

BEFORE THE ARKANSAS CEMETERY BOARD

CASE NO. C-17-0051

ORDER NO. C-17-0051-17-OR01

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IN THE MATTER OF:

**RANDOLPH MEMORIAL GARDENS;
POCAHONTAS, ARKANSAS**

ORDER APPROVING APPLICATION FOR TRANSFER OF OWNERSHIP

The Arkansas Cemetery Board (“Board”) held its quarterly meeting on April 21, 2017, pursuant to Ark. Code Ann. § 20-17-1005 and Rule 5 of the Rules of the Arkansas Cemetery Board. Among the matters considered was an application for transfer of ownership of Randolph Memorial Gardens from NEA Burial Services, Inc. (“Seller”) to Randolph Memorial Gardens, LLC (“Purchaser”). Upon consideration of the testimony of the witnesses, the exhibits, and all other matters presented, the Board hereby finds and concludes:

FINDINGS OF FACT

1. Randolph Memorial Gardens is licensed by the Board as a perpetual care cemetery as defined by the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. §§ 20-17-1001 through 20-17-1030 (“Act”).
2. Michael and Paige Johnson are the sole shareholders of NEA Burial Services, Inc.
3. Brody and Rebecca Foster hold 90% of the shares of Randolph Memorial Gardens, LLC and Teddy and Beth Foster hold 10% of the shares of Randolph Memorial Gardens, LLC.

4. On November 10, 2016, the Seller and Purchaser submitted an application to the Board proposing a transfer of ownership of Randolph Memorial Gardens to the Purchaser. The original application has since been supplemented to include documents and information requested by the Staff of the Arkansas Securities Department (“Staff”).

5. The Seller and Purchaser have submitted all documents and information required for a transfer of ownership of a perpetual care cemetery, pursuant to Ark. Code Ann. §§ 20-17-1012(b)(2)(A)—(M) and Rule 12 of the Rules of the Arkansas Cemetery Board and meet all statutory and regulatory requirements necessary for approval of the proposed transfer of ownership, except for a clear title opinion. The title opinion indicated real estate taxes were due to Randolph County for the 2015 real estate tax payment.

6. The Staff of the Arkansas Cemetery Board (“Staff”) completed an examination of Randolph Memorial Gardens (“Examination”) on March 2, 2017. The examination found that the Seller took possession of approximately forty-two (42) cemetery lots without making the required permanent maintenance fund contribution.

7. The Examination also found that the Seller did not make all required deposits to the permanent maintenance fund for lot sales at Randolph Memorial Gardens.

8. The Seller has an outstanding examination fee of sixty (\$60.00) dollars due to the Board.

CONCLUSIONS OF LAW

9. Ark. Code Ann. § 20-17-1012(b)(1)(A) states that when a change is proposed in the controlling interest or ownership of a perpetual care cemetery or any cemetery company, the cemetery that holds the current permit and the individual or

organization proposing to obtain ownership or gain control of the cemetery shall file an application for the issuance of a new permit.

10. An application for transfer of ownership of a perpetual care cemetery must contain certain specified fees, documents, statements, and accountings. Ark. Code Ann. § 20-17-1012(b)(2) and Rule 12 of the Rules of the Arkansas Cemetery Board.

11. Ark. Code Ann. § 20-17-1016(b)(3) states that if a cemetery company gives away a graves space, the gross sales proceeds received for a similar grave space shall be used as the basis to make the required permanent maintenance fund contribution for the gift.

12. Ark. Code Ann. § 20-17-1016(a)(1) and (a)(2) states that a cemetery company shall deposit twenty percent (20%) of the gross proceeds from the sale of a lot or grave space into its permanent maintenance fund within forty-five (45) days after the final payment has been made.

13. If the Board finds that the seller and purchaser have complied with the Act and the Rules of the Arkansas Cemetery Board, the Board shall order the issuance of a new permit to the purchaser. Rule 12.07 of the Rules of the Arkansas Cemetery Board.

ORDER

IT IS HEREBY ORDERED that the transfer of ownership application for Randolph Memorial Gardens is approved conditioned upon the Seller satisfying the delinquent real estate taxes due to Randolph County, paying four thousand two hundred (\$4,200) dollars to the permanent maintenance fund for the donated lots, and placing two thousand five hundred (\$2,500) dollars into an escrowed account while the Buyers complete a review of the records to determine all lots sold by the Seller had a proper permanent maintenance

deposit made. Additionally, the Seller must ensure that the sixty (\$60.00) dollar examination fee is remitted to the Staff. The Staff is authorized to issue a new permit to the Purchasers for the operation of Randolph Memorial Gardens. Brody and Rebecca Foster are ordered to record the permit with the Randolph County Clerk's office, and mail a copy to the Arkansas Department of Health.

IT IS SO ORDERED.

Dated this 15th day of May, 2017.

ARKANSAS CEMETERY BOARD



G. William "Bill" Booker, II
Chairperson



B. Edmond Waters
Secretary