~~Arkansas Cemetery Board~~
~~No. 0218~~

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~~RULES OF THE~~
~~ARKANSAS CEMETERY BOARD~~

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~~EFFECTIVE February 9, 2014~~

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~~ARKANSAS CEMETERY BOARD~~
~~HERITAGE WEST BUILDING, SUITE 300~~
~~201 EAST MARKHAM~~
~~LITTLE ROCK, ARKANSAS 72201~~

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Agency #043.00

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Rule 5
Arkansas State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services
Rule Pertaining to Perpetually Maintained Cemeteries

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~~Arkansas Cemetery Board Rules~~

~~Rule 1. TITLE.~~

~~These Rules shall be known as the Rules of the Arkansas Cemetery Board.~~

Section 1. Authority

This rule is promulgated pursuant to Ark. Code Ann. §§ 23-61-1103(a)(5)(C), 23-61-1109(a)(4), and 20-17-1304(2).

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Section 2. Purpose

The purpose of this rule is to provide requirements that are applicable to perpetual care cemeteries and the cemetery companies who own and operate perpetual care cemeteries.

Section 3. Definitions

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~~RULE 2. DEFINITIONS.~~

~~When the terms listed below are used in the Act, the Grant Fund Act, any rules or forms promulgated under the Act or Grant Fund Act, or any order of the Cemetery Board under the Act or Grant Fund Act the following definitions shall apply, unless a contrary definition is expressly provided or clearly required by the context, to the extent that they do not conflict with the definitions set forth in the Act or Grant Fund Act.~~

~~2.01 **Act** means the Cemetery Act for Perpetually Maintained Cemeteries, Ark. Code Ann. § 20-17-1001 et seq., as the same may be codified and amended from time to time.~~

A. "Board" means the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

B. "care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery.

C. "cemetery" means any land or structure in this state dedicated to, and used or intended to be used for, interment of human remains. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more burial parks for earth interments and mausoleums for vault or crypt interments.

D. "cemetery company" means an individual, partnership, corporation, limited liability company, or association, now or hereafter organized, owning or controlling cemetery lands or property, and conducting the business of a cemetery or making an application to the Board to own or control the lands, or conduct the business.

~~2.02 **Deed** means an instrument of bond, contract, or conveyance used to convey an interest in real property.~~

E. "cemetery deed" or "instrument of conveyance" means a deed or certificate that conveys the right of interment or entombment in the lot or grave space. The right of interment or entombment is subject to the rules of the perpetual care cemetery.

F. "columbarium" means a structure or room or space in a building or structure used or intended to be used for the interment of cremated human remains.

G. "crypt" means a chamber in a wall that is built of sufficient size to inter casketed human remains.

~~2.03 **Grand Fund Act means** the Insolvent Cemetery Grant Fund Act, Act 429 of 2009 effective July 31, 2009, codified as Ark. Code Ann. § 20-17-1301 *et seq.* as amended.~~

~~2.04 **Grant Funds** means the money granted by the Board to an Insolvent cemetery from the Insolvent Cemetery Grant Fund~~

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Commented [AG1]: Many years ago, deeds were issued to consumers, conveying an interest in real property. That changed over time, and the instrument conveyed in modern times conveys a right of burial/interment, not an interest in real property. The term "instrument of conveyance" is included here to reference those other documents that convey the burial right, or right to inter, sometimes titled a certificate.

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~~as established by Act 429 of 2009.~~

H. "infant interment garden" means a designated area in a perpetual care cemetery for the interments of infants and children no more than twenty-four (24) months of age.

I. "interment" means the lawful disposition of the remains of a deceased person as provided by law.

~~2.05 **Insolvent Cemetery** means a cemetery that has been declared Insolvent by a state or federal court.~~

J. "lawn crypt" means an interment space sometimes referred to as a "belowground crypt", "Westminster", or "turf top crypt" in a preplaced chamber or burial vault either side-by-side or at multiple depths, covered by earth and sod.

K. "lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein.

L. ~~2.06 M~~ "mausoleum" means a community-type structure or room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches. ~~as defined in section 20-17-1002(10) of the Act shall not mean a family mausoleum constructed by an individual lot owners, placed on lots owned by the individuals, and used exclusively for the lot owners or family.~~

M. "niche" means a space in a columbarium that is used or intended to be used for the interment of the cremated remains of one (1) or more deceased persons.

N. "permit holder" means a cemetery company that holds a permit issued by the Board to own or operate a perpetual care cemetery.

O. "perpetual care cemetery" means a cemetery for the benefit of which a permanent maintenance fund has been established.

~~2.07 **Project** means the intended use of the grant funds in relation to the care, maintenance, and operation of the insolvent cemetery as described by the applicant on the application.~~

P. "properly maintained" means that care and maintenance services are provided, including without limitation: mowing the grass; weed trimming around lots or grave spaces and fences or property lines of the cemetery; emptying trash receptacles; and removing excess dirt, tree limbs, leaves, trash, and other debris from the grounds.

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2.08 **Recipient** means the insolvent cemetery that receives a grant from the Board within the meaning of the Act.

2.09 **Secretary** means the Secretary of the Cemetery Board.

Rule 3. APPLICATION OF ACT

[RESERVED]

RULE 4. ARKANSAS CEMETERY BOARD – CREATION – MEMBERS.

[RESERVED]

RULE 5. ARKANSAS CEMETERY BOARD – PROCEEDINGS.

5.01 MEETINGS.

(a) The Board shall meet at least quarterly and such regular quarterly meetings shall be public. The meetings shall be governed by the Arkansas Administrative Procedures Act as codified in Ark. Code Ann. § 25-15-201 et *seq.*

(b) The Board shall fix the date, time, and place of each meeting and shall publish notice thereof at least fifteen (15) calendar days before the date set for the meeting.

(c) The Board shall meet at special meetings subject to the call of the Chairman or the written demand of any two (2) members. Such special meetings shall be public and governed by the Arkansas Administrative Procedure Act as codified in Ark. Code Ann. § 25-150201 et *seq.*

5.02 APPEARANCES BEFORE THE BOARD. Any applicant, protestant, cemetery company, or other party that has an interest in a matter set for a meeting before the Board shall be entitled in person and by attorney to be heard, introduce evidence, and examine and cross-examine witnesses.

5.03 ORDERS OF THE BOARD

(a) Upon conclusion of any meeting, the Board shall make its findings and promptly execute and order setting forth such findings.

(b) An order signed by one ex officio member of the Board, or the ex officio member's designated deputy, and one appointed member of the Board who attended the Board meeting shall be considered executed. The date of the order shall mean the date the last of the two (2) signature is placed on the order.

5.04 RECORD OF THE MEETINGS. A transcript of each meeting shall be maintained by the Board.

RULE 6 ARKANSAS CEMETERY BOARD – POWERS AND DUTIES.

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~~6.01 EXAMINATIONS. Representatives of the Securities Department shall have delegated authority from the Board to conduct examinations.~~

~~6.02 LEGAL PROCEEDINGS. Representatives of the Securities Department shall have delegated authority from the Board to represent the Board in legal proceedings and advise the Board during its meetings.~~

~~6.03 ISSUANCE, SUSPENSION, AMENDMENT, OR REVOCATION OF PERMIT. If, after a public meeting held in accordance with section 20-17-1005 of the Act and Rule 5, the Board determines that a permit should be issued, suspended, amended, or revoked, the Board shall so order. If a permit is issued, suspended, revoked, or amended, a copy of such permit shall be filed by the permit holder with the County Clerk in the county in which the cemetery is located, and a copy sent to the Department of Health. The date of the permit shall be the same date as the date of the order set forth in Rule 5.03.~~

Section 4. Fee for Examination of Cemetery ~~**Rule 7. EXAMINATION OF A CEMETERY.**~~

~~7.01 Reserved.~~

The fee for every examination conducted by the Board or its representative shall be one hundred dollars ($100) per day for each examiner who conducts the examination.

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Section 5. Permit- Application ~~**RULE 8. PERMIT—APPLICATION.**~~

A. **Proof of publication.** Before making application to the Board for a permit to establish and operate a new cemetery or for the extension of the boundaries of an existing cemetery, the person or cemetery company proposing to make application shall publish weekly for three (3) weeks in a newspaper of general circulation in the county in which the proposed cemetery is located, a notice that an application will be filed with the Board to establish or extend the boundaries of a cemetery in the county.

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~~8.01 PROOF OF PUBLICATION. Proof of the publication of the notice required by section 20-17-1008(a)(1) of the Act must be attached to and made a part of the application to the Board. Publication of such notice shall be made within ninety (90) calendar days of the date of application.~~

~~8.02 FORM OF APPLICATION. An application filed pursuant to the Act shall include the information required by Section 20-17-1008 of the Act and Rule 8.07. A specific form is not required, but the application must be made in writing and signed in the presence of a notary. The original application shall be accompanied by not less than ten (10) copies.~~

B. **Form of application.** The application for a permit to establish and operate a cemetery is not required to be in any specific form, but it must be in writing and signed in the presence of a notary. The application shall include the following components:

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C. ~~8.03 DATE OF FILING.~~**Date of Filing**. One original signed copy, under oath, and one copy of the ~~An~~ application must be filed with the ~~Secretary,~~ Board ~~at least~~ not less than twenty (20) calendar days prior to the Board meeting at which ~~it~~the application is to be considered.

D. ~~8.04 FEES.~~**Fee.** If the application is for a permit to establish a cemetery, then a fee of $1,500 shall accompany the application. If the application is to extend the boundaries of an existing cemetery, then a fee of $400 shall accompany the application. ~~The applicant shall submit the fees as set forth in Section 20-17-1008 of the Act.~~

E. ~~8.05 SURVEY AND MAP.~~**Survey and map.** ~~In lieu of filing a survey and map with the Board,~~ ~~t~~The applicant ~~may~~ shall file a survey and map with the Board. If the survey and map are filed with the Arkansas Department of Health ("ADH"), ~~in a form satisfactory to the Department of Health,~~ as part of the investigation ~~set forth in section 20-17-1009 of the Act~~ undertaken by ADH, then the applicant may submit proof of the filing with ADH. ~~, and upon proof of such filing, shall be accepted by the Board.~~

F. ~~8.06 PROTEST TO APPLICATION.~~**Protest to application for permit.** Whenever any person desires to protest the issuance of a permit, the protestant shall file with the Board a written protest setting forth any objections. Any such protest must be filed at least seven (7) calendar days before the Board meeting at which the application is to be heard. ~~A copy of the protest shall be sent to the cemetery company making the application by the protestant.~~ The protestant shall send a copy of the protest to the cemetery company making application, and the protestant shall also submit to the board, proof that he or she sent a copy of the protest to the cemetery company. ~~Protestants shall be entitled to appear before the Board as set forth in Rule 5.02.~~

G. ~~8.07(a)~~ **Additional information required.** In addition to the required information ~~required by the Act~~ provided in Ark. Code Ann. § 20-17-1008, any application ~~filed pursuant to section 20-17-1008 of the Act~~ to establish a new cemetery shall contain the following information:

~~(1)~~ 1. The applicant's form of business organization, e.g. corporation, partnership, sole proprietorship, limited liability company, etc. If the form of business is a corporation or limited liability company, the applicant must identify under which State law the entity is incorporated or organized.

2. If the applicant is a foreign corporation or limited liability company, the following information must be submitted: ~~its~~

a. the applicant's resident agent for service of process~~.~~;

b. the address of ~~its~~ the applicant's home office~~.~~; and

~~(2)~~ c. a statement that ~~it~~ the applicant has been registered with the Arkansas Secretary of State as a foreign corporation or a limited liability company, ~~respectively,~~ doing business in the State of Arkansas.

~~(3)~~ 3. The names and addresses of applicant's managing officers and Board of Directors; or if a partnership, the names and addresses of all partners and their respective share of the business.

~~(4)~~ 4. The amount of outstanding capital stock of the applicant and a list of the stockholders of record who hold, own, or control at least 20% or more of the voting or capital of the applicant. The

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list of stockholders must indicate if a stockholder of record holds the stock as trustee or agent for someone other than himself.

~~(5)~~ 5. A copy of the Articles of Incorporation, Articles of Organization, Bylaws, or similar founding charter of the applicant. The copy must be duly authenticated and certified by the proper authority~~,~~. ~~or i~~ If the applicant is a partnership, then it must submit a copy of athe partnership agreement.

~~(6)~~ 6. A statement ~~that~~ as to whether the corporation or limited liability company is ~~or is not~~ a subsidiary of another corporation or limited liability company~~,~~. ~~and i~~ If ~~it~~the applicant is a subsidiary, then it shall submit the name of the parent organization, the percentage of voting securities owned by the parent organization, or any other basis of control by the parent organization.

~~(7)~~ 7. A description of all property held by the applicant. If any such property is not held in fee or is subject to any encumbrance, then the applicant must so state and briefly describe how held.

~~(8)~~ 8. A statement as to whether the applicant is the owner or operator of any other cemetery in this or any other state and the name and address of ~~said~~ the cemetery (or cemeteries), and the contact information of the cemetery or cemeteries.

~~(9)~~ 9. A statement briefly describing the nature of any legal proceedings against the applicant~~;~~, any of its owners, officers, agents, or employees; or the partners of a partnership; or the owner of a proprietorship, which have occurred within the last ten (10) years. The person responsible for the application shall also submit a statement about ~~as well as~~ any final judgments or orders against ~~the same~~ an applicant, an owner, an officer, an agent, an employee, or a partner, or an owner of a proprietorship, and the person may submit copies of the final judgments or orders.

~~(10)~~ 10. A consolidated balance sheet and a profit and loss statement prepared by an independent certified public accountant ("CPA") showing the financial condition of the applicant as of thirty (30) calendar days before the filing of the application.

~~(11)~~ 11. A statement showing an estimate of the volume of sales expected to be produced in the first five (5) years of operation. The estimate should be based upon criteria such as projected population growth in the area, the number of cemeteries in the area, the condition of these cemeteries, and any other relevant facts.

~~(12)~~ 12. Any other evidence which would show a public need for the cemetery.

H. If any of the information required by Section 5.G is already on file with the Board, the applicant may incorporate the previous filing(s) by reference in the application.

I. The applicant shall designate an individual to be responsible for the application. The individual shall undergo and pass a state criminal background check, the cost of which shall be borne by the applicant.

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J. The Board may require an applicant to submit such other information it deems necessary.

RULE 9. PERMIT – INVESTIGATION BY DEPARTMENT OF HEALTH.

[RESERVED]

Section 6. Permit- Investigation by the Arkansas Department of Health

Upon submission of an application to the Board for the issuance of a permit to establish a new cemetery or to extend the boundaries of an existing cemetery, the applicant shall request that ADH investigate the proposed cemetery location or extension to determine if the proposed new location or the proposed extension of boundaries will be sanitary.

Section 7. Permit- Approval by Board and Issuance of Permit

Rule 10. PERMIT – INVESTIGATION AND ISSUANCE BY THE ARKANSAS CEMETERY BOARD.

10.01 A. ISSUANCE OF PERMIT. If the application for a new perpetual care cemetery or extension of boundaries of an existing perpetual care cemetery cemetery holding a permit under the Act is approved, the Board shall issue a permit to the cemetery company setting forth the legal description of the property to be used as a cemetery. The date of the permit shall be the same date as the date of the order as set forth in Rule 5.03.

10.02 B. FILING OF PERMIT. The cemetery company shall file a copy of each newly issued permit with the County Clerk of the county in which the cemetery is located, and shall send a copy of each newly issued permit to the Arkansas Department of Health.

Section 8. Permit- Amendment

RULE 11. PERMIT – AMENDMENT

11.01 A. FORM OF APPLICATION. An application to modify an existing permit shall be filed pursuant to the Act and shall include the information required by section 20-171011 of the Act in Ark. Code Ann. § 20-17-1011. A specific form is not required, but the application must be in writing and signed in the presence of a notary.

11.02 B. DATE OF FILING. An application must be filed with the Secretary Board at least twenty (20) calendar days prior tobefore the Board meeting at which it is to be the Board will considered the application.

11.03 C.FEES. The applicant shall submit fees as required in Section 20-17-1011 of the Act. A fee of $400 shall accompany the application for amendment of the permit.

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11.04 D. EXHIBITS FILED BY REFERENCE. If the proposed rules and regulations for the use, care, and management of the cemetery or the proposed method of establishing a permanent maintenance fund are already on file with the Board, the applicant may incorporate such information by reference in the application in lieu of attaching the full exhibit submitting a copy of the rules and regulations of the cemetery.

11.05 E. MODIFICTIONS DETERMINED BY BOARD. If t The Board, or its representatives, may determines that the facts set forth in an application which resulted in the issuance of a permit under this Act have changed or an amendment to the a permit may be necessary. If so, the Board may consider whether the present permit needs to be amended. The cemetery company presently holding the permit shall be notified of the Board's decision to review the existing permit, and it shall be given an opportunity at the meeting to present evidence participate in the discussion.

11.06 F. PUBLIC MEETING. The Board shall consider all applications filed pursuant to section 20-17-1011 of the Act at a regular or special meeting. Any application to amend a permit shall be discussed at a regular or a special meeting of the Board.

11.07 G. ISSUANCE OF PERMITS. If the Board determines that an existing permit should be amended, the Board shall issue a new permit. The new permit shall supersede the previous permit. The new amended permit shall be filed by the cemetery company with the County Clerk in the county in which the cemetery is located and a copy sent to the Arkansas Department of Health.

Section 9. Permit- Transfer of Ownership

RULE 12. PERMIT TRANSFER OF OWNERSHIP

12.01 A. FORM OF APPLICATION. A specific form is not required. However, one original copy signed in the presence of a notary, and one copy of An the application to transfer ownership of a cemetery shall be filed with the Board. The application shall include the information required by in section Ark. Code Ann. § 20-17-1012 of the Act. A specific form is not required, but the application must be made in writing and signed in the presence of a notary. The original application shall be accompanied by not less than ten (10) copies.

12.02 B. DATE OF FILING. An applications to transfer ownership must be filed with the Secretary Board at least twenty (20) calendar days prior to the Board meeting at which it is to be considered.

12.03 C. FEES. The applicant shall submit the fees as required in Section 20-17-1012 of the Act. The application to transfer ownership shall be accompanied by a fee of $1.500. However, the fee is not required if the person or entity who is to gain the controlling interest of the cemetery is an heir to the estate of the individual who previously held the controlling interest in the permit.

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Commented [AG7]: Authority for this fee is found at Ark. Code Ann. § 20-17-1012(b)(2)(A)(i).

~~12.04~~ D. ~~ADDITIONAL INFORMATION REQUIRED BY THE BOARD.~~ The following provisions apply to all applications to transfer ownership of a cemetery:

~~(a)~~ 1. The cemetery company proposing to acquire the ownership or a controlling interest in a cemetery company currently holding a permit shall file the information set forth in ~~Rule 8.07(a)(1) through 8.07(a)(10)~~ Section 5.G.1 through 10, unless upon proper showing the Board waives one or more of the requirements.

~~(b)~~ 2. If any of the information required by ~~this Rule~~ Section 5.G.1 through 10 or Ark. Code Ann. § 20-17-1012 is already on file with the Board, then the applicant may incorporate the previous filings by reference ~~in the application~~.

~~(c)~~ 3. The Board may require the cemetery company proposing to acquire or the cemetery company proposing to dispose of the ownership of a cemetery to submit such other information as it deems necessary.

~~12.05~~ E. ~~PUBLIC MEETING. The Board shall consider all applications filed pursuant to section 20-17-1012 of the Act at a regular quarterly meeting or a special meeting.~~ Any application to transfer ownership of a permit shall be discussed at a regular or a special meeting of the Board.

~~12.06 SELLOR OR TRANSFEROR FILINGS WITH BOARD.~~

~~(a)~~ F. Prior to the sale~~,~~ or transfer of ownership, the seller or transferor shall notify the Board of the proposed sale or transfer. Such notification need not be in any specific form but it must be in writing and signed in the presence of a notary. ~~The original notification shall be accompanied by not less than ten (10) copies.~~

~~(b)~~ G. The seller shall submit ~~attach as exhibits to the filing at least~~ the following information:

~~(1)~~ 1. A ~~R~~report disclosing the balances as reported on last previous annual report, the amounts of sales for which payment has been made in full since the annual report, the corresponding deed or instrument numbers which have been issued, the amounts and dates of each deposit made to the permanent maintenance fund, and such other information necessary to show that all amounts due to be paid into the permanent maintenance fund have been satisfied.

~~(2)~~ 2. Listings which detail~~ing~~ each ~~house~~ account receivable and each discounted note showing the name of the lot purchaser, the gross amount of the lot sale~~s~~ price, and the outstanding balance.

~~(3)~~ 3. Report of the trustee disclosing the date and amount of all deposits to the trust fund since the annual report, the dates and amounts of income earned and disbursed since the annual report, and a listing of all assets of the permanent maintenance fund delineating between principal assets and income assets.

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~~(4)~~ 4. All reports and listings required by ~~Rule 12.06(a)~~ Section 9.G shall be as of the same date, which date shall not be more than forty-five (45) calendar days prior to the date of the Board meeting at which the application shall be heard~~, and~~. The reports and listings shall be filed at least seven (7) calendar days prior to such meeting date.

~~(c)~~ H. If such application for transfer of ownership is approved by the Board, the seller or transferor shall, within seven (7) calendar days after the sale or transfer date, submit a statement, under oath, of the assets of the permanent maintenance fund as of the sale or transfer date.

~~12.07~~ I. ~~ISSUANCE OF PERMIT TO PURCHASER.~~ If the Board finds that the seller or transferor and the purchaser or transferee have ~~complied with the Act and Rules~~ submitted all required information, the Board shall order the issuance of a new permit to the purchaser or transferee. The new permit shall supersede the previous permit. The date of the new permit shall coincide with the date of sale or transfer. The permit holder shall file a copy of the newly issued permit with the County Clerk of the county in which the cemetery is located and shall send a copy of the new permit to the Arkansas Department of Health.

Section 10. Permanent Maintenance Fund Generally
~~RULE 13. PERMANENT MAINTENANCE FUND GENERALLY.~~

~~13.01~~ A. ~~TRUST AGREEMENT.~~ Each permanent maintenance fund ~~established pursuant to section 20-18-1013 of the Act~~ shall have a written trust agreement governing the operation of the fund. A copy of the trust agreement shall be filed with the Board.

~~13.02~~ B. ~~NOTIFICATION OF CHANGE OF TRUSTEES.~~ The Board shall be notified prior to any change in the trustee arrangement or in the trustee(s) by either the cemetery company or the trustee(s).

~~13.03~~ C. ~~PAYMENT OF PENALTY FOR FAILURE TO MAKE REQUIRED CONTRIBUTIONS TO FUND.~~ If the Board finds that a cemetery company must pay a penalty ~~as provided in section 20-17-1016(c) of the Act~~ for failure to make required deposits to the trust fund, the cemetery company must submit proof to the Board from the trustee(s) that the penalty has been deposited into the cemetery company's permanent maintenance fund.

D. A cemetery company that elects to establish a permanent maintenance fund ~~in accordance with section 20-17-1014(b)(3) of the Act~~ overseen by an individual trustee shall have each bank or ~~other financial institution~~ financial institution that will receive deposits for the permanent maintenance fund, furnish the Board with a letter setting forth that:

1. All funds deposited shall be federally insured;
2. All funds except the interest earned thereon, will be restricted so that it may not be pledged, withdrawn, or otherwise encumbered without written authorization of the ~~Secretary~~ Board, and
3. The name of the trustee who may withdraw the interest.

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4. Permanent maintenance funds deposited in any one bank or ~~other financial institution~~ other financial institution in excess of the maximum FDIC insurance shall be deemed to be federally insured if the bank or other financial institution pledges specific security which are direct obligations of the United States government, or agencies whose securities are guaranteed by the United States government, as collateral for the funds in excess of the FDIC insurance coverage.

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Commented [AG9]: This was moved from Section 11, which is the new section where it would originally have ended up, because these requirements apply more to the trust fund than to trustees.

Section 11. Permanent Maintenance Fund- Trustees

~~RULE 14. PERMANENT MAINTENANCE FUNE – TRUSTEES.~~

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~~14.01~~ A. ~~MINUTES OF TRUSTEE MEETINGS.~~ If a permanent maintenance fund is ~~established in accordance with section 20-17-1014(b)(2) of the Act~~ overseen by three trustees, then the minutes of the trustees~~'~~ meetings must be maintained by the cemetery company. The minutes must be signed by all three trustees, reflect the authorization of all purchases and sales of investments, and reflect the authorization of all disbursements of income. If the trust agreement provides that only one trustee shall have sole disbursement authority, then minutes must be prepared by that one trustee and submitted to the remaining trustees for ratification at least twice a year.

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~~14.02 FIDELITY BONDS.~~

~~(a)~~ B. ~~If a~~ A fidelity bond is required ~~pursuant to 20-171014(b)(2) of the Act~~ of any trustee who makes disbursements from the trust fund~~.~~, ~~t~~The bond shall be deposited with the Board and shall indemnify the ~~insured~~ permanent maintenance fund against loss of money or property, which the fund shall sustain through fraudulent or dishonest acts committed by trustees having disbursement authority. The fidelity bond shall remain in full force and effect from the effective date of the bond, until it is terminated or modified by the corporate surety thereon, and such fidelity bond shall provide that thirty (30) calendar days' notice must be given to the ~~Securities Commissioner~~ Board by the corporate surety prior to the effective date of termination. Any modification to the fidelity bond must likewise be filed with the Board.

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~~(b)~~ C. If a fidelity bond ~~required pursuant to section 20-17-1014(b)(2) of the Act~~ includes a deductible, an appropriate deposit of cash or securities, in a form approved by the Board, shall be accepted to meet the deductible.

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Commented [AG10]: This section should not be stricken through- it is carried over from the old rule.

~~14.03 PROOF OF FEDERAL INSURANCE AND RESTRICTION ON ACCOUNTS~~

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~~(a) A cemetery company that elects to establish a permanent maintenance fund in accordance with section 20-17-1014(b)(3) of the Act, shall have each bank or savings and loan association that will receive deposits for the permanent maintenance fund, furnish the Board with a letter setting forth that:~~

Commented [AG11]: This language was moved to Section 10 because the language deals with the trust fund more than trustees.

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~~1. All funds deposited shall be federally insured;~~

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~~2. All funds except the interest earned thereon, will be restricted so that it may not be pledged, withdrawn, or otherwise encumbered without written authorization of the Secretary, and~~

~~3. The name of the trustee who may withdraw the interest.~~

~~(b) Permanent maintenance funds deposited in any one bank or savings and loan association in excess of the maximum FDIC insurance shall be deemed to be federally insured if the bank or savings and loan association pledges specific security which are direct obligations of the United States government, or agencies whose securities are guaranteed by the United States government, as collateral for the funds in excess of the FDIC insurance coverage.~~

~~**Rule 15. PERMANENT MAINTENANCE FUND – ANNUAL REPORT.**~~

~~[RESERVED]~~

Section 12. Permanent Maintenance Fund- Required Deposits

~~**RULE 16. PERMANENT MAINTENANCE FUND – REQUIRED DEPOSITS**~~

A. A cemetery company ~~which~~ may elects to discount installment sales contracts at a bank or other financial institution and receive a discounted value immediately in cash. When this election is made, the required percentage of the gross sales price shall be placed in a separate restricted escrow account at the time that the contract is discounted. The escrow agreement shall ~~first~~ be filed with the ~~Secretary~~ Board ~~a copy of the agreement~~. The agreement shall includ~~ing~~ the terms under which the escrow account is restricted. ~~Should the Secretary determine that the agreement does not adequately provide the safeguards established by section 20-17-1016(b)(2)(B) of the Act, the Secretary shall ask the Board to review the agreement at a public meeting held in accordance with section 20-17-1005 of the Act and Rule 5.~~ Further:

1. The amount placed in escrow shall not be withdrawn until the lot purchaser defaults on or fully satisfies his or her contract obligations.

2. The escrow account may be used by the bank or other financial institution as part of its required reserve and may be used as recourse if the lot purchaser defaults on the contract.

3. Upon default, the required percentage of the gross sales price which was placed in the escrow account may be withdrawn and used by the cemetery company.

4. Once final payment has been made, the required percentage of the gross sales price which was placed in the escrow account shall be withdrawn and placed into the permanent maintenance fund within five (5) business days.

B. A cemetery company may also elect to receive installment payments directly. When this election is made, the company shall maintain records as to the full amount of the sale, receipts received, and the balance due. The company shall deposit the required percentage of gross proceeds of sale into the permanent maintenance fund no later than the forty-fifth day after the

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final payment is made, or the company may deposit the required percentage of each amount received not later than the forty-fifth day after each installment payment by the purchaser.

Commented [AG12]: Section 12 derives from Ark. Code Ann. § 20-17-1016(b)(2)(A) and (B).

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~~RULE 17. PERMANENT MAINTENANCE FUND – VOLUNTARY CONTRIBUTION.~~

~~[RESERVED]~~

~~RULE 18. PERMANENT MAINTENANCE FUND – PENALTIES.~~

~~[RESERVED]~~

Section 13. Conveyance of Lots

~~RULE 19. CONVEYANCE OF LOTS.~~

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A. Deeds or other instruments of conveyance shall be issued only by the cemetery company that holds the perpetual care cemetery permit.

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B. Requirements:

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1. The original deed or other instrument of conveyance, and one copy of the deed or other instrument of conveyance issued to the purchaser, shall be maintained by the cemetery company.

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2. If a transfer instrument of conveyance is issued, the following records shall be maintained by the cemetery company:

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a. The original transfer deed or other instrument of conveyance and one copy;

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b. The date and amount previously paid to the trust;

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c. The name of the previous owner(s);

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d. A copy of the quitclaim deed or sufficient documentation showing the grantor's request for termination of ownership; and

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e. Documentation, to include a dated signature, of the new owner(s), whereby the new owner(s) acknowledges receipt of a copy of the cemetery's rules and regulations.

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C. A replacement deed or other instrument of conveyance should be accompanied by transfer documentation issued by the cemetery pursuant to its rules. A copy of all transfer documentation and the replacement deed or instrument of conveyance shall be kept by the cemetery.

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~~[RESERVED]~~

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~~RULE 20. UNLAWFUL ACT.~~

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~~[RESERVED]~~

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~~RULE 21. DISPOSITION OF CONTRIBUTIONS AND FEES.~~

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~~21.01 Proof of any contribution to the permanent maintenance fund required by order of the Board shall be filed with the Board within thirty (30) calendar days after the contribution is made.~~

Commented [AG13]: This language is deleted because the Board's orders always specify the deadline for the contribution/fine and proof it was made.

Section 14. Records Required
~~**RULE 22. RECORDS REQUIRED.**~~

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~~22.01~~ A. ~~CASH RECEIPTS AND DISBURSEMENTS.~~ All cemetery companies must keep a book, journal, or comparable record of cash receipts and disbursements showing the date, amount, person from who received or to whom disbursed, and the purpose of each receipt or disbursement. This record shall reflect amounts disbursed and deposited to the permanent maintenance fund and any other disbursement of funds by the cemetery company. Records should be kept in compliance with general accounting practices.

~~22.02 SALES CONTRACTS.~~

~~(a)~~ B. All sales contracts must be numbered consecutively after a sales contract is executed by the cemetery company, and must contain at least the following:

~~(1)~~ 1. date of contract~~.~~;
~~(2)~~ 2. total purchase price~~.~~;
~~(3)~~ 3. terms of sale~~.~~;
~~(4)~~ 4. description of plot or plots purchased~~.~~;
~~(5)~~ 5. signature of buyer(s)~~.~~;
~~(6)~~ 6. address of buyer(s)~~.~~;
~~(7)~~ 7. date when paid in full~~.~~;
~~(8)~~ 8. deed number or certificate (of interment rights) number (the deed or certificate or other instrument of conveyance shall be issued within sixty (60) days of payment in full) ~~issued, and~~; and
~~(9)~~ 9. acknowledgment that the purchaser(s) has (have) received a copy of the rules and regulations of the cemetery.

~~(b)~~ C. The cemetery company must maintain a copy of each contract in a numerical file or must maintain a numerical listing of each contract with sufficient details, referenced in ~~Rule 22.02(a)~~Section 14.B above. All voided or cancelled contracts must be so marked and retained in the files indefinitely ~~in accordance with Rule 22.08~~.

~~(c)~~ D. ~~The original or a manually signed duplicate of the original of each contact~~ Each original signed contract must be retained by the cemetery company.

~~(d)~~ E. Cemetery companies that enter into sales contracts in which one basic contract is drawn for the sale of cemetery lots and other items, such as memorial and burial vaults, must specifically set out in such contract the purchase price of each item being purchased and the total sales contract price. If such contract is paid for with an installment plan, the payments must be pro-rated among the respective items so that full payment of any or all ~~of the~~ items can be readily identified. Only the portion of the sales contract which is for the purchase of the cemetery lot shall be subject to the trust fund deposit requirements ~~of the Act~~.

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~~(c)~~ F. Sales contracts which include a calendar or fiscal year and are numbered consecutively within said prefix, shall be considered to be numbered consecutively ~~under section 20-17-1022(b) of the Act, and these Rules~~.

G. ~~22.03~~ Requirements for installment sales: ~~INSTALLMENT SALES.~~

~~(a)~~ 1. The cemetery company must retain accounts receivable records on all contracts not yet paid in full. The records must be maintained on contracts where the cemetery company receives installment directly as discounted contracts. All accounts must be posted currently (at least once a month), either by the cemetery company or the bank, financial institution, or other person discounting the note.

~~(b)~~ 2. Prior to discounting sales contracts with a bank or other financial institution, a cemetery company must verify that the institution will provide the cemetery company with monthly statements showing the status of each discounted note. Such monthly status reports must be maintained in the cemetery file.

~~(c)~~ 3. If the sales contracts provide for installment payments which include interest, credit life insurance, or similar items, the cemetery must comply with all applicable ~~F~~federal and ~~S~~state regulations.

H. ~~22.04~~ ~~DEEDS.~~ Instruments of conveyance required.

~~(a)~~ 1. Each cemetery company shall issue deeds, certificates, or some other instrument of conveyance, and maintain a record, such as a deed book, of all ~~deeds~~ instruments issued ~~(deed record book) as set forth in section 20-17-1019(a)&(c) of the Act~~.

~~(b)~~ 2. All ~~deeds~~ instruments of conveyance must be prenumbered and either the stubs of the ~~deeds~~ instruments or a ~~deed~~ record book shall be kept which reflects ~~ing~~:

~~(1)~~ a. a corresponding contract number~~.~~;

~~(2)~~ b. the name of the purchaser~~.~~; ~~and~~

c. the date and amount of deposit to the ~~T~~trust ~~F~~fund~~.~~; and

d. that the deed or other instrument of conveyance was executed and made available to the owner within forty-five (45) days after final payment is received, or payment is made in full.

~~(3)~~

I. ~~22.05~~ ~~CEMETERY MAP.~~ The cemetery company must continuously maintain ~~on a current basis~~ a cemetery map, plot plan, or comparable record, either in paper or electronic format, reflecting all interments, lots paid-in-full, and lots under contract but not yet fully paid.

J. ~~22.06~~ ~~RULES AND REGULATIONS GOVERNING CEMETERY CARE AND MAINTENANCE.~~ The cemetery company must have its current rules and regulations providing for the general care and maintenance of the cemetery ~~in accordance with sections 20-17-1008(b)(3)(D) and 20-17-1013(f) of the Act~~ on file at the cemetery for the use of the public.

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K. 22.07 CEMETERY PLANS FOR CARE AND MAINTENANCE OF CEMETERY

Each cemetery company shall file with the Board a copy of the rules and regulations, and any changes thereto, providing the general care and maintenance of the cemetery. The rules and regulations shall be filed within forty-five (45) calendar days after adoption by the cemetery company.

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L.22.08 RETENTION OF RECORDS. Records required for deeds or other instruments of conveyance, contracts, and plot maps must be kept indefinitely. All other books and records must be kept for at least five (5) years.

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(a) Records may be kept in an electronic format that is convertible into legible, tangible documents, provided that the means to examine such records is acceptable to the Board, is available at the office of the cemetery, and the hardware and software needed to access the records is maintained during the retention period.

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(1) The cemetery company shall file with the Board a copy of a plan for electronic recordkeeping within forty-five (45) calendar days after adoption by the cemetery company.

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(2) Cemetery companies shall implement the following security processes

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A. Provide an appropriate level of security to ensure the integrity of the records. Security controls should include, at a minimum, physical and logical access controls, backup and recovery procedures, and training for custodians and users.

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B. Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

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C. Substantiate that security procedures prevent unauthorized addition, modification, or deletion of a record and ensure systems are protected against such problems as power interruptions.

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D. Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage media, and the official retention requirements.

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(b) All records shall be available for inspection and copying at the expense of the cemetery company upon request by the Board or its delegates.

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(c) All records required to be maintained shall be secured against unauthorized access and damage.

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Section 15. Annual Report of Cemetery Company

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RULE 23. ANNUAL REPORT OF CEMETERY COMPANY.

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A. 23.01 FEES

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~~(a)~~ 1. The fee for filing an annual report ~~shall be as set forth in Section 20-17-1023(a) of the Act~~ is three hundred twenty-five dollars ($325).

2. The burial sale contract fee ~~shall be as set forth in section 20-17-1024(b) of the Act~~ is seven dollars ($7) for each burial sale contract entered into.

~~(b) 23.02 Reserved.~~

~~23.03 INCOME STATEMENT. The annual report of the cemetery company shall include an income statement for the previous calendar year prepared according to the generally accepted accounting principles.~~

~~RULE 24. [RESERVED].~~

~~RULE 25. PROTECTION OF CEMETERIES – POWER TO LEND.~~

~~[RESERVED]~~

~~RULE 26. ANNUAL PERMIT FEE.~~

~~[RESERVED]~~

~~RULE 27 DUTIES OF THE STATE SECURITIES DEPARTMENT.~~

~~[RESERVED]~~

~~RULE 28 CONTRACTS WITH MUNICIPALITIES OR COUNTY WHERE A CEMETERY IS LOCATED.~~

~~[RESERVED]~~

~~RULE 29. CEMETERY ADVISORY BOARDS – MEMBERSHIP – ORGANIZATION – AUTHORITY.~~

~~[RESERVED]~~

~~RULE 30. INSOLVENT CEMETERY GRANT FUND RULES.~~

~~RULE 31.01 PURPOSE~~

~~It is the purpose of this rule to formalize a process and set reasonable guidelines to make assistance available to address the care, maintenance, and operation of an insolvent perpetual care cemetery and more specifically, to establish standards for distributing available Grant Funds administered by the Arkansas Cemetery Board.~~

Section 16. Insolvent Cemetery Grant Funds

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A. An organization is eligible to receive insolvent cemetery grant funds if the organization operates a perpetual care cemetery that is insolvent or is in financial distress as determined by the Board.

B. An eligible organization includes a nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

C. ~~**RULE 30.02 APPLICATION FORM.**~~ Application for grant funds

~~(a)~~ 1. An application for insolvent cemetery grant funds, or an application to make a change in an approved grant application, ~~filed pursuant to section 20-17-1306 of the Grant Fund Act~~ need not be in any specific form, but must be made in writing and signed in the presence of a notary. The original application shall be accompanied by ~~no less than ten (10) copies~~ one (1) copy.

~~(b)~~ 2. The application shall contain ~~at a minimum~~ the following information:

~~(1)~~ a. Name of applicant.

~~(i)~~ b. Documentation demonstrating that ~~T~~the applicant ~~must demonstrate that it~~ meets the eligibility requirements ~~of the Grant Fund Act~~.

~~(ii)~~ c. Documentation demonstrating that ~~T~~the applicant ~~must demonstrate that it~~ is in good standing with all applicable federal, state, and local agencies that govern the applicant.

~~(2)~~ d. The ~~N~~name of the individual or individuals principally responsible for the care, maintenance, and operation of the insolvent cemetery.

~~(i)~~ The ~~is~~ individual(s) must be primarily responsible for the ~~non-profit~~ company that controls the cemetery, and has the authority to bind the ~~non-profit~~ company.

~~(ii)~~ The ~~is~~ individual(s) will be held responsible to complete the required reports to the Board, if the grant application is approved.

~~(3)~~ e. Amount requested by applicant.

~~(4)~~ f. A project synopsis for the use of the grant fund monies, which shall include:

~~(i)~~ (1) The specific use of the funds;

~~(ii)~~ (2) An itemized list of specific needs to be addressed;

~~(iii)~~ (3) Projected costs for each item; and

~~(iv)~~ (4) A detailed plan for implementing and completing the project.

~~(5)~~ g. The goals and objectives of the project.

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~~(6)~~ h. The duration of the project.

~~(7)~~ i. Implementation timeline for use of the funds;

~~(8)~~ j. A budget summary containing a detailed summary of the proposed budget and information of other financial resources utilized.

~~(9)~~ k. The policy and procedures of the applicant detailing the administration and oversight of the funds.

~~(c)~~ 3. The Board ~~reserves the right to~~ may request additional information as needed for evaluation of the request for funds.

~~(d)~~ 4. ~~Date of Filing.~~ Applications must be filed with the Board at least twenty (20) calendar days prior to the ~~Board~~ meeting at which the grant application is to be considered.

~~**RULE 30.03 POWERS AND DUTIES OF THE CEMETERY BOARD**~~

~~(a)~~ D. Criteria for grant applications and awards:~~.~~

~~(1)~~ 1. The applicant must demonstrate to the Board that it has the resources available to ensure that the ~~proposed use of the funds occurs~~ funds are used as proposed.

~~(2)~~ 2. The Board ~~reserves the right to~~ may determine funding priorities and amounts based on the overall needs of an insolvent cemetery.

~~(b)~~ E. Oversight for all grant expenditures~~.~~:

~~(1) At the time of the grant application, the applicant must demonstrate to the Board that the applicant has sufficient mechanisms in place to ensure the grant expenditures are used for their intended purpose.~~

~~(2)~~ 1. The applicant shall appoint an institutional custodian of the grant fund monies.

~~(3)~~ 2. The applicant shall ~~satisfy~~ provide documentation ~~the Board~~ that it has obtained all applicable federal, state, and local permits required to disburse any granted funds.

~~(4)~~ 3. A copy of the original application, and all project expenditures with invoices attached ~~will~~ shall remain on ~~the books and records of~~ file at the cemetery.

~~(c)~~ F. ~~Criteria for reporting and maintaining all grant moneys and expenditures~~Reporting and recordkeeping requirements~~.~~:

~~(1)~~ 1. Recipients shall submit timely quarterly reports of the progress of the project, end of the year financial reports, and a final report when the project is completed ~~or work on the project~~.

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~~(2)~~ 2. The grant fund recipient shall submit in writing, any request for changes of the approved project.

~~(3)~~ 3. The books and records~~keeping~~ shall comply with ~~the~~ generally accepted accounting principles.

~~(d)~~ G. ~~Criteria for the review of grant awards and expenditure to prevent misuse or abuse of grant money.~~Board monitoring of use of grant funds and records;

~~(1)~~ 1. The Board will monitor ~~P~~projects ~~will be monitored~~ through site visits, review of ~~required~~ project reports, and ~~fiscal~~ review of the company's financial records related to the project (s).

~~(2)~~ 2. The Board shall annually ~~An~~ examine ~~ation of~~ the books and records of the grant fund recipient ~~shall be reviewed annually~~ to determine compliance ~~with the Grant Fund Act~~.

~~(i)~~ 3. The examination shall include, but not be limited to:

~~(A)~~ a. Review of the books and records of the grant fund money;

~~(B)~~ b. Review of the expense reports, invoices, ~~and~~ receipts, and bank statements; and

~~(C)~~ c. Review of the projects detailed in the application to ensure compliance with the project summary as described in the application.

~~(ii)~~ 4. A report of the examination shall be submitted to the Board ~~after completion of the examination report~~.

~~(3) Conflict of Interest.~~
~~(i) No Board member or employee of a Board member, for the purpose of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of with the grant fund recipient, or the Board in connection with the grant fund program.~~

~~(ii) It shall not be a conflict of interest for the Board to permit any cemetery with which a Board member is affiliated to participate in the grant fund program provided that such Board member shall promptly disclose the nature of the affiliation to the Board.~~

~~RULE 30.04 REPORTS~~

~~(a) Quarterly Reports.~~

~~(1)~~ H. Grant fund recipients shall submit ~~The~~ quarterly reports. The reports are due ~~thirty (30)~~ forty-five (45) calendar days from the end of each calendar quarter.

~~(2)~~ I. The ~~quarterly~~ reports shall include:

~~(A)~~ 1. financial statements in accordance with generally accepted accounting principles;

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~~(B)~~ 2. expense reports; and

~~(C)~~ 3. project status reports.

~~(3)~~ J. Failure to submit timely quarterly or end of year reports shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.

~~(b)~~ K. End of the year ~~R~~reports.

~~(1)~~ 1. The ~~end of the year~~ reports shall be due ~~sixty (60)~~ forty-five (45) calendar days from the end of the calendar year. The report shall contain:

~~(A)~~ a. financial statements;

~~(B)~~ b. project summary statements;

~~(C)~~ c. proof of expenditures from the grant award, including but not limited to:

~~(i)~~ (1) expense itemization for each grant;

~~(ii)~~ (2) date of purchase of items or services;

~~(iii)~~ (3) items or services purchased;

~~(iv)~~ (4) vendor;

~~(v)~~ (5) purchase price; and

~~(vi)~~ (6) invoice or purchase order number.

~~(2)~~ (7) ~~E~~estimated completion dates of the on-going project(s).

~~(3) Failure to submit an end of the year report shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.~~

~~(c)~~ L. Final report. ~~Project Summary.~~

~~(1)~~ 1. Upon completion of a project the recipient shall ~~supply the Board with a copy of a~~ file a final report with the Board.

~~(2)~~ 2. The final report shall contain~~:~~ financial statements, expense reports, and proof of completion of the project.

~~(A) Financial statements;~~

~~(B) Expense reports; and~~

~~(C) Proof of completion of the project.~~

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~~(d)~~ M. ~~Tax Returns.~~ ~~The~~ Grant Fund recipients shall provide ~~to~~ the Board a with copy of the recipient's federal and state tax returns within thirty (30) calendar days after submission of the federal and state tax returns.

~~(e) Failure to submit timely reports shall provide grounds for the Board to withhold disbursement of grant funds for subsequent grant requests.~~

~~RULE 30.05 USE OF GRANT AWARDS:~~

N. Funds are to be used to make infrastructure repairs and capital improvements as defined in Board Rule 2. ~~The applicant shall use the grant fund money solely for the purpose described in the grant fund application. Failure to comply with these guidelines will result in a permanent bar of the insolvent cemetery from receiving grant fund money from the Board.~~

Section 17. Effective Date

This rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

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