

Funeral Home: _____

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Agreement**"), made and entered into effective as of the 29th day of May, 2013, is by and between John M. Wirth (the "Receiver"), as the court-appointed receiver for the Wisconsin Funeral Trust (the "Trust"), and the undersigned funeral home (the "Funeral Home" or "Home"):

ARTICLE 1. RECITALS AND DEFINITIONS

1.1 On September 14, 2012, plaintiff Wisconsin Department of Financial Institutions ("WDFI") filed an action against the Wisconsin Funeral Directors Association, Inc. (the "WFDA") and Fiduciary Partners, Inc. (the "Trustee"), as Trustee for the Trust, alleging violations of securities laws relating to the Trust, in Dane County Circuit Court, Case Nos. 12 CX 44 and 12 CX 44A (together, the "State Action"). In the State Action, WDFI requested, pursuant to Wisconsin Statutes § 551.603(2)(b)1., the appointment of a receiver of all assets of the WFDA and the Trust. On September 14, 2012, the Dane County Circuit Court (the "Court") entered an order in the State Action appointing the Receiver as interim receiver for the WFDA and the Trust. On October 24, 2012, with the stipulation of the Trustee and the WFDA, the Court entered permanent injunctions and appointed the Receiver as receiver over the Trust and certain rights and assets of the WFDA.

1.2 The Trust was intended to be a master trust in which payments deriving from burial agreements (each a "Burial Agreement") are held in trust pursuant to Wisconsin Statutes § 445.125(1).

1.3 The Funeral Home is a party to one or more Burial Agreements the proceeds from which were deposited in the Trust.

1.4 The Trust, by the Receiver, and the Funeral Home desire to ensure that all Depositors, as defined below, receive the benefit of their respective existing Burial Agreements notwithstanding the present shortfall of funds remaining in the Trust. The Parties recognize that the Funeral Home has a vital role in ensuring that Depositors receive the benefit of their Burial Agreements. By Funeral Home's signature on this Agreement, the Receiver recognizes that the Home is committing to do the right thing by its Depositor customers, by assuring all of its Depositors that the Home will make up for any shortfall in Trust funds and will comply with its Burial Agreements. By Receiver's signature on this Agreement, Receiver will not seek payments or damages from the Home other than as set forth on the terms herein. The Receiver will not limit his remedies against Homes who do not sign this Agreement.

1.5 There is a shortfall of Depositor funds in the Trust. The Receiver has been empowered by the Court to take all reasonable and necessary steps to investigate and then, if necessary, initiate litigation to recover damages for Trust

losses caused by responsible parties. The Receiver has engaged in significant investigation, and has concluded that there are responsible parties who caused losses to the Trust. Funeral Home itself or by its counsel acknowledges it has been generally informed of the claims the Receiver could make against responsible parties. By Funeral Home's signature on this Agreement, the Receiver has covenanted not to sue Funeral Home for any reason. The Receiver will not limit his remedies against Funeral Homes who do not sign this Agreement.

1.6 The Trust, by the Receiver, and the Funeral Home (together, the "**Parties**" and each individually, a "**Party**") desire to resolve any possible causes of action that the Funeral Homes might face as a result of shortfalls in the Trust, including causes of action by the Receiver and third parties, in the manner set forth in this Agreement without risking the uncertainty of litigation or its related costs. The Parties recognize and agree that this is a partial settlement, and that no rights, claims or obligations any Party to this Agreement had, has or may have with respect to any other party in the State Action shall be affected by this Agreement except as stated herein. The Parties recognize and agree that while this Agreement addresses protection of Homes against litigation by non-parties to this Agreement, there is no guarantee that such claims won't be made, nor is there any indemnity for such possible claims being offered by the Receiver or the Trust, other than as stated in this Agreement.

1.7 The Funeral Home is one of many Homes who are signing this Agreement containing the same terms set forth in this Agreement.

1.8 This Agreement is entered into to resolve disputed claims and to prevent the further expenditure of funds by the Parties in the State Action against each other. No Party by entering into this Agreement admits any misconduct or wrongdoing, and each Party continues to specifically deny any misconduct or wrongdoing.

1.9 In connection with this Agreement, the Receiver has made certain disclosures to the Funeral Homes about the actions that have and may be taken to reduce or close the shortfall between the Stated Account Balances (as defined below) and the fair market value of the Trust, including proposed legal actions and/or arbitrations against parties alleged to be responsible for the Trust's loss of value. The Receiver has also made disclosures about possible future steps by the Trust, including addressing the potential wind-down or distribution of Trust funds to Depositors (and Funeral Homes that have provided benefits to Depositors under Burial Agreements). The Funeral Home acknowledges that the amount ultimately distributed to the Funeral Home for its claims under this Agreement may not fully reimburse the Funeral Home for its contracted payments to or for the benefit of the Depositors with whom it has Burial Agreements.

1.10 Each of the Parties by his or its representative's signature hereon warrants and represents that he or the representative is authorized and has the

authority to enter into this Agreement; that valuable consideration has been or will be paid and exchanged for and as part of this Agreement; and that the signing Party, along with that signing Party's successors, heirs and assigns, agrees to be bound by its terms. No assignment of a Party's rights hereunder shall relieve that Party of his, her, or its obligations hereunder.

1.11 In this Agreement, the following terms have the following definitions:

a. "Depositor" means a person with whom the Funeral Home has a Burial Agreement, consistent with Wis. Stat. § 445.125(1)(a)1. All references in this Agreement to the death of a Depositor or the Depositor's funeral are understood to refer to the person for whom goods and services are provided under a Burial Agreement.

b. "Depositor's Account" means that portion of the Trust related to the Burial Agreement between the Funeral Home and a Depositor.

c. "Trust Deposit" means the total amount of money Depositor delivered to the Funeral Home to place in the Trust pursuant to a Burial Agreement.

d. "Stated Account Balance" means the amount shown in the records of the Trust as being payable in connection with a Burial Agreement. The Stated Account Balance includes the Trust Deposit plus all interest credited to the Depositor's account, less withdrawals from that account, if any.

e. "Funeral Home" means the Funeral Home signing this agreement. The term includes the Funeral Home's owners, officers, directors, shareholders, members, employees, parent companies, subsidiaries, successors and assigns. All such entities are within the scope of this agreement regardless of the capacity in which they have acted, including service as Wisconsin Funeral Directors Association Directors or as members of its Pre-Need Committee. If the Funeral Home ceases to operate or abide by this Agreement, this agreement applies to any subsequently formed funeral home business within 25 miles of the Funeral Home where any of the Funeral Home's current owners, officers, directors, shareholders or members have more than a 5% ownership interest. The owners, officers, directors, shareholders, employees and members of the Funeral Home are not personally liable for the obligations of this Agreement.

f. "Beneficiary" means the Funeral Home as provider of funeral merchandise and services, consistent with Wis. Stat. § 445.125(1)(a)1.

In this Agreement, unless separately stated, the term "Receiver" is inclusive of the rights and assets of the Trust and the Receiver's ownership of certain rights and assets of the WFDA. It is intended that that rights and obligations of the Receiver under this Agreement will become the rights and obligations of any successor trustee unless modified by the Court. If there is reference in this Agreement to any notice to, or obligation of, the "Trust", any such notice shall be to the Receiver or successor trustee, and any such obligation of the Trust shall be carried out by the Receiver or successor trustee.

ARTICLE 2. TERMS OF SETTLEMENT

2.1 Provision of Goods and Services. The Funeral Home guarantees and agrees that it shall timely pay for and provide all of the contracted goods and services, and fully perform, all of its obligations, under the terms of each existing Burial Agreement to which it is a party with a Depositor.

2.2 Reimbursement to Funeral Home from the Trust.

- a. The Funeral Home will only be reimbursed by the Trust for goods, services and disbursements provided to a Depositor with an existing Burial Agreement, and pursuant to terms approved from time to time by the Court.
- b. Currently, the Court has approved an initial reimbursement of 60% of the Stated Account Balance as of the date of Depositor's burial after the provision of Depositor's funeral, with the Funeral Home retaining a claim against the Trust for the balance of the Stated Account Balance.
- c. The reimbursement plan is subject to change by the Court from time to time. All such changes in the reimbursement plan shall preserve equality of reimbursement payments among all Funeral Homes. That means that if the Trust's reimbursement percentage increases, the Trust shall pay equalizing rebates to Funeral Homes that previously received reimbursements at a lower rate. Changes in the reimbursement plans may be made upon not less than 20 days prior notice to, and an opportunity to object by, the Funeral Home to any proposed change in the reimbursement plan.
- d. The Funeral Home understands and agrees that the Trust, by the Receiver or any subsequent trustee, is empowered to maintain and retain adequate reserves, and may from time to time seek adjustment to the percentage distributions, to ensure that the Trust has sufficient funds to pay all future claims and costs of

administration, including payment in full of future claims by Depositors resulting from funeral homes who do not meet their obligations.

- e. If the Trust is terminated while Depositors still have rights to Funeral Home services, the provisions made for trust termination shall preserve equality of reimbursement payments among all Funeral Homes.

2.3 Limited Funeral Home Payments from Depositor. The Funeral Home shall not require that a Depositor make any payment except for payment, at the Funeral Home's standard retail prices, for (a) goods and services requested by a Depositor's representatives or heirs that were not included in the Burial Agreement; and (b) goods and services that are not covered by the price guarantee, if any, in the Burial Agreement.

2.4 Refunds due to Depositor Changes. If at the time of goods or services to be provided by the Home under a Burial Agreement the Depositor wants changes:

- a. If the Burial Agreement with the Funeral Home for a deceased Depositor states that such Burial Agreement is "guaranteed" or has a "guaranteed price," and if the Funeral Home agrees to amend such Burial Agreement at the time of burial and the result of such amendment is that the Funeral Home provides goods and services for a price less than the aggregate price described in the Burial Agreement, the Funeral Home shall pay the entire difference of the change to the estate of the Depositor. The Trust shall then, after application by the Funeral Home, pay to the Funeral Home the initial reimbursement then paid by the Trust (currently 60% of the Stated Account Balance), and the Funeral Home shall retain a claim against the Trust for the balance.

- b. If the Burial Agreement with the Funeral Home for a deceased Depositor does not state that such Burial Agreement is "guaranteed" or has a "guaranteed price," the Funeral Home shall pay the estate of the Depositor the amount, if any, by which the Stated Account Balance exceeds the Funeral Home's standard retail price of the actual goods and services provided. The Trust shall then, after application by the Funeral Home, pay to the Funeral Home the initial reimbursement then paid by the Trust (currently 60% of the Stated Account Balance), and the Funeral Home shall retain a claim against the Trust for the balance.

2.5 Withdrawals. Subject to the following paragraph allowing suspension of withdrawals, if a Depositor provides written notice to the Funeral Home of revocation of the Burial Agreement, then the Funeral Home shall notify the Trust of such request within 10 days after receipt of such request, and the Trust shall either:

a. Pay to Depositor an amount equal to the initial reimbursement percentage then paid by the Trust (currently 60%) times the revocable portion of the Trust Deposit, in which case the Funeral Home shall pay to such Depositor the remaining balance of the revocable portion of the Trust Deposit (the "Remaining Principal Balance") within 30 days of the Depositor's request, and the Funeral Home shall retain a claim against the Trust for the amount paid to such Depositor; or

b. Pay to Depositor 100% of the revocable portion of the Trust Deposit if, as part of the Funeral Home's notification to the Trust of the Depositor's request, the Funeral Home makes a written election to reimburse the Trust under section 2.8 for the revocable portion of the Remaining Principal Balance.

Any remaining irrevocable portion of the Stated Account Balance, and any amount of the Stated Account Balance not paid as described above, shall remain subject to the terms of this Agreement and the applicable Burial Agreement.

2.6 Suspension of Withdrawals.

a. **By the Receiver.** The Receiver, and any successor trustee for the Trust, in his or her sole discretion may at any time suspend withdrawals from the Trust in whole or in part if he or she reasonably believes that further withdrawals will materially impair the Trust's present or future ability to pay claims arising under this Agreement or Burial Agreements. The Receiver or successor trustee shall promptly notify any affected party and the Court of any suspension of withdrawals, the expected duration of any suspension, and the reasons therefor.

b. **By the Funeral Home.** The Funeral Home may suspend withdrawals for Depositor Accounts arising from Burial Agreements with the Funeral Home, if the Funeral Home reasonably believes that further withdrawals will materially impair its present or future ability to stay in business and provide goods and services to Depositors. The Funeral Home will promptly notify the Trust of a suspension of withdrawals and the basis for the suspension. If the Trust objects to such suspension, the reasonableness of such suspension shall be submitted to arbitration under section 4.10, below. In addition to determining whether the suspension is reasonable, the arbitrator may determine the time at which the suspension shall be ended. If a Funeral Home suspends withdrawals, the Trust may nevertheless continue to allow withdrawals, and in such event, the Trust shall, after consultation with the Funeral Home, propose terms under which the Funeral Home shall reimburse the Trust for the Remaining Principal Balance for withdrawals allowed by the Trust to cover the Funeral Home's suspension of withdrawals. The terms of such reimbursement shall be subject to section 2.8, below, except that the term of repayment shall extend for such time as would reasonably be

appropriate, based on the business and finances of the Funeral Home. If the Parties are not able to reach mutually agreeable terms of reimbursement within 15 days after the Trust's proposal, the matter shall be submitted to arbitration under section 4.10, below.

2.7 Transfers of Depositor's Account. If a Depositor or the Depositor's representatives or heirs make a written request to the Funeral Home to transfer the Burial Agreement with the Funeral Home to a different funeral home (the "Transfer Request"), the Funeral Home shall notify the Trust of the Transfer Request within five business days after receipt of such request.

The Funeral Home shall make a determination of whether the proposed transfer is permitted under the terms of the applicable Burial Agreement or applicable law, and shall inform the Trust of the determination as part of the notification to the Trust of the Transfer Request. If the Trust disagrees with the Funeral Home about whether a transfer is permitted, provided that the transferee funeral home accepts the transfer in writing, the Trust shall approve the Transfer Request and change the Beneficiary of the Burial Agreement on the records of the Trust to the transferee funeral home, and shall, unless the Funeral Home concurs with the Trust's determination, submit the propriety of the transfer to binding arbitration under section 4.10, below. As used in this Agreement, the "Transfer Date" shall mean the date of the Transfer Request.

Within 30 days' following notification by the Funeral Home to the Trust of the Transfer Request, the Trust shall determine, and shall provide the Funeral Home with an accounting of, the sum of the following (the "Transfer Balance"): (1) the amount of the Trust Deposit as of the Transfer Date, (2) interest or dividends accruing in the Depositor's Account through December 31, 2007 as stated on the records of the Trust, and (3) interest accruing in Depositor's Account from January 1, 2008 through the Transfer Date at a rate equal to "CD+1". The rate shall first be established as of January 1, 2008 based on CD+1 for the prior calendar quarter, and shall be adjusted as of the last business day of April and September thereafter based on CD+1 as reported for each of the preceding calendar quarters.

"CD+1" means (a) the per annum rate reported by SNL Financial LC for the average \$10,000 three-year certificate of deposit issued in the State of Wisconsin during the calendar quarter (the "Index") plus (b) 1%. If SNL Financial LC ceases publication of the Index, the Index shall be determined from such other source as the Trust reasonably selects. If the Index is not readily available to the Trust from another source, the Trust shall have the right to choose a reasonably comparable index. If SNL Financial LC or the replacement source retracts or corrects a previously determined Index, the retracted or corrected Index shall apply.

On or before the date 30 days after the Trust provides notice to the Funeral Home of the Depositor's funeral, the Funeral Home shall pay to the Trust the amount equal to the Transfer Balance minus the amount of the fair market value of

the Depositor's Account as of the date of the Depositor's funeral. The fair market value of the Depositor's Account equals: [i] a fraction, with the Depositor's Stated Account Balance as the numerator and the sum of all the Trust's Stated Account Balances as the denominator, multiplied by [ii] the fair market value of the Trust's assets. The Funeral Home shall retain a claim against the Trust for the amount it paid to the Trust.

In lieu of making such payment, the Funeral Home may make a written election to the Trust, within 10 days after the Trust provides notice to the Funeral Home of Depositor's funeral, to have the Trust make such payment, in which case the Funeral Home shall reimburse the Trust for such payment pursuant to section 2.8 below.

2.8 Reimbursement of the Trust by Funeral Home. If the Funeral Home elects to reimburse the Trust instead of making the payment required by sections 2.5.b, 2.6, or 2.7a or b, above, then the Funeral Home shall pay such reimbursement to the Trust in equal monthly payments over a term of one year, with per annum interest accruing on the outstanding principal balance of such reimbursement at the rate of Wisconsin's average 3-year CD rate (as determined by the Trust from time to time) in effect on the date of such payment by the Trust plus 2%; provided, however that the Funeral Home may prepay the amount of its obligation to the Trust at any time and without penalty, and the Trust may immediately offset, in whole or in part, any reimbursement due from the Trust to the Funeral Home against the amount of the Funeral Home's outstanding obligation(s) to the Trust. The Trust may, in its sole discretion, agree to a term and amortization for a period longer than one year if the Trust determines that the repayment causes a material hardship for the Funeral Home that would jeopardize its ability to remain a going concern; however, no such longer term shall exceed three years without further order of the Court. Upon electing to reimburse the Trust, the Funeral Home shall promptly execute and provide the Trust with a promissory note, or such other documentation as is consistent with the terms of this Agreement and the Receiver shall find acceptable. Upon full repayment to the Trust, including interest, the Funeral Home shall retain a claim against the Trust for the principal amount reimbursed to the Trust.

2.9 Retroactive Effect. To the extent that the Funeral Home has provided Depositors with goods, services and disbursements in a manner consistent with sections 2.5, 2.6, 2.7, or 2.8 following the appointment of the Receiver but prior to entry into this Agreement, and for which the Funeral Home has not received initial reimbursement, the Funeral Home may seek initial reimbursement from the Trust for such goods, benefits and payments as if this Agreement were in effect from the date of the appointment of the Receiver. In order to receive an initial reimbursement for such goods, services and payments, the Funeral Home shall provide paperwork to the Trust consistent with ordinary past practice for reimbursements from the Trust, along with a statement signed by the Depositor's

heirs or representatives acknowledging receipt of such goods, services and disbursements. To the extent a Burial Agreement has been amended as described in section 2.4 following appointment of the Receiver but prior to entry into this Agreement, the provisions of section 2.4 shall apply and any required refund shall be made by the Funeral Home within 30 days of the date the Funeral Home signs this Agreement. Upon payment by the Funeral Home, the Receiver shall pay such retroactive claims and the Funeral Home shall retain a claim against the Trust, in accordance with section 2.4.

2.10 Notice of Default and Opportunity to Cure. Upon a default under this Agreement or any agreement made in furtherance of this Agreement, the Party alleging that a default has occurred shall provide written notice to all parties alleged to be in default, describing the alleged default and providing each defaulting party 15 days after receipt of the notice to cure the default. The Party alleging default shall not take any further enforcement action relating to the default for which notice is given until the cure period has expired.

2.11 Enforcement. In the event of a final determination concerning the payment of any monetary obligation under this Agreement, the arbitrator may but is not required to award a non-defaulting Party its costs of enforcing this Agreement, including reasonable attorneys' fees, provided that the arbitrator determines that such a default in fact has occurred and was not cured during any applicable cure period. The Funeral Home acknowledges that the Trust has an interest in enforcing the Funeral Home's obligations under Burial Agreements and the obligations under this Agreement.

2.12 Funeral Home Claims against the Trust. All claims of the Funeral Home against the Trust are subordinate to allowed administrative expenses of the Trust, including Receiver fees, attorney fees and costs of litigation.

2.13 Funeral Home Representation and Warranty. Funeral Home hereby represents and warrants that it is financially sound and capable of performing all anticipated obligations under Article 2 of this Agreement.

2.14 Survival of Article 2 Enforcement. The Parties understand and agree that the provisions of Article 2 shall apply to the Funeral Home so long as there is an outstanding Burial Agreement, even if there is a change of Receiver, a successor trustee, or any other method of managing the Trust, or any Court ordered windup and/or change in character of the Trust or receivership.

ARTICLE 3.

PERMANENT INJUNCTION, RELEASE AND COVENANT NOT TO SUE

3.1. Permanent Injunction. The Receiver recognizes that the Funeral Home's performance under this Agreement is vital to providing Depositors with the benefit of their respective Burial Agreements, and that to the extent allowable under

law the Receiver will seek protection of the Funeral Home from non-Party claims seeking damages or other relief from the Trust, the Receiver, the Depositor Accounts, the Depositors or the Funeral Homes. There is presently in effect a preliminary injunction prohibiting maintenance of claims against the Trust and the Funeral Homes based on existing Burial Agreements. The Receiver shall apply for and seek the agreement of the other parties to the State Action via consent decree to make this injunction permanent with respect to Funeral Homes who are signatories to this Agreement, and shall further seek by consent decree to extend the injunction to prevent actions by non-parties to this Agreement against the Receiver, the Trust or the signatory Funeral Home for damages arising from any shortfall in the Trust or any Depositor Account(s), substantially in the form and with the injunctive power of the present injunctive language set forth in Paragraph 11 (a through e) of the Court's order of October 24, 2012. Absent entry of such consent decree and grant of such permanent injunction, this Agreement shall not bind the Parties. If, at the time of the execution of this Agreement, the Court has entered an order approving this Agreement or the form of this Agreement, and such approval contained a permanent injunction that would inure to the benefit of the signatory Funeral Home upon entry into this Agreement, then such order satisfies the approval requirement of this paragraph. Notwithstanding the foregoing, any Depositor or other interested party, including the State of Wisconsin, shall have the right to move the Court, prior to the discharge of the Receiver, (a) to compel the Receiver to satisfy his obligations under this Agreement and his other fiduciary obligations; (b) to compel the Receiver to exercise his discretion under this Agreement prudently; (c) to enjoin the Receiver from taking any action contrary to the terms of this Agreement or contrary to his fiduciary obligations; or (d) for other relief against or involving the Receiver that is just and equitable. Similarly, nothing in this Agreement shall limit the right of any Depositor or other interest party, including the State of Wisconsin, after the discharge of the Receiver, to bring an action in the Court (i) against any person or entity who succeeds to the Receiver's authority over the Trust in order to compel the successor to satisfy the successor's obligations under this Agreement and the successor's other fiduciary obligations; (ii) to compel the successor to exercise the successor's discretion under this Agreement prudently; or (iii) to enjoin the successor from taking any action contrary to the terms of this Agreement or contrary to the successor's fiduciary obligations.

3.2. Receiver's Covenants. The Receiver, in his capacity as Receiver for the Trust and for the WFDA's claims, hereby fully and finally covenants not to initiate or pursue claims, regardless of forum, adverse to the Funeral Home, on or concerning any claim or cause of action, legal or equitable, in contract or tort or statute, direct or indirect, presently asserted or not, known or unknown. This covenant not to sue shall not include any claim seeking to enforce the obligations contained in this Agreement.

3.3. Funeral Home's Covenants and Release. The Funeral Home fully and finally releases, remises and discharges the Receiver and, except as described

below, the Trust and current and past trustees of the Trust, from any claim or cause of action, legal or equitable, in contract or tort or statute, direct or indirect, presently asserted or not, known or unknown. This Release shall not cover any claim seeking to enforce the obligations contained in this Agreement. Additionally, this Release shall not cover any claim against the Trust for the principal and accrued interest payable with respect to Burial Contracts, as such amounts may be determined to be payable pursuant to any current or future order of the Court. Notwithstanding this Release, the Funeral Home may respond to any motion by the parties in the State Action.

3.3.1 Funeral Home's Assignment of Claims to Receiver. By its signature hereon, Funeral Home hereby irrevocably assigns to the Receiver all right, title and interest in actual or prospective claims it had, now has, or in the future may have, legal or equitable, against all responsible persons or entities for losses or shortfalls in the Trust, from the inception of the Trust to the date of the September 14, 2012 receivership Order.

3.4. Pierringer Release. The Parties hereby enter into a Pierringer Release of non-intentional tort claims. It is the intent and sole purpose of the Pierringer Release set forth in this Section to adhere to the following principles:

- the Funeral Home's negligence liability is segregated;
- the Funeral Home's liability for negligence claims is resolved to the credit of all parties to any future or pending litigation;
- the Receiver shall have full ability to continue with any lawsuit or arbitration proceeding against any or all entities or persons who may be liable to the Trust or to the WFDA on negligence and all other claims;
- the Receiver will indemnify the Funeral Home for that portion of any contribution adjudicated to be due from the Funeral Home to any other defendant or respondent solely on non-intentional tort claims, all as per the holding in *Pierringer v. Hoyer*, 124 N.W.2d 106, 21 Wis.2d 182 (1963).

3.4.1. The Receiver releases the Funeral Home, including its past and present officers, directors, employees, shareholders, members, agents, heirs, successors and assigns (collectively the "**Released Funeral Home Parties**"), and only the Released Funeral Home Parties, from non-intentional tort claims alleged or which could have been alleged in an action or arbitration proceeding brought by the Receiver. The Receiver expressly reserves the balance of its whole causes of action or any other claims of whatever kind or nature not released hereby which the

Receiver now has or may hereinafter have against any other person arising out of the circumstances giving rise to the claims alleged in an action or arbitration proceeding brought by the Receiver.

3.4.2. The Receiver and the Funeral Home recognize that the Funeral Home is not paying the total of the Receiver's full amount of claimed damages as would be paid if all tortfeasors in the incident compromised and were settling all actions and claims of the Receiver. The Receiver hereby credits, discharges and satisfies only that fraction, portion, or percentage of the total amount of damages caused by the non-intentional conduct, if any, of the Funeral Home in relation to the causal fault of all adjudged non-intentional tortfeasors as may hereafter be determined in the future trial or other disposition of the claims alleged in an action or arbitration proceeding brought by the Receiver.

3.4.3. The Receiver agrees to hold and save harmless the Released Funeral Home Parties from any claim for contribution or indemnification made by others adjudged at fault for non-intentional torts alleged by the Receiver in any action or arbitration proceeding by satisfying any such fraction, portion, or percentage of the judgment attributable to the Released Funeral Home Parties' non-intentional conduct, which is causally related to the Receiver's claims in such action or arbitration proceeding. The Parties agree that the Receiver's obligations under this Section are limited to foregoing payment from others adjudged at fault for non-intentional torts alleged by the Receiver in any action or arbitration proceeding, and shall not require the Receiver to pay cash consideration to fulfill his obligations under this Section.

3.5. **Final Releases.** In the event of final judgment or settlement of any and all claims brought by or against the Receiver, after all appeals are exhausted, any Party to this Agreement may request any other Party to this Agreement to substitute a Final Release for any Covenant Not to Sue hereunder. The Party receiving such a request shall consider it in good faith, but is not required to convert a covenant not to sue into a release.

3.6. **Other Litigation.** The Parties understand and acknowledge that the Receiver contemplates or has brought litigation against third parties alleged to be responsible for Trust losses ("Receiver Action"). Nothing in this Agreement limits or affects any Party's right to make claims or defenses in a Receiver Action or the State Action against or in defense to non-parties to this Agreement, except as otherwise prohibited in the injunctive relief described in ¶ 3.1. Nothing in this Agreement

requires or allows the Trust to indemnify or defend the Funeral Home in any action, other than as stated in the Pierringer Release set forth in ¶ 3.4, herein.

ARTICLE 4. MISCELLANEOUS

4.1. **Court Approval.** The rights and obligations under this Agreement are subject to Court approval.

4.2. **Binding Agreement.** This Agreement shall bind the undersigned and their respective successors and assigns.

4.3. **Entire Agreement; Waivers and Amendments.** This document contains all of the terms and conditions of the Agreement described herein. All words, phrases, sentences and paragraphs are material to the execution hereof. All prior discussions, oral or written, are merged into this Agreement. This Agreement may not be amended, superseded, canceled, renewed or extended, and the rights and obligations of a party under this Agreement may not be waived, unless both parties sign a written agreement for the purpose or, in the case of a waiver, the party waiving compliance signs such a written agreement. Failure to enforce rights after a default under this Agreement, or any delay in enforcing such rights, shall not be deemed a waiver.

4.4. **Notices.** All notices, requests and demands shall be in writing and shall be either delivered personally, by messenger, courier or overnight service or mailed by U.S. mail with appropriate postage prepaid to the intended recipient's address set forth adjacent to the recipient's signature below or to such other address as may be designated in writing by notice given in the manner provided in this Agreement and shall be effective on its personal delivery or 24 hours following deposit in the U.S. mail or with a messenger service, whether or not delivery is accepted.

4.5. **Authority.** Each of the Parties by his or its representative's signature hereon warrants and represents that he or the representative is authorized and has the authority to enter into this Agreement; that valuable consideration has been or will be paid and exchanged for and as part of this Agreement; and that the signing Party, along with that signing Party's successors, heirs and assigns, agrees to be bound by its terms. No assignment of a Party's rights hereunder shall relieve that Party of his or its obligations hereunder.

4.6. **Counterparts; Electronic Delivery.** This Agreement may be executed in multiple counterparts which together shall constitute a complete instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or facsimile or electronically shall be effective as delivery of a manually executed counterpart of this Agreement.

4.7. **Additional Documents.** All Parties agree to execute related documents that may be necessary to accomplish the express purposes of this Agreement upon reasonable request.

4.8. **Warranty of Authority.** Each Party represents and agrees that he, she or it has thoroughly considered all aspects of this Agreement, has had the opportunity to discuss this Agreement with his, her or its counsel, has carefully read and fully understands all of the provisions of this Agreement, and is voluntarily entering into this Agreement. Each Party further understands that the other Parties are relying on this and all other representations he, she or it has made herein.

4.9. **Comprehension of Agreement.** The Parties agree that, in entering into this Agreement, they are relying upon their own judgment, belief and knowledge, and further acknowledge that no promise, inducement or agreement or any representations and warranties not expressed herein have been made to procure their agreement hereto. The Parties acknowledge that they have read, understand and fully agree to the terms of this Agreement. The Parties further acknowledge and agree that this Agreement is a compromise and settlement of disputed and contested claims, and nothing contained in this Agreement is intended or shall be construed as an admission by the Parties or evidence of liability or wrongdoing of any kind.

4.10. **Arbitration of Disputes.** In order to resolve, quickly and fairly, any and all claims or disputes that should occur arising out of or relating to this Agreement, all such claims and disputes shall be resolved by binding arbitration. The arbitrator shall be chosen by agreement of the Parties to the claim or controversy if the Parties can agree to the arbitrator within 10 business days of the date demand is made for arbitration. Otherwise, the arbitrator shall be retired Milwaukee County Circuit Court Judge Michael Skwierawski, or retired Wisconsin Court of Appeals Judge Neal Nettesheim, whoever is most quickly available. If neither arbitrator is available, any Party may, no sooner than 10 business days after the date of demand, petition the Court for the appointment of an arbitrator pursuant to Wisconsin Statutes Section 788.04(1). The arbitration shall be conducted without discovery unless ordered by the arbitrator, and the arbitrator shall hear from the Parties and issue his or her decision within 30 days of the date of appointment unless all Parties agree or the arbitrator orders otherwise. The arbitration shall proceed pursuant to rules established by the arbitrator. The arbitrator shall determine the meaning of all terms and phrases in this Agreement, and no Party shall look to a court to make such a determination. The arbitrator shall issue his or her decision in writing. This agreement to arbitrate shall be specifically enforceable. If any Party refuses, upon five business days' prior written notice after selection of the arbitrator, to participate in the arbitration, the arbitration shall proceed without such Party and the arbitrator shall make his or her rulings without the input of such Party. The decision of the arbitrator shall be binding pursuant to applicable law, and judgment upon the award ordered by the arbitrator may be entered in any court having

