

**BEFORE THE ARKANSAS CEMETERY BOARD**

**IN THE MATTER OF**

**CEMETERY HOLDINGS, LLC    ORDER NO. C-06-026-06-OR01**

**D/B/A**

**EDGEWOOD MEMORIAL PARK - NORTH LITTLE ROCK**

**MEMORIAL PARK CEMETERY – PINE BLUFF**

**ARLINGTON MEMORIAL PARK CEMETERY – EL DORADO**

**REST HAVEN MEMORIAL GARDENS - EL DORADO**

**ORDER APPROVING  
TRANSFER OF OWNERSHIP APPLICATION**

Before the Arkansas Cemetery Board (“the Board”) on this 7<sup>th</sup> day of June, 2006, is the matter of an application for transfer of ownership of four Arkansas cemeteries from Cemetery Holdings, LLC to Forest Hill Funeral Home and Memorial Park East, LLC. The cemeteries affected by the proposed transfer of ownership application are Edgewood Memorial Park in North Little Rock, Memorial Park Cemetery in Pine Bluff, Arlington Memorial Park Cemetery in El Dorado, and Rest Haven Memorial Gardens in El Dorado. Having proof of proper and timely publication of the notice of this meeting, and having considered the application, exhibits, the testimony of the witnesses, and other matters presented to the Board, the Board finds, concludes, and orders as follows:

## **FINDINGS OF FACT**

### *Applicant's Statutory and Regulatory Obligations*

1. Forest Hill Funeral Home and Memorial Park East, LLC, (“the applicant”), has made application for a transfer of ownership of four Arkansas cemeteries from their current permit holder and licensee, Cemetery Holdings, LLC, (“the seller”).
2. The application for transfer of ownership of each of the four cemeteries styled above was submitted to the Board on January 10, 2006. The application was supplemented on February 17, 2006, and again on February 22, 2006. This matter was previously considered by the Board at its quarterly meeting held on February 24, 2006. At that meeting, it was determined that certain statutory and regulatory requirements for the transfer had not been met by the applicant. Upon a vote of the Board, this matter was tabled until the Board’s next regularly scheduled meeting.
3. On June 2, 2006 and on June 5, 2006, the applicant submitted additional supplemental information and documents to its application.
4. Upon a review of all filings submitted in connection with this application, the Board finds that the applicant has meet its statutory and regulatory obligations for transfer of ownership of these four cemeteries pursuant to Ark. Code Ann. 20-17-1012 (a) through (f), and Rules 8 and 11 of the Rules

of the Arkansas Cemetery Board.

*Seller's Statutory and Regulatory Obligations*

5. Rule 11.05 (A) (2) of the Rules of the Arkansas Cemetery Board requires the seller of a cemetery property to submit a listing of each house account receivable and each discounted note showing the name of the lot purchaser, the gross amount of the lot sales price and the outstanding balance. The Board finds that Cemetery Holdings, LLC (“the seller”), has failed to comply with Rule 11.05 (A) (2). Further, the seller has failed to submit a notarized statement representing that the application contains a complete and accurate accounting of all outstanding accounts receivable, discounted notes, and paid in full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser, as required by Ark. Code Ann. 20-17-1012 (a) (2) (J). The applicant has compiled its own listing of accounts receivable based upon a review of all cemetery records available at the local offices of each of the four Arkansas cemeteries. The Board finds that the applicant has made its best efforts to achieve compliance with the Rule 11.05 (A) (2). However, absent cooperation from the seller, there can be no assurance that the listing is complete. Therefore, the seller should be required to comply with Ark. Code Ann. 20-17-1012 (a) (2) (J) and Rule 11.05 (A) (2).

Investment of Permanent Maintenance Trust Funds

6. The applicant is engaged in the perpetual care cemetery industry in Tennessee. An affiliate of the applicant is engaged in the perpetual care cemetery industry in Michigan. The staff has informed the Board that regulators in those jurisdictions are conducting reviews of certain cemetery trust fund investments made by the applicant in Tennessee and by its affiliated entity in Michigan. The Board has taken notice of the fact that these reviews are in progress, and as a safeguard, has set forth appropriate conditions on the issuance of a new permit as set forth in the order below.

Additional Contributions to the Permanent Maintenance Trust Funds Due from the Seller

7. In its order entered following a meeting of the Board on June 10, 2005, the Board determined that the seller had failed to make the required deposits into the permanent maintenance trust fund accounts of the following cemeteries in the amounts set forth below:

|                                  |            |           |
|----------------------------------|------------|-----------|
| Memorial Park Cemetery           | Pine Bluff | \$3206.25 |
| Rest Haven Memorial Gardens      | El Dorado  | 2630.00   |
| Arlington Memorial Park Cemetery | El Dorado  | 9990.00   |

8. In addition to requiring payment of the trust fund shortages set forth above, the Board determined at its June 10, 2005 meeting that the seller should be required to make additional contributions to the permanent maintenance trust fund accounts of the cemeteries pursuant to Ark. Code

Ann. Section 20-17-1016 (c) (1) in the amounts set forth below for failure to make the required deposits in a timely manner:

|                                  |           |           |
|----------------------------------|-----------|-----------|
| Rest Haven Memorial Gardens      | El Dorado | \$5000.00 |
| Arlington Memorial Park Cemetery | El Dorado | 5000.00   |

9. At its June 10, 2005 meeting, the Board further determined that the seller should be required to make the following additional contributions to the permanent maintenance trust fund accounts of each of the four Arkansas cemeteries for failure to care for and properly maintain and preserve the cemeteries pursuant to Ark. Code Ann. Section 20-17-1006 (7) in the following amounts:

|                                  |                   |           |
|----------------------------------|-------------------|-----------|
| Edgewood Memorial Park           | North Little Rock | \$3000.00 |
| Memorial Park Cemetery           | Pine Bluff        | 3000.00   |
| Rest Haven Memorial Gardens      | El Dorado         | 3000.00   |
| Arlington Memorial Park Cemetery | El Dorado         | 3000.00   |

10. On or about July 13, 2005, the principal shortages present in the permanent maintenance trust fund accounts referenced in Paragraph 7 of this order were cured by the seller with deposits in the amounts of \$3206.25 being made into the account of Memorial Park Cemetery, \$2630.00 being made into the account of Rest Haven Memorial Gardens, and \$9990.00 being made into the account of Arlington Memorial Park Cemetery.

11. The additional permanent maintenance trust fund account contributions

assessed to the seller referenced in Paragraphs 8 and 9 of this order have not been paid.

### **CONCLUSIONS OF LAW**

12. Whenever any change is proposed in the controlling interest or ownership of a perpetual care cemetery or any cemetery company or any organization that, directly or indirectly, owns a controlling interest in the cemetery company, the cemetery that holds the current permit and the individual or organization proposing to obtain ownership or gain control shall file an application for the issuance of a new permit with the Board.

**Ark. Code Ann. Section 20-17-1012 (a) (1).**

13. An application for transfer of ownership of a perpetual care cemetery must contain certain specified fees, documents, statements, and accountings.

**Ark. Code Ann. Section 20-17-1012 (a) (2) (A) through (M), and Rule 11, Rules of the Arkansas Cemetery Board.**

14. If the Board finds that the vendor and vendee have complied with the Act and Rules, the Board shall order the issuance of a new permit to the vendee. **Rule 11.06, Rules of the Arkansas Cemetery Board.**

15. The Board may additionally require the presentation of proof of the continued current status of the permanent maintenance trust fund by the vendee or transferee for such a reasonable period of time as the Board may

determine to be necessary in the public interest. **Ark. Code Ann. 20-17-1012 (c) (3).**

**ORDER**

IT IS HEREBY ORDERED that the transfer of ownership application for Edgewood Memorial Park, Memorial Park Cemetery, Arlington Memorial Park Cemetery, and Rest Haven Memorial Gardens from Cemetery Holdings, LLC to Forest Hill Funeral Home and Memorial Park East, LLC is hereby approved, subject to and conditioned upon the execution of a written agreement between the Chairperson and Secretary of Board, the authorized agent of Forest Hill, and each of the financial institutions in which the permanent maintenance trust funds of the cemeteries are deposited. The agreement should contain language requiring the approval of the Board prior to any action being taken to transfer of any portion of the principle of the trust funds to another financial institution, or prior to redirecting or reinvesting any portion of the trust into other investment vehicles or instruments. Upon execution of such an agreement, the staff shall be authorized to issue a new permit to the applicant.

IT IS FURTHER ORDERED that Cemetery Holdings, LLC, the seller, shall deliver to the applicant all burial and accounts receivable records associated with these four Arkansas cemeteries in the possession of Cemetery Holdings, LLC, or any its affiliated entities; and that said records

shall be delivered to the applicant within thirty (30) days of the date of this order.

IT IS FURTHER ORDERED that Cemetery Holdings, LLC shall furnish proof to the Arkansas Cemetery Board that that it has complied with the Board's order dated June 23, 2005. Said proof shall confirm the deposit of additional contributions into the permanent maintenance trust funds of the four Arkansas cemeteries in the following amounts:

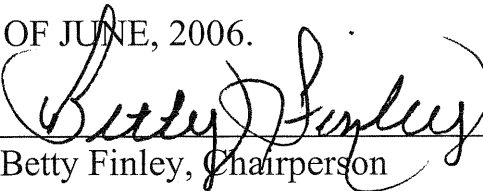
|                                  |                   |           |
|----------------------------------|-------------------|-----------|
| Edgewood Memorial Park           | North Little Rock | \$3000.00 |
| Memorial Park Cemetery           | Pine Bluff        | 3000.00   |
| Arlington Memorial Park Cemetery | El Dorado         | 8000.00   |
| Rest Haven Memorial Gardens      | El Dorado         | 8000.00   |

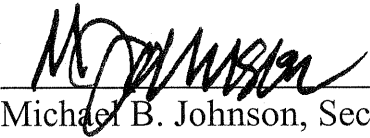
Proof of the deposit of said funds into the permanent maintenance trust fund accounts of these cemeteries shall be furnished to the Board within thirty (30) days of the date of this order. Should the seller fail to make said deposits, the payment of these additional contributions shall remain a liability of Cemetery Holdings, LLC, and shall not be deemed the responsibility of the applicant, Forest Hill Funeral Home and Memorial Park East, LLC.

IT IS SO ORDERED.



DATED THIS 22<sup>nd</sup> DAY OF JUNE, 2006.

  
Betty Finley, Chairperson  
Arkansas Cemetery Board

  
Michael B. Johnson, Secretary  
Arkansas Cemetery Board