Regarding the Agreed Upon
11 Procedures, the first question I had was, do we
12 have the initial Agreed Upon Procedure, and then
13 the second Agreed Upon Procedure. I guess that's
14 what Doris has gone to look at. Amy, do you
15 know?

16 MS. HOLLEMAN: She's not. They
17 have the first and I believe the second is in this
18 package. Because I think their CPA sent those to
19 us.

20 MR. FLOYD: Well, the Board is not
21 aware of that status to know how to interpret this
22 third AUP, the 2007 to 2011, whether they're
23 reconciled or not or -- we're just not aware if
24 the first and second AUPs were -- found
25 deficiencies or --

1 MS. HOLLEMAN: The second one,
2 we'll tell you what the second one was.

3 MR. FLOYD: I guess my point is, we
4 can't approve this one until we know what the
5 first two were.

6 Regarding this AUP bill, I had kind
7 of the same question I had about the other ones
8 today. I wasn't real clear that the deposits were
9 matching the liabilities. I see it's fairly clear
10 that the LLR reports match the beginning and the
11 ending balances with the bank and the trust, but
12 that's really a secondary question to was the
13 right amount of money deposited to start with.

14 It also states in here that the
15 cemetery was not reporting invested income form on
16 a 1099. That's not a requirement.

17 MR. GAFFNEY: That's right.

18 MR. FLOYD: That was a
19 misinterpretation of something earlier in the
20 establishment of the Board. Apparently, it's
21 still getting disseminated to whoever is
22 performing the AUP. Do you have any insight as to
23 these AUPs and them getting to identify the
24 liabilities as of 2007, 8, 9 and I guess 10 sales
25 periods?

1 MR. GAFFNEY: Let John Lindsay, who
2 is our accountant, see if he can --

3 MR. FLOYD: But he did not perform
4 the AUP.

5 MR. LINDSAY: No, I did not.

6 MR. FLOYD: My note to myself, also
7 it seemed to combine the trust AUPs with the
8 merchandise account AUPs as opposed to having two
9 separate AUPs.

10 MR. LINDSAY: Russell, under 1B,
11 the finding is that the sales activity reported in
12 the contract book was deposited into the bank
13 trust account. Is that not what you're asking,
14 that the liability was determined and that the
15 deposit was made?

16 MR. FLOYD: Are you looking at the
17 AUP?

18 MR. LINDSAY: Yes. 1B.

19 MR. FLOYD: Under --

20 MR. LINDSAY: Procedures and
21 findings. Under B, there are two procedures. The
22 second procedure --

23 MR. FLOYD: It reads, traced on a
24 test basis, the sales activity in the contract
25 book to determine that a corresponding deposit

1 occurred in the bank trust account.

2 MR. LINDSAY: It's calculated the
3 liability and then tracing it into the --

4 MR. FLOYD: Now, is this for the
5 care and maintenance trust?

6 MR. LINDSAY: It would be for both
7 trusts, I believe.

8 MR. FLOYD: I'm not sure,
9 Mr. Chairman, but, typically, we prefer having two
10 separate AUPs so we don't get them -- because
11 they're two separate procedures.

12 MR. LINDSAY: Now, attached to his
13 report are both the perpetual care and the
14 merchandise reports for the period.

15 MR. FLOYD: So he did two separate
16 ones, he just summed them up?

17 MR. LINDSAY: Yeah. He traced both
18 of the reports.

19 MR. FLOYD: Maybe we'll ask him to
20 rewrite that just for the record. Doris, were you
21 able to find the initial and the second AUP?

22 MR. CUBITT: To find what in the
23 second AUP?

24 MR. FLOYD: The initial AUP --

25 MS. CUBITT: Yes.

1 MR. FLOYD: It's never been
2 reported to the Board whether they were deficient
3 or in balance or what their status was. I guess
4 when you look at a 2007 AUP, it has to match up
5 with the findings of the 2006 ending AUP and this
6 doesn't give us that information.

7 MS. CUBITT: We can, in the future,
8 give you both reports that we have in a package
9 like this, and copies of the annual reports also
10 so that you'll know when you look at it exactly
11 what it's for.

12 MR. FLOYD: Well, were they
13 deficient or --

14 MS. CUBITT: It says, we have
15 performed the procedures enumerated below which
16 were agreed to by Mr. George Brian Connelly to
17 determine that the balance of the perpetual care
18 trust fund at January 1st, 1991 is not
19 unreasonably understated, and that the deposits
20 into the fund for the period January 1st '91 to
21 December 31st '02 were as required by law.

22 Mr. Connelly is responsible for the
23 accompanying statement of the perpetual care trust
24 fund balance. This Agreed Upon Procedures
25 engagement was conducted in accordance with the

1 application standards established by the American
2 Institute of Certified Public Accountants.

3 A deficiency of these procedures
4 are totally the responsibility of those parties
5 set by the report. They make no representation
6 regarding the sufficiency of the procedures
7 described below either for the purposes of which
8 this report has been requested or any other
9 purpose. And then it goes to procedures and
10 finding. And procedure one, the finding from that
11 is that the balance of January 1st, 1991 is not
12 unreasonably understated.

13 Procedure two, the deposits into
14 the fund were made as required by law. Procedure
15 three, the expenditures were as required by law.
16 Procedure four, the finding was, merchandise
17 accounts of Memorial Gardens, Incorporated were
18 established as of January the 1st, 2003. Prior to
19 that, all memorials were ordered and installed at
20 the time of the contractual payout. All burial
21 vaults were ordered and stored on the cemetery
22 grounds until the time of need upon contractual
23 payout.

24 We were not engaged to and did not
25 conduct an examination, the objective of which

1 would be the expression of an opinion or
2 compliance. And, furthermore, we do not express
3 an opinion. That's kind of standard language.

4 MR. FLOYD: And that was in 1991?

5 MS. CUBITT: Uh-huh. It actually
6 was issued May 15th, 2009.

7 MR. FLOYD: But that was through
8 the period --

9 MS. CUBITT: That was the first
10 AUP.

11 MR. FLOYD: -- of '91?

12 MS. CUBITT: Uh-huh.

13 MR. FLOYD: And that would be 2003
14 or 2002.

15 MS. CUBITT: And then it should
16 have carried it from there till when they did this
17 in '06 --

18 MR. FLOYD: From '91 to 2002 or the
19 next period. Did this address that period?

20 MS. CUBITT: Yes.

21 MR. FLOYD: So it brought it up to
22 2002?

23 MS. CUBITT: Yes. And then it
24 should have --

25 MR. FLOYD: So you've got from 2003

1 to 2007 through 6 was the second AUP.

2 MS. CUBITT: Well, really, it was
3 one AUP and it should have covered -- they had to
4 cover the beginning -- you had to determine if the
5 beginning balance in '91 was basically correct.
6 Then you had to check the things from '91 up to
7 '02/'03, and then you had to bring it in the same
8 report as --

9 MR. FLOYD: Well, depending on when
10 you make the reports. If you made them on a
11 timely basis, you had them in different
12 statements.

13 MS. CUBITT: And this report was
14 dated May 15th '09, so it should have included
15 through '06, I believe.

16 MR. FLOYD: Well, it should have
17 and it could have, but didn't. Just because they
18 gave it to us in '09 doesn't mean it covers all
19 those periods.

20 MS. CUBITT: And it does not say
21 that. It does not mention the years '03, '04, '05
22 and '06.

23 MR. FLOYD: We don't really know.

24 MS. CUBITT: Uh-uh. So I would say
25 that to do Agreed Upon Procedures now, they would

1 have to go back and cover --

2 MR. FLOYD: Well, they can clarify
3 what they -- so we don't know what this really
4 covers, how far it covers.

5 MS. CUBITT: Based on the statement
6 that he had made in here, it covers until December
7 31st '02.

8 MR. FLOYD: Okay. So we've got a
9 gap from '02 --

10 MS. CUBITT: '03, '04, '05, '06.

11 MR. FLOYD: Okay. We've got a
12 gap.

13 MS. CUBITT: We've got 7, 8 and 9
14 and we have 10.

15 MR. FLOYD: Well, we've got 7, 8,
16 9, 10 and 11.

17 MS. CUBITT: Okay.

18 MR. FLOYD: So we've got a missing
19 period in there.

20 MR. CUBITT: Yes, sir.

21 MR. CHAIRMAN: And where did this
22 last --

23 MS. CUBITT: Sir?

24 MR. CHAIRMAN: Where did this last
25 accountant get his beginning figures, I wonder?

1 MS. CUBITT: That's a good
2 question.

3 MR. FLOYD: Well, he didn't have
4 them.

5 MS. CUBITT: It's the same
6 accountant.

7 MR. GAFFNEY: Mr. Chairman, the CPA
8 that did this, Chris Skinner, told us that he had
9 done for the Connellys through '06. Thus, he
10 started it in '07, which is also when we were told
11 through this Board we needed '07, 8, 9 and 10.
12 And Mr. Skinner also confirmed that he had done up
13 to '06.

14 MR. FLOYD: I wonder if he turned
15 them in or if he gave them to the Connellys and
16 then the Connellys didn't turn them in. Do we
17 know what the findings were for 3, 4, 5 and 6?

18 MR. GAFFNEY: I would suspect --
19 now, I'm just speculating that Mr. Skinner, the
20 CPA, very possibly could have a copy of those.
21 But that's just speculation.

22 MR. FLOYD: Well, refresh our
23 memory on your contract. It states one of the
24 offsets would be to fund any shortfall that was
25 determined by the Board to exist in any of the

1 funds.

2 MR. GAFFNEY: Yes.

3 MR. FLOYD: Is that right?

4 MR. GAFFNEY: That is correct.

5 MR. FLOYD: No matter how big or
6 small?

7 MR. GAFFNEY: Well, it can only go
8 so big. It comes out of my pocket.

9 MS. CUBITT: This report does start
10 with '07 and it doesn't really say anything about
11 the beginning balance. You know, he may have
12 prepared one but we don't have a copy of it for
13 the period '03 through '06.

14 MR. CHAIRMAN: So he told you he
15 did do the Agreed Upon Procedures through --

16 MR. GAFFNEY: John Lindsay, my
17 partner, met with Mr. Skinner. Is that your
18 understanding, that --

19 MR. LINDSAY: That is my
20 understanding, that he had done through '06.

21 MR. FLOYD: Did he share with you
22 what his findings were?

23 MR. LINDSAY: No, sir, he didn't.
24 But, again, it's Connelly information and not our
25 information, so I could understand if he wouldn't

1 share it with us.

2 MR. FLOYD: I think it's important
3 for us to know whether there were deficiencies or
4 not, and I would think you might want to know,
5 too.

6 MR. LINDSAY: Well, we would
7 absolutely want to know.

8 MR. FLOYD: What's your time table,
9 Mr. Gaffney?

10 MR. GAFFNEY: Yesterday. The
11 Connelly family is in some degree of upheaval.
12 Mrs. Connelly is an invalid. Her husband was
13 appointed a conservator, but without the authority
14 to sell real property so we had to go through a
15 probate judge.

16 In the process, liens, tax liens
17 started getting thrown against different
18 properties that they had, threatening to lock the
19 doors. We came up with a lien yesterday that we
20 found out about. And so the sooner this can -- as
21 of yesterday, every lien has been taken care of
22 other than the one that popped up yesterday, and
23 this is on a different cemetery. But the sooner
24 we can take possession, then we can get in and
25 start finding out what's really there.

1 MR. FLOYD: Who is taking care of
2 the liens?

3 MR. GAFFNEY: We made a down
4 payment to the attorney that represents
5 Mrs. Connelly and he put it in an escrow account.
6 And the understanding was, it would be held. Our
7 down payment would be held for one purpose and one
8 purpose only, and that is to clean up issues that
9 have come up, tax liens and things of that
10 nature.

11 MR. FLOYD: That'll protect the new
12 owner, then.

13 MR. GAFFNEY: Mr. Chairman, once we
14 can take ownership, if there are deficiencies, and
15 I hope that we can get these procedures that are
16 missing, I do know that they did their annual
17 reports, the Connellys did do their annual
18 reports, we will stand -- and we do. We stand
19 completely responsible to make up any deficiencies
20 that there might be in the PC funds.

21 MR. FLOYD: Is that in the contract
22 or you're stating that --

23 MR. GAFFNEY: No. I'm just stating
24 that. It's not in the contract, no. Once we take
25 ownership, it's going to be our responsibility,

1 anyway. So if there's a deficiency, we have to
2 make it up and we certainly will make it up and
3 we'll stand completely responsible for that.

4 MR. FLOYD: Mr. Chairman, I make a
5 motion that we approve issuing a license to
6 Grandview pending their submitting for approval
7 the trust document, rules and regulations and
8 sales contract, and an AUP for the period of 2003
9 through 2006, with the understanding that Citadel
10 Group be responsible for any shortfalls in any of
11 the merchandise or the care and maintenance trust
12 fund. Is that the right period, 2003, 4, 5 and
13 6?

14 MS. CUBITT: Yes, sir.

15 MR. GRIGG: I just want to make
16 sure I've got it right. Your motion, Mr. Floyd,
17 is approving licensure pending the Board receiving
18 this or final approval for --

19 MR. FLOYD: Approving.

20 MR. GRIGG: Okay. So they need to
21 get this to you and it needs to be approved. Once
22 all of that is done, then their license will be in
23 good effect as far as the Board is concerned?

24 MR. FLOYD: With the understanding
25 that they're responsible for any shortfalls.

1 MR. GRIGG: Okay.

2 MR. CHAIRMAN: Okay. You've heard
3 the motion. Do I have a second?

4 MR. BARTUS: Second.

5 MR. CHAIRMAN: All those in favor
6 say aye.

7 (Response)

8 MR. CHAIRMAN: All those opposed?

9 (No response)

10 MR. GAFFNEY: Thank you, sir. I'll
11 get right on this.

12 MR. CHAIRMAN: All right. Thank
13 you.

14 MR. GAFFNEY: Thank you.

15 MR. CHAIRMAN: It's good to have
16 you back in South Carolina.

17 MR. GAFFNEY: It looks like it's
18 going to cost me some money, though.

19 MR. FLOYD: We don't want North
20 Carolina getting all the money.

21 MR. RIGGINS: Are you going to join
22 the association?

23 MR. GAFFNEY: If I have any money
24 left, Rick.

25 MR. FLOYD: Ms. Huff, do you want

1 to tell us what you're doing?

2 MS. HUFF: Sir?

3 MR. FLOYD: Does she need to be
4 sworn in or does she just want to tell us what
5 she's doing?

6 MR. GRIGG: She can just tell us.

7 MR. FLOYD: As long as you tell us
8 the truth.

9 MS. HUFF: Well, yes, sir, I will.
10 Well, I'm here basically for the same reason that
11 Mr. Gaffney was here and we'd like to, or I would
12 like to get a license changed into my name because
13 I'm in the process, hopefully, of purchasing
14 Greenlawn.

15 MR. FLOYD: And you're purchasing
16 that from the --

17 MS. HUFF: From the Connellys,
18 yes.

19 MR. FLOYD: -- main conservator?

20 MS. HUFF: Yes, exactly. My
21 attorney has worked with their attorney.

22 MR. FLOYD: I see you're doing a
23 stock sale, a stock purchase, not --

24 MS. HUFF: Yes, sir.

25 MR. FLOYD: And asset purchase

1 agreement?

2 MS. HUFF: Yes.

3 MR. FLOYD: That means you're
4 assuming all the liabilities. Isn't that what
5 that means, Mr. Chairman?

6 MR. CHAIRMAN: Uh-huh.

7 MR. FLOYD: In that regard, it
8 really makes it easier for us, doesn't it?
9 Because she's responsible for everything, period.
10 Is this going through the conservator? I noticed
11 Margie signed it.

12 MS. HUFF: Well, it did. It had to
13 because we had to complete it through the
14 conservator. But in the beginning, the agreement
15 was signed by Margie because she was still in good
16 health at that time when we first started the
17 negotiations.

18 MR. FLOYD: I think this is a
19 similar trust agreement. You heard us describe
20 --

21 MS. HUFF: Yes.

22 MR. FLOYD: It would need to be --
23 if you were real nice, Mr. Gaffney might give you
24 a copy of his. You've heard the issues we've
25 raised so they apply to you as well. I think it's

1 an identical document myself.

2 MS. HUFF: And I also had
3 Mr. Skinner to do my Agreed Upon Procedures. And
4 I assumed that the years that were -- that you
5 didn't have any proof of, I assumed that they had
6 been done, but we didn't actually discuss that.

7 MR. FLOYD: I haven't -- well, I'm
8 assuming they're the same gap.

9 MS. HUFF: Yes.

10 MS. CUBITT: Right. 3, 4, 5 and
11 6.

12 MR. FLOYD: Now, I don't remember
13 looking at your -- how are you purchasing this?
14 Is this a financial arrangement? Is it
15 installments?

16 MS. HUFF: No. Actually, my
17 attorney has already transferred the funds to
18 Mrs. Connelly's attorney. There was a situation
19 where --

20 MR. FLOYD: Is this an outright
21 sale?

22 MS. HUFF: Yes. An outright sale,
23 yes.

24 MR. FLOYD: So it's done?

25 MS. HUFF: Yes, it's done.

1 MR. FLOYD: So you have no
2 recourse?

3 MS. HUFF: Not at this point. They
4 were in a situation -- had I not been there for 18
5 years prior to this, I think --

6 MR. FLOYD: And you're intimately
7 familiar with how it's been operating?

8 MS. HUFF: To a certain extent.
9 Now, of course, the reports and things like that,
10 Melanie Connelly, George Connelly's wife, they
11 were in charge of those. But, now, as far as
12 monies being put into the trust funds and that
13 sort of thing, yes, I did that and that definitely
14 was put in each month.

15 MR. FLOYD: Are you able to be
16 responsible for any deficiencies if there are some
17 found?

18 MS. HUFF: Yes, sir. We'll be like
19 Bill. As long as it's not that much. But, yes,
20 sir, I'm willing to --

21 MS. FLOYD: Did Melanie ever give
22 you copies of what she was doing? Did you ever
23 see those?

24 MS. HUFF: No.

25 MS. FLOYD: So you have no way of

1 really knowing?

2 MS. HUFF: I don't. We would send
3 information -- I say we. But that, I mean, Yvonne
4 at Grandview and myself, we would send our yearly
5 information to her and she was to do the reports.
6 And as whether or they got done, you know, she
7 would not share that with us.

8 MR. FLOYD: You would be aware from
9 the merchandise side if merchandise wasn't being
10 provided that was required in your operation?

11 MS. HUFF: Yes. And I do know the
12 perpetual care fund and the merchandise account,
13 they have been added to the whole time I've been
14 there monthly.

15 MR. FLOYD: You saw the deposits?

16 MS. HUFF: I made the deposits.

17 MR. FLOYD: You made the deposits?

18 MS. HUFF: Yes, sir. So, you know,
19 that fact I'm sure of because I actually made the
20 deposits myself.

21 MR. FLOYD: Wendi, when you're up
22 there looking at the original AUPs, would you look
23 at the original, the same thing we did for --

24 MS. ELROD: I'm looking at it.

25 MR. FLOYD: Does it have the same

1 findings, basically?

2 MS. ELROD: The same thing.

3 MR. FLOYD: Did they have any
4 deficiencies?

5 MS. ELROD: I did not notate any
6 deficiencies. It says the same thing, though.

7 MR. FLOYD: Similar?

8 MS. ELROD: Yes. Correct.

9 MR. FLOYD: Does anybody see
10 anything before we get to rules and regulations?

11 MR. CHAIRMAN: I did note a couple
12 of things in your trust agreement that was a
13 little different, and it says that the trustee may
14 arrange with any other corporation or individual
15 for the care, maintenance and upkeep of said
16 property on such terms and conditions as it may
17 deem advisable. I don't think that's a duty of a
18 trustee and you may want to make it deleting that.

19 MR. FLOYD: It was not clear to me
20 regarding outside third-party merchandise that
21 what you charged for care and maintenance for them
22 was the same as what you charged for the sales and
23 maintenance itself. The only difference is
24 whether third-party installations is --

25 MS. HUFF: I believe it's the same

1 except it's minus the twelve cents.

2 MR. FLOYD: Right. I couldn't
3 figure it out by reading this.

4 MS. HUFF: Oh, okay.

5 MR. FLOYD: It says, to all my
6 companies and you've got installation listed.

7 MS. HUFF: Uh-huh.

8 MR. FLOYD: So it looked like you
9 were charging twelve cents for installation even
10 though you're not doing installation now. I
11 wasn't sure -- you understand that it's got to be
12 the same?

13 MS. HUFF: Right.

14 MR. FLOYD: You can't charge an
15 outside vendor a different set of fees than what
16 you charge your own.

17 MS. HUFF: Exactly.

18 MR. FLOYD: Now, in this case, they
19 may not have even installing. They might have
20 just been selling the vaults.

21 MS. HUFF: That's right. And the
22 bronze markers are delivered to us and we install
23 them.

24 MR. FLOYD: So you don't have
25 third-party installations?

1 MS. HUFF: Very rarely. We do most
2 of the installations.

3 MR. FLOYD: Okay. As long as this
4 is what you charge your own --

5 MS. HUFF: It is, uh-huh.

6 MR. FLOYD: I just couldn't tell it
7 from -- and those are part of the disclosures that
8 need to be in your office and available when
9 they're walking in to see what your charges are.
10 It really shouldn't make a difference where they
11 buy it from.

12 MS. HUFF: Right. And I do have
13 these posted.

14 MR. FLOYD: All right. Anything
15 else you can say about that, Rick?

16 MR. RIGGINS: I saw that.

17 MR. FLOYD: The exception is if
18 you've got a third-party installer. That's all I
19 have there.

20 MR. CHAIRMAN: You may want to do
21 the same thing Bill talked about and use the
22 contract on the website.

23 MR. FLOYD: The website has the
24 contract and the disclosure form and it's free.
25 That makes it easy for you.

1 MS. HUFF: I'll definitely do that.

2 MR. FLOYD: So this is the
3 monumental cemetery that's in Easley?

4 MS. HUFF: Yes, it is. It's a
5 combination of monuments and low granites which
6 are flat and then the bronze markers.

7 MR. FLOYD: Is it fully developed?

8 MS. HUFF: No, sir.

9 MR. FLOYD: You have a little more
10 room?

11 MS. HUFF: I do, yes, sir.

12 MR. FLOYD: Are you ready for a
13 motion?

14 MR. CHAIRMAN: Yes, sir.

15 MR. FLOYD: I make the same motion
16 I just made. I make a motion that we approve the
17 issuance of the license to Greenlawn Memorial
18 Park, pending the submission and approval of new
19 trust documents, rules and regulations, sales
20 contract and Agreed Upon Procedures for the 2003,
21 4, 5 and 6 periods, and your agreement that you'll
22 assume responsibility for those insufficiencies if
23 there are any. However I said it the first time.

24 MR. CHAIRMAN: Did they sell
25 opening and closing?

1 MS. HUFF: I'm sorry?

2 MR. CHAIRMAN: Did they sell
3 opening and closing --

4 MS. HUFF: Very few. Very few.
5 There were some sold years ago, but very few.

6 MR. FLOYD: With this stock
7 purchase contract, she's responsible for those and
8 it's a liability whether it's funded or not.

9 MR. GRIGG: I believe that's
10 correct.

11 MR. CHAIRMAN: All right. You've
12 heard the motion. Do I have a second?

13 MS. PETTY: Second.

14 MR. CHAIRMAN: All those in favor
15 say aye.

16 (Response)

17 MR. CHAIRMAN: All those opposed?

18 (No response)

19 MR. CHAIRMAN: Thank you. All
20 right. The next thing on our agenda is to approve
21 Southeastern Memorial Gardens' name change to
22 Southern Palms Memorial Garden.

23 MR. FLOYD: She's already done it.

24 MR. CHAIRMAN: It's the same
25 owners, I guess. It's just a name change.

1 MR. FLOYD: Does applying for it
2 apply to them?

3 MR. CHAIRMAN: My understanding was
4 that they had some, over the years, some issues in
5 the public eye and they felt like a name change
6 would be beneficial to them. I'll say this.
7 They've really made it look nice. They've put
8 some palm trees across the front and they've put
9 irrigation in the cemetery and it's got pretty
10 grass. It looks nice. Unless somebody has an
11 issue with it, I would entertain a motion to
12 accept that request.

13 MR. FLOYD: The contract didn't
14 have a -- there's a vault disclosure that requires
15 right of substitution. And, also, it doesn't have
16 a disclosure about required charges and optional
17 charges.

18 MR. CHAIRMAN: I think they
19 submitted a contract.

20 MR. FLOYD: Well, it was under
21 the -- it says Southern Palms Memorial Gardens
22 concluded their contract. Well, it doesn't show
23 up on the agenda. It's only seven or eight pages.
24 The contract is there and we should point out, we
25 can do another pending, approve the name change

1 pending he updates his contract or make him update
2 his contract. He's operating that way anyway. He
3 did it in July. So, technically, do they even
4 have to come before us for a name change?

5 MR. CHAIRMAN: We're not going to
6 think --

7 MR. FLOYD: It's not the owner
8 that's been changed. The name has changed.

9 MR. CHAIRMAN: It's just a name
10 change. Because, I mean --

11 MS. CUBITT: We just never had one
12 that way and so we felt like we needed to bring it
13 to y'all.

14 MR. GRIGG: I looked earlier. I
15 don't see anything actually in there that requires
16 them to appear for just a name change, but --

17 MR. CHAIRMAN: Other than just for
18 informational purposes.

19 MR. GRIGG: Exactly. Exactly.

20 MR. CHAIRMAN: So what do you see
21 on this contract?

22 MR. FLOYD: Well, it's not on -- it
23 looked like he did it all right here and he's got
24 the vault, but he wanted warranty care. But the
25 third part of that warranty disclosure is that

1 there's a right of substitution which is usually
2 on the back somewhere and I couldn't find it on
3 the back. And I also couldn't find where the
4 required and optional charges disclosure anywhere
5 around, so --

6 MR. CHAIRMAN: So we'll ask him to
7 change it.

8 MR. FLOYD: Right. Either that or
9 have an additional document. So do you want to
10 approve this pending that he does that or not
11 approve it until he submits --

12 MR. CHAIRMAN: I mean --

13 MR. FLOYD: You don't have to.

14 MR. CHAIRMAN: Okay.

15 MR. FLOYD: Okay. Mr. Chairman, I
16 make a motion that we approve the name change,
17 pending he makes the change to his sales and
18 purchase agreement which includes the right of
19 substitution for the vault and also a list of
20 required charges and those charges that are
21 optional.

22 MR. CHAIRMAN: You've heard the
23 motion. Do I have a second?

24 MR. RIGGINS: Second.

25 MR. CHAIRMAN: All those in favor

1 say aye.

2 (Response)

3 MR. CHAIRMAN: All those opposed?

4 (No response)

5 MR. FLOYD: What's next, J.W.?

6 MR. CHAIRMAN: Huh?

7 MR. FLOYD: What's next?

8 MR. CHAIRMAN: That SCI contract.

9 Now, it's my understanding, Doris, that they're
10 going to electronic contracts?

11 MS. CUBITT: Yes, sir.

12 MR. CHAIRMAN: Okay.

13 MR. FLOYD: I had a similar issue
14 with this contract, this block, this Schedule A
15 box they put on here. It's hard for me to see if
16 they're making the care, maintenance and
17 installation disclosures. And I can't tell if the
18 vault is warrantied or not.

19 MR. CHAIRMAN: Do you know what
20 category it is?

21 MR. FLOYD: Well, it looks like
22 they've got category one and category two, and
23 then below this they define category one and
24 category two.

25 MR. BARTUS: Which page are you on,

1 Russ?

2 MR. RIGGINS: Page two.

3 MR. CHAIRMAN: Well, this is
4 Schedule A down here, Russell, page four. That's
5 what they're going to right here.

6 MR. FLOYD: What's the number of
7 your page?

8 MR. CHAIRMAN: Page four. That's
9 our old contract.

10 MR. FLOYD: That's the back of it.
11 So you're saying page four has got prices. You've
12 got prices on page four.

13 MR. CHAIRMAN: Now, this is what
14 the consumer has been getting, Russell.

15 MR. FLOYD: Right. But the
16 disclosure I'm talking about is, you're required
17 to disclose at the time of sale any required
18 charges. I don't know what this is a sample of,
19 to tell you the truth, because I was looking for
20 that on the back of the contract.

21 MR. CHAIRMAN: Wendi, have you
22 talked with whoever this person -- who's been
23 talking to the SCI contact person?

24 MS. CUBITT: I have not.

25 MR. BARTUS: See, the thing is, in

1 the cover, it says the consumer will receive an
2 easy to read summary showing exactly what they had
3 purchased. That doesn't mean they've going to get
4 a basic printout of --

5 MR. FLOYD: Well, the standard
6 disclosure we're talking about are probably
7 standard parts of the contract, what they're going
8 to -- what is doing to be dynamics is the part
9 that addresses services and merchandise they
10 bought. That's the dynamic part of the contract.
11 The rest of it gets printed on every one of them,
12 should be.

13 MR. BARTUS: It doesn't say that.

14 MR. FLOYD: We need to see the
15 electronic version probably. We can't approve
16 this. We need to see how the electronic version
17 prints out.

18 MR. BARTUS: Now, that was my
19 concern.

20 MR. FLOYD: Now, that's assuming
21 what I told John is how they would do it. That's
22 how we do something to keep it from being this
23 long because you've got to list everything.
24 You're only electronically smart enough to just
25 list things they bought. But the header and the

1 footers is a set disclosure. But I don't know
2 that that's what they're doing.

3 They do have the warranty and right
4 of refusal on the back. I just couldn't see if
5 the vault was warrantied or not and if the CMI was
6 itemized properly. Just because this Schedule A
7 box is up here blocking -- again, this isn't the
8 electronic version. This is a copy of --

9 MR. BARTUS: This is a copy of the
10 regular standard contract.

11 MR. FLOYD: So we need to see the
12 electronic version.

13 MR. CHAIRMAN: I'll entertain a
14 motion to table this until we're ready.

15 MR. FLOYD: I make a motion we
16 table approving the SCI contract until we have an
17 actual copy of the electronic version.

18 MR. BARTUS: I second.

19 MR. CHAIRMAN: All right. All
20 those in favor say aye.

21 (Response)

22 MR. CHAIRMAN: All those opposed?

23 (No response)

24 MR. FLOYD: Mr. Chairman, I make a
25 motion we go into Executive Session.

1 MR. CHAIRMAN: Do I have a second?

2 You heard the motion.

3 MR. RIGGINS: Second.

4 MR. CHAIRMAN: All those in favor

5 say aye.

6 (Response)

7 MR. CHAIRMAN: All those opposed?

8 (No response)

9 (Executive Session from 3:25 p.m. to

10 4:07 p.m.)

11 MR. FLOYD: Mr. Chairman, I make a

12 motion we come out of Executive Session.

13 MR. CHAIRMAN: I have a motion and

14 do I have a second to come out of Executive

15 Session?

16 MR. BARTUS: Second.

17 MR. CHAIRMAN: All those approving

18 say aye.

19 (Response)

20 MR. CHAIRMAN: All those opposed?

21 (No response)

22 MR. CHAIRMAN: There were no

23 motions made and no votes taken during Executive

24 Session. All right. The next thing on our agenda

25 is regulation changes.

1 MR. FLOYD: Mr. Chairman, I make a
2 motion that we resubmit the regulations, document
3 number 4168, at the next Legislative Session and
4 that we delete Section 21.2(10) from that propose
5 regulation change.

6 MR. CHAIRMAN: All right. You've
7 heard the motion. Do I have a second?

8 MR. RIGGINS: Second.

9 MR. CHAIRMAN: All right. All
10 those in favor say aye.

11 (Response)

12 MR. CHAIRMAN: All those opposed?

13 (No response)

14 MR. CHAIRMAN: Thank you. All
15 right. The next thing is election of officers for
16 the next year.

17 MR. RIGGINS: Is that open?

18 MR. CHAIRMAN: It's open.

19 MR. RIGGINS: I make a motion we
20 nominate J.W. Russ as Chairman.

21 MR. CHAIRMAN: All right. You have
22 a motion to elect the present Chair for another
23 year. Do I have a second?

24 MR. BARTUS: I second.

25 MR. CHAIRMAN: All those in favor

1 say aye.

2 (Response)

3 MR. CHAIRMAN: And all those
4 opposed?

5 (No response)

6 MR. CHAIRMAN: All right.

7 MR. RIGGINS: I'd like to make a
8 motion that Russell Floyd be Co-Chairman.

9 MR. GRIGG: Vice Chairman.

10 MR. RIGGINS: Okay.

11 MR. CHAIRMAN: He's in charge of
12 vice. All right. I have a motion that Russell
13 Floyd be your Vice Chairman next year. Do I have
14 a second?

15 MR. BARTUS: Second.

16 MR. CHAIRMAN: All those in favor
17 say aye.

18 (Response)

19 MR. CHAIRMAN: All those opposed?

20 (No response)

21 MR. CHAIRMAN: All right. 2012
22 meeting dates. What are the dates? I thought I
23 had them but I don't see them.

24 MR. RIGGINS: Thursday, March the
25 15th and Wednesday May the 16th. It's on the

1 bottom of the agenda.

2 MR. GRIGG: Doris, you need a vote
3 to approve those dates, right?

4 MS. CUBITT: Yes.

5 MR. CHAIRMAN: All right. Thursday
6 March the 15th, Wednesday May the 16th, and
7 Wednesday July 25th and Wednesday November the
8 7th. Does anybody have any problem with any of
9 those dates?

10 MR. BARTUS: Not at this time.

11 MR. CHAIRMAN: I need a motion.

12 MR. RIGGINS: I make a motion we
13 accept the dates that are proposed for 2012.

14 MR. CHAIRMAN: Do I have a second?

15 MS. PETTY: Second.

16 MR. CHAIRMAN: All those in favor
17 say aye.

18 (Response)

19 MR. CHAIRMAN: All those opposed?

20 (No response)

21 MS. CUBITT: Mr. Chairman, do you
22 want to go back up and pick up 6 and 7?

23 MR. CHAIRMAN: Yes, ma'am. You've
24 got the floor, Ms. Cubitt.

25 MS. CUBITT: Thank you. I've given

1 y'all a copy of the financial statements for --
2 the June one is for the end of the fiscal year and
3 then the July one starts the new fiscal year and
4 it's always in September at a time that -- we
5 don't have the October ones yet.

6 MR. CHAIRMAN: And it looks like
7 we're all right till the end of the year.

8 MS. CUBITT: Yes, sir.

9 MR. CHAIRMAN: Okay.

10 MS. CUBITT: Do y'all have any
11 questions about those?

12 MR. FLOYD: Yeah. I didn't
13 understand them. It's apparently on a fiscal
14 year?

15 MS. CUBITT: Yes, sir. From July
16 1st to June 30th.

17 MR. CHAIRMAN: And our renewals are
18 in January, so --

19 MR. RIGGINS: Is that a deficit
20 with the parentheses around it? Is that what that
21 means?

22 MS. CUBITT: Yes, sir.

23 MR. RIGGINS: So we started out on
24 June 11th in the hole?

25 MS. CUBITT: Yes, sir. Or July 1

1 '11.

2 MR. RIGGINS: Okay.

3 MS. CUBITT: And we renewed
4 December 31st of last year. Okay. I've got my
5 fiscal years mixed up. The fiscal year '11 would
6 have included the renewal this past December, and
7 that's why the income is -- the total revenue was
8 so much higher in that period.

9 We don't want to look at increasing
10 any fees now. That's something I need to talk
11 about with LLR. At some point in the future, that
12 might be a conversation you all will have, but
13 we're just going to go with it for right now.

14 MR. FLOYD: Do you have a feel from
15 a relation standpoint?

16 MS. CUBITT: Sir?

17 MR. FLOYD: Do you have a feel from
18 a budgetary standpoint based on the investigations
19 and all the activity that we'll have enough money?

20 MS. CUBITT: There's a possibility
21 that we won't, that we may go into the red. But
22 you have to understand that that's our breakout of
23 just our money, and so when we go into the red
24 there's money here that keeps it from being as bad
25 as it would be if you only had one -- if you had

1 one account and it was just your money in it and
2 you were taking money out, you couldn't go in the
3 red. But a lot of our expenses, you know, we
4 don't know until they're charged out to us for the
5 legal and the investigation and that type of
6 thing.

7 MR. FLOYD: Is that an
8 inner-company kind of accounting?

9 MS. CUBITT: Yes, sir.

10 MR. FLOYD: And as it's borrowed
11 from the main accountant and pay it back the
12 next --

13 MR. RIGGINS: Where ours is low at
14 that particular point, somebody else's might be
15 low that's carrying ours now at our low point.

16 MS. CUBITT: Right. Or somebody
17 might, you know, be a lot higher and like that for
18 right now, but it'll work out in the long run.

19 MR. CHAIRMAN: The next thing is
20 your remarks?

21 MS. CUBITT: Yes, sir. I want to
22 tell y'all that we do have a secure website. If
23 you want to just download your Board program to
24 your laptops, you can do that. We still can send
25 a CD, it's not a problem. But we do have that

1 capability with a secured website.

2 I also need to tell you that our
3 minutes system is changing. We are going to have
4 a very shortened minutes from meetings which will
5 in essence be the layout of the agenda and maybe a
6 little bit about what was said, but in the motion,
7 okay?

8 We're having a court reporter at
9 all of the meetings that stays the entire time of
10 the meeting and they give us a transcript from the
11 entire meeting and that is also posted on the web.
12 So if somebody looks at a motion and says, well,
13 what did they really say about that or did they
14 think about this, they'll then be able to go into
15 that transcript version and see verbatim what was
16 said. So that's a new thing that just began.

17 MR. FLOYD: Does that mean we won't
18 have to gaze at the minutes if they're being
19 transcribed later on?

20 MS. CUBITT: Well, you can edit the
21 short version, but you wouldn't edit the court
22 reporter's version. Though it should save the
23 editing a lot. There'll be a lot less to edit.

24 MR. BARTUS: But be careful what
25 you say.

1 MR. FLOYD: Well, yeah. I don't
2 know. Is this on video?

3 MS. CUBITT: Yes, sir.

4 MR. FLOYD: Well, you know, I've
5 tried to bring it up on mine but I couldn't get
6 it. I don't know what the problem was.

7 MR. RIGGINS: Well, now, at one
8 point, and I haven't looked in a while, I looked
9 at the minutes and it would be -- it might be last
10 year's minutes, not even close to where we're at
11 now. Am I not doing something right or --

12 MS. CUBITT: You should be able to
13 pull up the minutes. And it depends if we're in
14 the right room. If we're in this room or 105 --

15 MS. ELROD: Well, the minutes would
16 still show on there as long as they --

17 MS. CUBITT: Oh. We might just
18 show the written minutes because we don't post
19 those until they're approved. But the archived
20 version of the Branicus should be there if we were
21 in a room to use Branicus. There's two rooms that
22 use Branicus.

23 MR. RIGGINS: Is this live now or
24 is it just being taped?

25 MS. CUBITT: Live.

1 MR. RIGGINS: It's live? So I can
2 go home today and pull this up back, what happened
3 today?

4 MS. CUBITT: Yes, sir. I don't
5 know if it will be up tonight, but it will be up
6 --

7 MS. ELROD: It's up right now.

8 MS. CUBITT: Oh. It's up right
9 now. Right now, here are the minutes made today
10 that have been approved --

11 MR. RIGGINS: Okay. All right. I
12 got you.

13 MS. CUBITT: For some reason, that
14 says funeral service right now, but it's supposed
15 to be cemetery.

16 MR. RIGGINS: Oh. No wonder I
17 couldn't find it.

18 MS. CUBITT: There you go.

19 MR. RIGGINS: Okay. There's
20 movement now.

21 MS. CUBITT: There might be a
22 slight delay.

23 MR. RIGGINS: So there's a little
24 delay.

25 MS. CUBITT. Yeah. Normally, it's

1 not.

2 MR. CHAIRMAN: All right.

3 MS. CUBITT: I wanted to tell
4 y'all, we met in June and some of you may know and
5 some of you may not know that I was blessed to be
6 given three more Boards to be the administrator
7 over. I got the Cosmetology Board and the Barber
8 Board and the Massage Therapy Panel and I've been
9 doing that since late August.

10 I've had a Board meeting with all
11 three of those Boards I've had a meeting. The
12 previous administrator retired and it takes a
13 while for State Government to hire somebody, and
14 so they wanted somebody with some experience to
15 step in and handle things for them until they had
16 time to do what they needed to do. And they have
17 hired an administrator, effective this week, for
18 those three Boards and he's a really nice person.
19 His name is Byron Ray. And I'm going to work with
20 him a couple more weeks and then be available to
21 help him or answer questions, like any
22 administrator would help another administrator.
23 So I'm very thankful that he's been hired. I've
24 been in a lot of different spots at one time. And
25 that's all I have.

1 MR. CHAIRMAN: I want to thank all
2 the staff for the good job that y'all do. I want
3 to welcome Dean and I think he's going to be a
4 real good addition to our Board. And unless
5 somebody has something other than to add, I would
6 entertain a motion to adjourn.

7 MS. CUBITT: Mr. Chairman, you
8 might want to ask for public comments.

9 MR. CHAIRMAN: Would you like to
10 comment? Okay. A motion to adjourn?

11 MS. PETTY: Motion.

12 MR. BARTUS: Second.

13 MR. CHAIRMAN: Okay. All in favor
14 say aye.

15 (Response)

16 (Adjourned at 4:23 p.m.)

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CERTIFICATE OF REPORTER

I, Laura S. DeCillis, Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing Meeting was taken before me on the date and at the time and location stated on Page 1 of this transcript, and that said Meeting was recorded stenographically by me and were thereafter transcribed; that the foregoing Meeting as typed is a true, accurate and complete record to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

I further certify that the original of said transcript shall be hereafter sealed and delivered to the South Carolina Perpetual Care Cemetery Board, Synergy Business Park, Kingstree Building, Columbia, South Carolina, 29210.

Witness my hand, I have hereunto affixed my official seal this 10th day of January 2012, at Columbia, Richland County, South Carolina.

Laura S. DeCillis,
Certified Court Reporter
State of South Carolina at Large
My Commission expires
August 10, 2015