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Regulated Industries Complaints Office  
Department of Commerce and Consumer Affairs  
State of Hawaii  
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235 South Beretania Street, Suite 900  
Honolulu, Hawaii 96813  
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DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2010 DEC 23 A 10 12

HEARINGS OFFICE

Attorney for Department of Commerce  
and Consumer Affairs

CEMETERY AND FUNERAL TRUSTS PROGRAM  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Pre-Need Funeral Authority License of ) CEM 2008-3-L  
)  
) SETTLEMENT AGREEMENT PRIOR TO  
BALLARD MORTUARY, INC., ) FILING OF PETITION FOR DISCIPLINARY  
) ACTION AND DIRECTOR'S FINAL ORDER  
)  
Respondent. )

242092407

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION  
FOR DISCIPLINARY ACTION AND DIRECTOR'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'  
REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),  
through its undersigned attorney, and Respondent BALLARD MORTUARY, INC. (hereinafter  
"Respondent"), enter into this Settlement Agreement on the terms and conditions set forth  
below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent was licensed by the CEMETERY AND  
FUNERAL TRUSTS PROGRAM (hereinafter the "Program") as a Pre-Need Funeral Authority  
under License Number PNF 18. The license was issued on or about January 29, 1997. The  
license will expire on or about December 31, 2011.

2. Respondent's mailing address for purposes of this action is c/o J. George Hetherington, Esq., Torkildson Katz Moore Hetherington & Harris, 700 Bishop Street, 15<sup>th</sup> Floor, Honolulu, Hawaii 96813.

3. RICO received information alleging Respondent obtained a term loan from the Ballard Mortuary Pre-Need Funeral and Pre-Need Internment Trust without first submitting a formal, written application.

4. RICO alleges that Respondent obtained a term loan from the Ballard Mortuary Pre-Need Funeral and Pre-Need Internment Trust without first submitting a formal, written application.

5. The foregoing allegations, if proven at an administrative hearing before the Program, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 441-23(3) (violation of chapter or rules) and Hawaii Administrative Rules ("HAR") § 16-75-44(c) (written application and written approval of trustee required for loans).

6. The Program has jurisdiction over the subject matter herein and over the parties hereto.

7. A copy of the executed Settlement Agreement has been provided to the Department of the Attorney General.

**B. REPRESENTATIONS BY RESPONDENT:**

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and is represented in this matter by J. George Hetherington, Esq., Torkildson Katz Moore Hetherington & Harris, 700 Bishop Street, 15<sup>th</sup> Floor, Honolulu, Hawaii 96813.

2. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondent is aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a pre-need funeral authority by the Program acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's license. Respondent additionally states the Trustee fully participated in both the application and approval process for the loan in question; that loan documents were reviewed by legal counsel acting on behalf of Respondent; and that complete loan documents, along with contemporaneous Audited Financial Statements, have been provided to the Program.

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. CEM 2008-3-L.

8. Respondent understands this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.

C. TERMS OF SETTLEMENT:

1. Written application required. Without admitting liability or wrongdoing, Respondent agrees to comply with the law relating to loans from trusts, including the requirement for written applications for lines of credit and loans.
2. Administrative costs. Respondent agrees to pay administrative costs in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Daria A. Loy-Goto, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. Payment of administrative costs shall be due at the time this fully executed Settlement Agreement is returned to RICO.
3. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 and C.2 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Program attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the license to the Executive Officer of the Program within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Program for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.
4. Possible further sanction. The Program, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Program

may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of pre-need funeral authorities in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

5. Approval of the Program. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.6, C.7, C.8 and C.9 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Program.

6. No Objection if the Program Fails to Approve. If the Program does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Program's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Program's proceeding against Respondent on the basis that the Program has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

7. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

8. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or

promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

9. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Wailuku, Hawaii, 12/17/2010  
(CITY) (STATE) (DATE)

BALLARD MORTUARY, INC.

By: [Signature]  
Its President

DEC 23 2010

DATED: Honolulu, Hawaii, \_\_\_\_\_

[Signature]  
DARIA A. LOY-GOTO  
Attorney for Department of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

[Signature]  
J. GEORGE HETHERINGTON  
Attorney for Respondent

IN THE MATTER OF THE PRE-NEED FUNERAL AUTHORITY LICENSE OF BALLARD  
MORTUARY, INC.; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR  
DISCIPLINARY ACTION AND DIRECTOR'S FINAL ORDER; CASE NO. CEM 2008-3-L

APPROVED AND SO ORDERED:  
CEMETERY AND FUNERAL TRUSTS PROGRAM  
STATE OF HAWAII



\_\_\_\_\_  
Director of the Department of Commerce  
and Consumer Affairs

DEC 29 2010

\_\_\_\_\_  
DATE

STATE OF Hawaii )  
 ) SS.  
COUNTY OF Maui )

On this 17<sup>th</sup> day of December, 2010, before me personally appeared Mark Ballard, to me known to be the person described, and who executed the foregoing instrument on behalf of Ballard Mortuary, Inc. as President, and acknowledged that he/she executed the same as his/her free act and deed.



Alice Adams  
Name:  
Notary Public, State of

My Commission expires: 11/14/2014

**ALICE ADAMS**  
My Commission Expires 11/14/2014

Doc. Date: 12/17/10 # Pages: 8  
Alice Adams Second Circuit  
Doc. Description: Settlement  
Agreement  
[Signature] 12/17/10  
Notary Signature Date

**NOTARY CERTIFICATION**

**ALICE ADAMS**  
My Commission Expires 11/14/2014