

1 **BEFORE THE NEVADA STATE BOARD OF**
2 **FUNERAL AND CEMETERY SERVICES**

3 IN THE MATTER OF

Case No: FB16-03

4 BUNKERS MEMORY GARDENS
5 CEMETERY

6 Cemetery Certificate No. CEM30

7 Respondent.

8 **CONSENT DECREE**

9 The State of Nevada Board of Funeral and Cemetery Services ("BOARD") having
10 jurisdiction over certificate holder Bunker Memory Gardens Cemetery ("BMGC"), pursuant to
11 SB 286, Section 44; a complaint against said certificate holder alleging violations of the
12 Nevada statutes and regulations controlling the operation of cemeteries; and the parties being
13 mutually desirous of settling the controversy between them relative to the pending complaint;

14 IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this
15 matter shall be settled and resolved upon the following terms:

16 **VOLUNTARY WAIVER OF RIGHTS**

17 BMGC is aware of, understands, and has been advised of the effect of this Consent
18 Decree, which it has carefully read and fully acknowledged. BMGC has had the opportunity to
19 consult with competent counsel of its choice.

20 BMGC has freely and voluntarily entered into this Consent Decree, and is aware of its
21 rights to contest the charges pending against the cemetery. These rights include
22 representation by an attorney at its own expense, the right to file an answer in response to a
23 formal complaint, the right to a public hearing on any charges or allegations formally filed, the
24 right to confront and cross-examine witnesses called to testify against it, the right to present
25 evidence on its own behalf, the right to testify on its own behalf, the right to receive written
26 findings of fact and conclusions of law supporting the decision on the merits of the complaint,
27 and the right to obtain judicial review of the decision. All of these rights are being voluntarily
28 waived by BMGC in exchange for the BOARD'S acceptance of this Consent Decree.

1 If the Consent Decree is not accepted by the BOARD, no member of the BOARD will
2 be disqualified from further hearing of this matter, by reason of his or her consideration of the
3 Consent Decree and BMGC hereby waives any claim of bias or prejudice based upon said
4 consideration by any member of the BOARD in any subsequent disciplinary hearing
5 conducted by the BOARD.

6 **JURISDICTION**

7 BMGC acknowledges that the BOARD has jurisdiction over it and the conduct alleged
8 in the Complaint. BMGC acknowledges that the BOARD has the legal power and authority to
9 take disciplinary action, including, but not limited to, the revocation of its permit to operate a
10 cemetery in Nevada.

11 BMGC acknowledges that the BOARD will retain jurisdiction over this matter until all
12 terms and conditions set forth in this Consent Decree have been met to the satisfaction of the
13 BOARD.

14 **PUBLICATION OF CONSENT DECREE**

15 BMGC acknowledges that at the time this Consent Decree becomes effective, it also
16 becomes a public document and will be reported to the State of Nevada, Legislative Council
17 Bureau, Disciplinary Action Reporting System; and such other national databases as required
18 by law. It is also understood that any meeting during which the BOARD considers and
19 accepts or rejects this Consent Decree is open to the public and that the minutes of the
20 BOARD meeting are a public document, available for inspection by any person so requesting.

21 **INDEMNIFICATION**

22 BMGC, for itself, its heirs, executors, administrators, successors and assigns, hereby
23 indemnifies and holds harmless the State of Nevada, the BOARD, the Nevada Attorney
24 General's office and each of their members, agents and employees in their individual and
25 representative capacities against any and all claims, suits, demands, actions, debts,
26 damages, costs, charges, and expenses, including court costs and attorney's fees against any
27 persons, entities, as well as all liability, losses, and damages of any nature whatsoever that
28 the persons and entities named in this paragraph shall have or may at any time sustain or

1 suffer by reason of this investigation, this disciplinary action, this settlement or its
2 administration of the administrative fine and legal and investigation fees.

3 **STIPULATED FACTS AND CONCLUSIONS OF LAW**

4 BMGC understands the nature of the allegations under consideration by the BOARD.
5 It acknowledges that the conduct alleged in the Complaint, if proven, could constitute
6 violations of the Nevada Board of Funeral and Cemetery Services Practice Act (NRS and
7 NAC 642) and NRS Chapter 452. It further recognizes that if this matter were to be taken to a
8 disciplinary hearing before the BOARD, there is likelihood that the following allegations could
9 be proven as true, and that as a result it would be subject to disciplinary action by the
10 BOARD. As such, BMGC does not contest the following allegations:

11 1. BMGC held a valid certificate to operate a cemetery on the date of the alleged
12 violations and continues to hold a valid certificate through the present day.

13 2. The BOARD received a letter on February 18, 2016, indicating BMGC may be in
14 violation of the statutes and regulations under the purview of the BOARD.

15 3. It is alleged that the cemetery grounds are not being properly maintained and
16 that there is a severe gopher problem which has resulted in many dirt mounds throughout the
17 cemetery grounds some of which were completely or partially covering headstones.

18 4. It is further alleged that the majority of grave markers and headstones are not
19 properly aligned and that many of the flat grave markers are sinking.

20 5. NRS 452.030 states that the cemetery authority shall keep the cemetery in an
21 orderly condition.

22 6. That pursuant to SB 286, Section 44:

23 The following acts are grounds for which the Board may take
24 disciplinary action against any person who holds a license, permit
25 or certificate issued by the Board pursuant to this chapter or
chapter 451 or 452 of NRS, or may refuse to issue such a license,
permit or certificate to an applicant therefor:

- 26 1. Conviction of a crime involving moral turpitude.
27 2. Unprofessional conduct.
28 3. False or misleading advertising.
4. Conviction of a felony relating to the practice of funeral
directors or funeral arrangers.

1 5. Conviction of a misdemeanor that is related directly to the
2 business of a funeral establishment, direct cremation facility, cemetery
or crematory.

3 7. That pursuant to SB 286, Section 45:

4 1. If the Board determines that a person who holds a license, permit
5 or certificate issued by the Board pursuant to this chapter or chapter
6 451 or 452 of NRS has committed any of the acts set forth in NRS
642.470, the Board may:

- 7 (a) Refuse to renew the license permit or certificate;
8 (b) Revoke the license, permit or certificate;
9 (c) Suspend the license, permit or certificate for a definite
10 period or until further order of the Board;
11 (d) Impose a fine of not more than \$5,000 for each act that
12 constitutes a ground for disciplinary action;
13 (e) Place the person on probation for a definite period subject
14 to any reasonable conditions imposed by the Board;
15 (f) Administer a public reprimand; or
16 (g) Impose any combination of disciplinary actions set forth in
17 paragraphs (a) to (f), inclusive.

18 2. The Board shall not administer a private reprimand.

19 3. An order that imposes discipline and the findings of fact and
20 conclusions of law supporting that order are public records.

21 8. BMGC does not contest the allegations and acknowledges that as a
22 consequence it is subject to discipline pursuant to the above charges and statutory provisions.

23 9. BMGC enters this agreement to resolve this dispute, but does so without
24 admitting to liability or fault to the Board or any other persons regarding any allegations listed
25 in the Consent Decree. The parties agree that this consent decree is inadmissible as
26 evidence in a court of law to prove liability or fault.

27 **STIPULATED ADJUDICATION**

28 BMGC stipulates that pursuant to the authority of SB 286, Section 45, its cemetery
certificate number CEM30 shall be placed on probation for one (1) year and subject to a public
reprimand. During the term of probation, BMGC agrees to comply with the following
conditions:

1. Within thirty (30) days of the approval and execution of this Consent Decree,
BMGC shall pay one thousand four hundred and sixty two dollars (\$1,462.00) in legal and

1 investigative fees, and one thousand five hundred dollars (\$1,500.00) in administrative fines.

2 a. No grace period is permitted. Full payment not actually received by the
3 BOARD on or before the thirty days as indicated above, shall be construed as an event of
4 default by BMGC.

5 b. In the event of default, BMGC agrees that its certificate shall be
6 immediately suspended. The suspension of BMGC's permit shall continue until the unpaid
7 balance is paid in full and the suspension is subject to being reported to all appropriate
8 agencies.

9 c. BMGC acknowledges that the BOARD has the legal power and authority
10 to take action against it, including instituting debt collection actions for unpaid monetary
11 assessments in this case.

12 2. BMGC must submit to quarterly inspections during the probationary period
13 regarding the issues addressed in this Consent Decree – gopher holes and covered, mis-
14 aligned and/or unlevelled headstones. If during the inspection, an aspect of the cemetery is
15 determined to not be in an orderly condition as to gopher holes or headstones, the inspector
16 shall give BMGC specific notice (i.e., pictures or detailed description of the disorderly
17 condition and its location), and BMGC shall cure this condition in a reasonably, commercially
18 feasible time period and shall provide evidence (i.e., pictures) of the remedied condition.

19 3. BMGC shall raise/realign on average fifty (50) headstones per week during the
20 term of probation.

21 4. BMGC personnel shall drive the grounds on a daily basis to ensure that any dirt
22 mounds created by gophers are not covering any headstone. In the event that covered
23 headstones are identified during these drives, BMGC has forty-eight (48) hours to cure.

24 5. BMGC shall maintain active gopher traps throughout the grounds sufficient
25 enough to control of the gopher infestation.

26 6. BMGC shall obey all federal, state and local laws, and orders of the BOARD,
27 which are not inconsistent with this Consent Decree, pertaining to the operation of a cemetery
28 in this State. From the date of execution of this Consent Decree until BMGC satisfies the

1 payment requirements of subsection 1 of this Stipulated Adjudication section, BMGC shall
2 report any and all violations to the BOARD in writing within seventy-two (72) hours.

3 7. BMGC agrees that it will be financially responsible for all requirements of this
4 Consent Decree, including the cost of any reasonable financial assessments by the BOARD
5 for the cost of monitoring its compliance or carrying out the provisions of this Consent Decree
6 upon a determination of non-compliance with the provisions of this Consent Decree. The
7 BOARD will provide BMGC an itemized accounting of costs it believes BMGC will be
8 financially responsible. BMGC retains the right to challenge the reasonableness of itemized
9 costs.

10 8. BMGC will be placed on probation for one year from the date this Consent
11 Decree becomes effective. Sixty (60) days before the end of BMGC's probation, BMGC shall
12 submit a written report to the BOARD outlining its compliance with the Consent Decree. After
13 receiving BMGC's report, the Chair of the BOARD or his/her designee, the Executive Director
14 and the BOARD counsel may request to meet with BMGC's legal owner/representative and/or
15 request additional information. Unless the BOARD initiates any additional investigation or
16 orders an additional probationary period, BMGC's probation will automatically be terminated
17 after one (1) year from the effective date of the Consent Decree and BMGC's cemetery
18 certificate fully reinstated.

19 VIOLATION OF TERMS OF CONSENT DECREE

20 BMGC understands that the BOARD may, upon thirty (30) days' notice to BMGC,
21 convene a hearing for the limited purpose of establishing that it violated the terms of this
22 Consent Decree. If such a hearing results in a finding of a violation of this Consent Decree,
23 the BOARD may impose any penalty upon BMGC authorized by SB 286 including, but not
24 limited to, revocation of its certificate to operate a cemetery in the State of Nevada.

25 BMGC agrees to waive its right to appeal the substantive legal basis of the original
26 disciplinary action, which is the basis for this Consent Decree. BMGC does not waive its right
27 to appeal alleged violations regarding subsequent inspections or hearings to enforce the
28 Consent Decree. In the event an alleged violation of the Consent Decree is taken to hearing

1 and the facts which constitute the violation are determined to be not proven, no disciplinary
2 action shall be taken by the BOARD.

3 **ACCEPTANCE BY THE BOARD**


4 This Consent Decree will be presented and accepted by the BOARD with a
5 recommendation for approval from the Attorney General's Office at its next meeting.


7 **COMPLETE CONSENT DECREE**

8 This Consent Decree embodies the entire agreement between the BOARD and BMGC.
9 It may not be altered, amended, or modified without the express written consent of the parties.

10 DATED this 14 day of June, 2016.

DATED this 8TH day of JUNE, 2016.

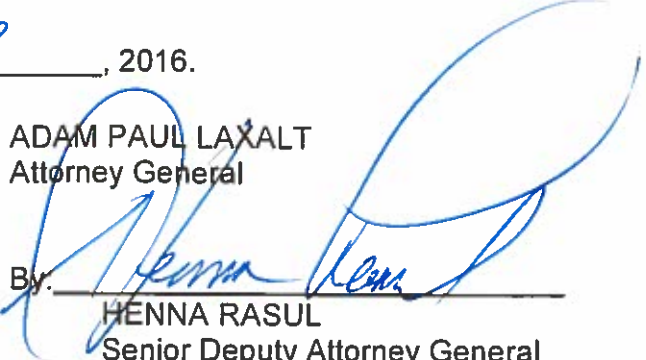
11 By: 
12 Carl B. Brink, Treasurer
13 Carriage Cemetery Services, Inc.
14 Bunkers Memory Gardens Cemetery
Certificate No. CEM30

By: 
CHAD R. FEARS, Esq.
Snell & Wilmer
3883 Howard Hughes Pkwy, Ste. 1100
Las Vegas, Nevada 89169
(702) 784-5258
Attorney for Respondent

16 The foregoing Consent Decree between BMGC and the STATE OF NEVADA
17 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-03 is approved as to
18 form and content.

19 DATED this 9 day of June, 2016.

20 ADAM PAUL LAXALT
21 Attorney General

22 By: 
23 HENNA RASUL
24 Senior Deputy Attorney General
25 100 N. Carson Street
26 Carson City, Nevada 89701
27 (775) 684-1234
28 Counsel to the State of Nevada
Board of Funeral and Cemetery
Services

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ORDER

By a majority vote on the 14th day of June, 2016, the State of Nevada Board of Funeral and Cemetery Services approved and adopted the terms and conditions set forth in the attached Consent Decree with BMGC, Certificate No. CEM30.

IT IS HEREBY ORDERED AND MADE EFFECTIVE.

DATED this 14th day of June, 2016.

By: Wayne G. Fazzino
Wayne Fazzino, Chair
Board of Funeral and Cemetery Services

