

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 20TH JUDICIAL DISTRICT
 AT NASHVILLE
 PART III

RECEIVED

JUN - 5 2019

Dav. Co. Chancery Court

STATE OF TENNESSEE,)
ex rel. JULIE MIX MCPEAK, solely in her)
 official capacity as Commissioner of)
 Commerce & Insurance,)
)
 Plaintiff,)
)
 v.)
)
 GALILEE MEMORIAL GARDENS,)
 JM&M SERVICES, INC.,)
 LAMBERT MEMORIAL CO., aka)
 LAMBERT MEMORIALS, INC.)
 LAMBERT & SONS, INC.)
 JEMAR LAMBERT, MARJE LAMBERT,)
 and MARY H. LAMBERT, and ALL)
 PERSONS ACTING IN CONCERT)
 WITH THEM,)
)
 Defendants.)

NIF
 No. 14-102-II(H)

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~~PROPOSED~~ MEMORANDUM AND FINAL ORDER FROM HEARING OF 4/10/2019
 TO DISSOLVE CORPORATION AND ALL BUSINESS ENTITIES IN RECEIVERSHIP; TO
 GRANT RECEIVER EXCLUSIVE TITLE TO THE ORIGINAL CEMETERY PARCEL;
 TO PERMANENTLY ENJOIN DEFENDANTS FROM THE GALILEE CEMETERY
 BUSINESS; AND TO DETERMINE OR BAR CLAIM OF DEFENDANTS

INTRODUCTION

On February 15, 2019, Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance, in her official capacity as Receiver of Galilee Memorial Gardens (and JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc., the related entities through which it conducts its business), through her appointed Special Deputy Receiver, Receivership Management, Inc., filed a "motion to set a hearing date on matters for

resolution – to dissolve the corporation and all business entities in receivership; to grant exclusive title to the original cemetery parcel; to permanently enjoin defendants from the Galilee cemetery business; and to determine or bar claim of defendants.”

In the Order granting the Receiver’s motion to set a hearing,¹ the Court found:

[T]he purpose of this requested hearing is chiefly directed to the rights or claims of the Lambert-associated Defendants (all Defendants named besides “Galilee Memorial Gardens”). The name Galilee Memorial Gardens belongs to the cemetery ground at 8283 Ellis Road, Bartlett, Tennessee, and was used by those conducting its business whether under the Lambert family or their predecessors, and the Court agrees this motion will assist wind-down of the receivership. [The issues and relief requested by the Receiver] are important steps required to end this receivership case because Defendants’ remaining property rights in the cemetery land and assets of its former business need to be determined and finally resolved. Certain orders on the topics of the Motion to Set requested by the Receiver entered before other plans for the cemetery’s future are determined, such as those concerning customers’ burial rights, should yield benefits of flexibility or simplification if the rights of named Defendants can be determined first. . . .

The Order set the matter for an evidentiary hearing on March 25, 2019, and directed the Receiver to present proof on the following topics so that the Court could determine the issues raised by the Receiver: 1) Identification of the Business Entities in Receivership to Be Dissolved; 2) Financial Status of Cemetery and Inclusion of Cemetery’s Monument Business; 3) The Deeds to the Cemetery Parcels; 4) The Basis for the Permanent Injunction Against Defendants’ Operating or Interfering with Galilee Memorial Gardens Cemetery; and 5) The Determination or Bar of Any Claims of Defendants.

Finally, the Order directed the Commissioner, as Petitioner/Receiver, to file and serve on Defendants “on or before March 15, 2019” the witness lists, exhibit lists, and any summary statement of the law to be applied to the proceeding in support of the requested relief. Similarly, the Order directed the Defendants to file “on or before March 20, 2019” their witness lists, exhibit

¹ Receiver’s counsel tendered the proposed order to the Court and served the Defendants on March 7, 2019. The Order was entered by the Court without alteration on March 18, 2019.

lists, and any other written material in response to the topics or relief to be considered. The Order further informed Defendants that March 20, 2019, was the date by which the Defendants were to file notice if they opposed the relief sought by the Receiver or had any intent of participating in the March 25th hearing.

On March 15, 2019, the Receiver complied with the Court's Order and filed her witness and exhibit lists, as well as a list of statutes related to the hearing on corporate dissolution and other matters. The Defendants, however, did not file any witness list, exhibit list, or any other written material by the Court's deadline of March 20, 2019; nor did the Defendants notify the Court of any opposition to the relief sought by the Receiver or any intent to participate in the March 25th hearing.

On March 21, 2019, the Receiver filed a motion to continue the hearing, which the Court granted that same day. The Court entered an Order that reset the hearing for April 10, 2019, and directed counsel for the Receiver to send a copy of the Order to the individual Defendants by overnight courier to ensure that they received notice of the Court's action as quickly as possible.

On April 10, 2019, the Court conducted the Receiver's requested evidentiary hearing. Appearing before the Court were Sarah A. Hiestand and C. Scott Jackson of the Tennessee Attorney General's Office, who represent the Petitioner/Plaintiff Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance, in her official capacity as Receiver of Galilee Memorial Gardens (and JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc., the related entities through which it conducts its business).² Robert E. Moore, Jr., President of Receivership Management, Inc., Special Deputy

² The Commissioner, besides being the statutory Receiver, acts as Plaintiff for purposes of seeking other and permanent relief on behalf of the State consistent with this proceeding.

Receiver, was also present. The Defendants did not appear at the hearing nor did they make any responsive filings before the hearing.

The Court heard testimony of five witnesses for the Plaintiff/Petitioner:

1. **Lauren A. Lamberth**, Senior Assistant Attorney General, Bankruptcy Division, Tennessee Attorney General's Office
2. **Robert Gribble**, Executive Director for the Board of Funeral Directors and Embalmers and the Burial Services Section, Regulatory Boards Division (Burial Services Section) Tennessee Department of Commerce and Insurance
3. **Mark K. Green**, Deputy General Counsel, Regulatory Boards & Consumer Affairs, Tennessee Department of Commerce and Insurance
4. **Carol Allsup**, Paralegal, Burch, Porter & Johnson, Special Counsel to the Receiver
5. **Robert E. Moore, Jr.**, of Receivership Management, Inc., Special Deputy Receiver

All of the witnesses serve (or have served) in roles connected with the prior regulation or ongoing receivership of Galilee Memorial Gardens on behalf of the State. All of these witnesses rendered testimony that this Court accredits and finds eminently credible and competent, based on these witnesses' personal knowledge and experience in the scope of their professional duties or employment. Plaintiff introduced forty-one exhibits through these five witnesses. The witnesses' personal knowledge supported the admission of all forty-one exhibits that were proffered and explained within their testimony.

The hearing was transcribed by a court reporter and filed with the Court on May 3, 2019, as the record of this evidentiary proceeding. Citations to the April 10, 2019 Transcript will be (TR), and citations to the forty-one exhibits that were admitted into evidence will be by (EX #).

HISTORY OF CASE AND BACKGROUND FROM THE RECORD

The five topics considered by the Court at the April 10, 2019 hearing were not presented in a vacuum. The record and orders previously on file in this case necessarily direct this proceeding to a great degree. Further, the Receiver's prior thirteen Interim Reports on the status of the cemetery, its lack of assets, and the progress of the receivership form the background of the Court's understanding of the conditions of Galilee Memorial Gardens. This proceeding continues the wind-down of the cemetery established by the Order after Status Conference (Aug. 30, 2016), and follows motions and filings about the status of the grounds and the proper disposition of the personal property of the cemetery.

Portions of the record are referenced when necessary to provide background for the proof requested by the Court for each topic addressed at the April 10, 2019 hearing.

TOPIC #1

IDENTIFICATION OF BUSINESS ENTITIES IN RECEIVERSHIP TO BE DISSOLVED

The Verified Petition that commenced this action in 2014 identified those persons and entities that the Department of Commerce and Insurance, through its Burial Services Section, had determined were operating the cemetery business at the location of Galilee Memorial Gardens cemetery as unregistered owners, following the expiration of the registration held by Jesse Lambert who died in May 2010. The Defendants were identified in the Verified Petition and in the caption of this matter as an open set, including apparent companies and individuals connected with Galilee Memorial Gardens cemetery. The Defendants were identified as Jemar Lambert, Marje Lambert and Mary H. Lambert (hereinafter collectively "Individual Lambert Defendants") and included the then-identified corporate or business entity names in which the ownership and/or operation of Galilee Memorial Gardens cemetery was apparently being conducted, transacted or held by the

three Individual Lambert Defendants. In order to create an effective receivership over the property and business of the cemetery and to obtain injunctive relief required to bring this cemetery's operations to a halt, the Commissioner broadly identified the Defendants and affected persons.

The Order of Receivership identified the named party Defendants and their relation to the cemetery business and the ownership of the cemetery land as follows:

5. Defendant Galilee Memorial Gardens (Galilee) is a cemetery that is located at 8283 Ellis Road, Memphis, TN, 38133, in Bartlett, TN. It was established and opened in 1960.³ Until December 31, 2010, Galilee operated under a valid certificate of registration issued by the Commissioner's predecessors.

6. Defendant JM&M Services, Inc. (JM&M) is a Tennessee corporation that does business under the name of "Galilee Memorial Gardens" and is identified on applications for certification of registration as the owner of Galilee. Its principal office is located at 8283 Ellis Road, Memphis, TN, 38133. Jemar Lambert is its registered agent for service of process.

7. Defendant Jemar Lambert is an adult resident of Shelby County Tennessee, and the president and chairman of the board of JM&M and owns 33% of its stock. Defendant Marje Lambert is an adult resident of Shelby County, Tennessee, a member of the board of directors of JM&M and owns 33% of its stock. Defendant Mary H. Lambert is an adult resident of Shelby County, Tennessee, a member of the board of directors of JM&M and owns the remainder of its stock. The business address listed on applications with the Commissioner for Jemar Lambert, Marje Lambert and Mary H. Lambert is 8283 Ellis Road, Memphis, TN, 38133.

8. Defendants named as "Lambert Memorial Co.," "Lambert Memorials Inc." and "Lambert & Sons, Inc." are all business names that have appeared on one or more bank accounts that have been used by Jemar Lambert in connection with the operation of Galilee. Defendants assert that the Court has not yet determined the extent to which a monument and merchandise business that may have been conducted under these names is separate from the Cemetery operation, and this inquiry is to be made expeditiously by the Commissioner as Receiver.

9. Galilee has been owned and operated by one or more members of the Lambert family since February 1993. Jesse Lambert, through Lambert Memorials, Inc., purchased the cemetery from the estate of Ellis Road Gardens, Inc. When Jesse Lambert died on May 15, 2010, ownership of Galilee passed to his family members, Defendants Jemar, Marje and Mary H. Lambert. The certificate of

³ Records uncovered by the receiver after commencement of this action reflect that the cemetery opened in 1956. (Ninth Report, Ex. I, 2015 interment database).

registration that was issued for the operation of Galilee expired on December 31, 2010.

The Order of Receivership appointed the Commissioner as Receiver in her official capacity, and with her successors in office, of the Defendant Galilee Memorial Gardens and of all entities doing business as the Cemetery. (Order of Receivership, p. 6-7). The particular entities doing business as the cemetery identified at that time were more specifically spelled out in Paragraph A that ordered:

A. That Julie Mix McPeak, Commissioner of the Tennessee Department of Commerce and Insurance, is appointed in her official capacity, and with her successors in office, as statutory Receiver of Galilee Memorial Gardens (and the related entities through which it does business, JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc.)(hereinafter Cemetery), as authorized by Tenn. Code Ann. 46-1-312(a);...

(Order of Receivership, p. 6-7).

Since the Order of Receivership was entered in 2014, the Department and the Receiver's deputy have sought to exhaustively identify all possible names through which Defendants conducted the business of Galilee cemetery. Three out of the four business names of which Commissioner is expressly named Receiver turn out to be informal trade names. Because no single, identifiable entity, business association or corporation had achieved valid registration as a cemetery company lawfully owning and operating Galilee Memorial Gardens prior to the filing of this case, the Receiver searched for all indicia of the business names that have been used to operate Galilee Memorial Gardens cemetery (and under which obligations of the cemetery were undertaken) by those persons who represented themselves as in control and ownership of the facility and land in 2014.

The information accumulated by the Receiver, which was presented through the witnesses at the April 10, 2019 hearing, exhaustively identifies for the Court all the names that any order of

dissolution, injunction, or other termination process will specify. At best, the proof shows that the Defendants in this case had only achieved some partial steps, and those inconsistently, toward the necessary transformation of Jesse Lambert's cemetery businesses at Galilee into any company of their own. Thus, several unregistered variants of the Galilee business operation must be identified for dissolution and for purposes of a permanent injunction.

FINDINGS OF FACT

Defendants' Cemetery Businesses as Represented to the Cemetery Regulator Before and After Death of Jesse Lambert Through a Series of Unsuccessful Applications

1. Mr. Robert Gribble, Executive Director for the Board of Funeral Directors & Embalmers and the Burial Services Section, which is in the Division of Regulatory Boards, testified about how Galilee Memorial Gardens was officially represented to the Burial Services Section, which regulates commercial cemeteries in Tennessee and pre-need sellers and pre-need sales agents. He had given two affidavits in support of the petition for receivership, the original marked as EX 2, and a supplementary affidavit marked as EX 3. (TR 44-45).

2. Mr. Gribble explained the official representations that Defendants made in the cemetery registration application process with the Burial Services Section about the nature and status of the corporation associated with the Defendants, which was ultimately determined to be correctly called **JM&M Services, Inc.**, and how it had purportedly succeeded to all of the prior operations. Mr. Gribble testified that the Department did not allow the registration that had been held by Jesse Lambert to be renewed after his death – rather a de novo application was required by the company now in charge. (TR 48).

3. Mr. Gribble explained that the last approved renewal of the cemetery registration was one submitted by Jesse Lambert in late March 2010. (TR 63-67, EX 4). On March 22, 2010, Mr. Gribble directed the Burial Services Section's notification to Jesse Lambert as Manager of

Galilee Memorial Gardens that informed him that his cemetery registration, License Number 038, had expired on December 31, 2009. The notification provided instructions as to how to renew and pay a late fee. In response, Jesse Lambert submitted a 3/23/2010-dated renewal form that described himself as "Manager," and chose to designate the type of ownership for the cemetery as "Sole Proprietorship" rather than "corporation." Inconsistently, Jesse Lambert's 2010 renewal also showed the corporation as "Active" with the Secretary of State ("SOS), and he filled in the requested SOS Control Number with "000263346." (EX 4).

4. By cross-referencing SOS materials admitted into evidence through the testimony of Mark K. Green, Deputy General Counsel for Regulatory Boards and Consumer Affairs, it is possible to identify the corporation associated with that control number. Control number 263346 is the Tennessee SOS number for "**Lambert Memorial Gardens, Incorporated**" formed on March 5, 1993, which has been certified by the SOS as in inactive, administratively dissolved status. (TR 103-104; EX 13, 15).

5. The application forms for registration of the cemetery, attached to the Affidavit of Mr. Gribble in support of the Verified Petition, EX 2, represent those submitted after Jesse Lambert died. These forms required the applicant to identify the cemetery and its location and to identify the name of the applicant as the owner of that cemetery real property. The Defendants made these designations inconsistently. At first, the sworn application received on August 31, 2011 claimed that "**JM&M, Inc.**" was the owner of Galilee Memorial Gardens, the cemetery to be registered at the physical address of 8283 Ellis Rd., Memphis TN 38133. (EX 2, ex 1). The application reflects the cemetery as having 8.9 contiguous acres, all designated for immediate use (EX 2, exs 1, 4 and 6), and JM&M, Inc. swore in its application that it was a currently chartered corporation in good standing. This form was signed by Marje Lambert as Vice President. (EX 2, ex 1).

6. The change of ownership process sheet attached to the application, signed by Jemar S. Lambert, states the cemetery was sold by “Jesse Lambert, Deceased” and sold to “**JM&M** (Jemar Lambert, Marje Lambert & Mary H. Lambert)” by *stock transfer* with an indebtedness to improvement care on date of transfer of \$10,832.50. (TR 49-51; EX 2, ex 1). The three Individual Lambert Defendants are listed as members of the board of directors and as the three equal stockholders of JM&M, Inc. Jemar Lambert was shown as President. (EX 2, ex 1).

7. This August 2011 application was denied by Burial Services and the Commissioner, who affirmed the denial of the application by an administrative judge. This was a lengthy process having been litigated through an appeal to the Commissioner within an administrative case known as “In the matter of JM&M Services, Inc. a Tennessee corporation; JM&M, Inc., a purported entity not registered as a corporation with the secretary of state; and Jemar S. Lambert, Marje E. Lambert, and Mary H. Lambert as individuals or a partnership.” (TR 51-52; EX 2, exs 2, 3). As in this receivership case, the order was fashioned to cover all parties involved, whatever it might be, to give notice to all parties as to whatever interest it might hold in the proceeding. (TR 52).

8. Both the administrative Initial Order Granting Summary Judgment and the Commissioner’s Final Order on December 12, 2012, denied the application and ordered Galilee to cease operations without a valid registration. (EX 2, exs 2, 3). They both cited the same several findings of facts and conclusions of law regarding the failure of applicants to comply with cemetery law and the failure to meet the minimum qualifications for a grant of cemetery registration. (TR 51-53). The findings of fact in Ex. 2 of EX 2 state that Galilee Memorial Gardens was formerly owned by Jesse Lambert, which was based on the Respondents’ admissions.

9. The Initial Order, Ex. 2 findings, which were adopted by the Final Order, reflect several issues of concern with the application for registration, including difficulties identifying the correct corporation as applicant, maintaining its active status, addressing trust deficiencies, obtaining trust agreements, and the Respondents' failure at any time to furnish the statutorily required, compliant accurate cemetery map of lots sold, lots available, and the location of interments. (EX 2, exs 2, 3, findings 1-18).

10. When the August 2011 application for registration by JM&M, Inc. was filed, that company lacked trust agreements on behalf of Galilee Memorial Gardens in compliance with the cemetery statutes. (TR 67-71). The agreements previously sent by the trust bank to the Burial Services Division, in September 2011, in EX. 5, indicate the Improvement Care Trust Fund (ICTF) agreement from June 1993, was entered into with Commercial Bank and Trust Company of Paris, TN, by **Lambert Memorial Gardens, Incorporated d/b/a Galilee Memorial Gardens, a Tennessee Corporation**, and signed by Jesse Lambert, as President of "**Galilee Memorial Gardens, Inc.**" The Preneed Merchandise and Services Trust Agreement, dated October 11, 2005, identifies **Galilee Memorial Gardens, a Tennessee corporation** as the cemetery company, and was signed by Jesse Lambert as President thereof. (TR 71). These documents were provided because an audit showed Burial Services needed documentation that trust agreements had been executed; but Burial Services regarded them as out-of-date because they had been executed by Jesse Lambert who had died. (TR 70). When EX 5 was submitted to show the trust account, Burial Services "told them that they needed to execute new trust agreements because these were between the bank and the cemetery when it was owned by Mr. [Jesse] Lambert, and *they were registering and applying in a new form of ownership.*" (TR 71).

11. New cemetery trust account agreements dated June 6, 2012 were eventually tardily submitted to the Burial Services Section for the ICTF account and the merchandise and services trust account. (EX 6). Both of these updated agreements were made between **JM&M Services, Inc. (dba Galilee Memorial Gardens)**, signed by Jemar S. Lambert as President, and the trustee bank, Commercial Bank and Trust Company, in Paris, Tennessee. These agreements both identify that “JM&M Services, Inc. dba Galilee Memorial Gardens” is the pertinent “Cemetery Company” and that “Galilee Memorial Gardens” is the pertinent cemetery being benefited. The Preneed Merchandise and Services Trust Agreement also states that “JM&M Services, Inc. dba Galilee Memorial Gardens” “owns and operates a cemetery” and that Galilee Memorial Gardens is a cemetery. (TR 71-74; EX 6, PreNeed Merchandise and Services Trust Agreement, pp. 1-2).

12. On January 16, 2013, another application for cemetery registration was filed by “**JM&M Services, Inc., (07/01/10) (Formerly Lambert & Son Inc. 09/20/00)**” (EX 2, ex 4), claiming to be the owner of the cemetery and applicant. (TR 53-55). This application was signed by Jemar S. Lambert, who was described as President. As shown by the exhibit of the actual SOS certified records, JM&M Services, Inc. was initially incorporated July 1, 2010, as “Lambert & Son, Inc.” (EX 14). The additional reference in the January 2013 application to “Formerly Lambert & Son Inc. 09/20/00” confusingly reflects the date Jesse Lambert formed a different corporation to do business in Tennessee, “**Lambert & Son Inc. of Memphis**” Control #395938, which was administratively dissolved on June 21, 2002. (EX 17, SOS certification; EX 13, SOS Business Entity Detail). This name is similar to a prior corporation that Jesse Lambert formed “**Lambert and Son Incorporated**” Control #270985 on October 5, 1993, which has been in inactive – Revoked (Revenue) status since April 2, 1996. (EX 16, SOS certification; EX 13, final page).

13. After the January 2013 application was denied following review on July 23, 2013 (TR 55-56; EX 2, ex 5) by a letter that authorized the cemetery to only fulfill pre-need contracts, and barred new sales, **JM&M Services, Inc.** submitted another (final) application for registration on August 28, 2013 as owner of the cemetery. (EX 2, ex 6). This application was signed by Marje Lambert, as Vice President. These applications in 2013 reflected the stock of JM&M Services, Inc. as owned equally by Jemar Lambert 33%, Marje Lambert and Mary H. Lambert, who were named as the corporation's board of directors. (TR 56-57; EX 2, ex 6).

14. On October 25, 2013, the Regions Bank checking account in the name of "**Lambert & Sons, Inc.**" at 8283 Ellis Rd. made a \$31,000.00 Wire Transfer for the benefit of the Galilee Memorial Gardens ICTF Account at Commercial Bank and Trust Company, as confirmed to Burial Services. (TR 58-60, EX 2 ex 11).

15. As of February 6, 2014, Mr. Gribble found reflected on the website used by Galilee Memorial Gardens, while depicting Galilee, also used the business names **Lambert Memorials** and **Lambert Memorials, Inc.** (TR 60-63; EX 3).

16. The recent Annual Report of Trustee on ICTF, for fiscal year 2017, for Galilee Memorial Gardens still shows **Lambert Memorial Gardens Inc.** as the name of the company which owns the cemetery. (TR pp. 86-88; EX 10). The Pre-Need report in EX 10 reflects the trustor cemetery company as Galilee Memorial Garden PreNeed Merchandise & Services, at the address of 8283 Ellis Road, Memphis. (TR 89). These reports, which were submitted by Commercial Bank & Trust, identify names established under Jesse Lambert, and do not show JM&M Services, Inc.

Jesse Lambert's Chapter 13 Individual Bankruptcy Case – Showing Cemetery Business Trade Names Used and No Discharge for Cemetery Obligations or Regulatory Claims

17. Lauren Lamberth, an attorney in the Tennessee Attorney General's Office, testified and provided documents from the Chapter 13 bankruptcy filing by Jesse Lambert. (TR 14-43). He filed as an individual Debtor, in case No. 06-21285, filed February 23, 2006, in the United States Bankruptcy Court, Western District of Tennessee. (TR 18; EX 1).

18. Jesse Lambert listed the Department as a creditor and gave it notice of the original bankruptcy filing. (EX 1). The Department had an interest in two unpaid trust fund accounts that Jesse Lambert was responsible to pay. (TR 18-20). The bankruptcy case was filed after the then-Commissioner Paula Flowers had brought a receivership petition in Shelby County due to underfunded trusts and failure to file annual reports. The Department contended that the bankruptcy was filed to avoid the pending receivership. (TR 33; EX 1, Doc 38).

19. The Department's objection was resolved by consent with Jesse Lambert, Debtor, who had the advice of counsel (EX 1, Doc 62, Consent Order Resolving [TDCI] Amended Objection to Confirmation, entered 8/14/2006). Jesse Lambert stipulated that he was the President and owner of **Lambert & Sons, Inc., a/k/a Lambert Memorials, Inc., d/b/a/ Galilee Memorial Gardens** (the "Cemetery"), a cemetery in Memphis, Shelby County, Tennessee. (TR 33-34; EX 1, Doc 62). He agreed to pay \$3500 per month for 60 months to pay down the arrearage of the ICTF, and to continue to pay ongoing ICTF obligations, and pay down the Merchandise and Services account deficiency of \$41,746.61 with ongoing receivables (not out of the bankruptcy plan). Jesse Lambert agreed all these obligations were personal to himself, and the Consent Order provided that at the end of the bankruptcy, neither deficiency would be discharged. (TR 34-36; EX 1, Doc 62).

20. Through the bankruptcy plan, the Department's claim for Debtor to pay the ICTF deficiency (without the 10% penalty) at Commercial Bank and Trust, established at \$205,382.24,

was fully paid. (TR 37-41). (Claim 9-1 and Doc 123 in EX 1, and Claim 9 Chapter 13 Website April 2012 printout). The last check was paid on September 10, 2011, over a year after Jesse Lambert died. (TR 40-41). Jesse Lambert's heirs moved to reopen the case to obtain a discharge of any of his dischargeable debts. (EX 1, Doc 109 and Doc 110).⁴ Due to the consent order with the Department, the discharge Jesse Lambert obtained did not affect any of the prior *or ongoing obligations* of the cemetery to continue to pay into the trusts. (TR 42; EX 1, Doc 62). The Consent Order contained additional stipulations regarding Jesse Lambert's continued obligations to comply with statutory reporting requirements and future audits and reviews by TDCI. (*Id.* p.3)

21. Because of the consent order with the Department, ongoing obligations of the cemetery or Jesse Lambert and his companies under the cemetery regulatory law were not extinguished because of any discharge that Jesse Lambert otherwise received through his personal bankruptcy. Any trade names for Jesse Lambert's cemetery business could still be considered Galilee business names to the extent cemetery customers had outstanding merchandise, services and lot claims.

22. Within EX 1, all the business activity and all the entities listed by Jesse Lambert were connected to his ownership and the operation of Galilee Memorial Gardens cemetery. The Court is particularly reliant on Documents 1, 24 and 26 from that bankruptcy case, which were the voluntary petition, its amendment, and the required schedules that supported the petition, in which Mr. Jesse Lambert revealed several business names in which he operated his cemetery business.

⁴ EX 1, Doc 109 – filed 04/12/2012 – Order on Completed Chapter 13 Case Without the Entry of a Discharge and Discharging Chapter 13 Trustee Combined with Notice of the Entry Thereof

EX 1 Doc 111 – filed 05/11/2012 – Motion to Set Aside Order – by Dedrick Brittenum, Jr. Attorney for the heirs of Jesse Lambert, to set aside (Doc 109) order about completed case without a discharge: “Jesse Lambert died 15 May 2010 prior to fulfilling all of the requirements of the plan. The heirs of the deceased debtor completed all of the requirements under the plan.”

These filings were signed and sworn to by Jesse Lambert as the Debtor, with a legal description of those businesses from which he had any earnings or employment.

23. In his original petition, Document 1 in EX 1, Jesse Lambert listed no trade names, but his amended voluntary petition, Document 26, filed 4/18/2006, showed the following in the box for “trade names” of the debtor: **FDBA Lambert & Son, Inc. DBA Lambert, Inc. DBA Galilee Memorial Gardens DBA Lambert Memorials, Inc. DBA Lambert Monuments DBA Classic Images Remembrances** (EX 1, Doc 26, p. 1)[“All Other Names used by the Debtor in the last 8 years”] (TR 20-21).

24. To these, a further enumeration was made part of the Statement of Financial Affairs, filed April 17, 2006, in bankruptcy Document 24. In that listing of the nature, location and name of businesses in which debtor was in any way connected, Jesse Lambert included the slightly different renditions of his dbas: **Lambert, Inc.; Galilee Memorial Gardens; Lambert Memorials, Inc.; Classic Images Remembrance; Lambert Monuments, Inc.; Lambert & Son of Memphis, Inc.** All six of these names were “Cemetery” businesses, with an address of 8283 Ellis Road, Memphis, TN 38133, and had an identical EIN (tax ID number) 62-1544431. All were claimed to have started on March 5, 1993.⁵ All were claimed as still active. (TR 30-32; EX 1, Doc 24 pp. 22-23).

25. Jesse Lambert listed his employer as **Lambert Inc.**, and that he was its proprietor, claiming 100% of its stock. (EX 1, Doc 24, pp. 3, 13). All of his income from employment or operation of business was attributed to the source “Galilee Memorial Gardens.” *Id.*, p. 16.

⁵ March 5, 1993 is just weeks after Mr. Jesse Lambert acquired the cemetery parcel and property under the Asset Purchase Agreement (a document listed in the bankruptcy papers at Schedule G Executory Contracts, EX 1 Doc 24, p. 12). This document was also made an exhibit to this proceeding - Shelby County Registrar’s Instrument 03015493, EX 40). March 5, 1993 is the official date that Jesse Lambert formed Tennessee corporation “Lambert Memorial Gardens, Incorporated” control # 263346. (EX 13, 15).

26. Jesse Lambert listed suits in which he was a party at pages 18-19 of Doc. 24, and more names for the cemetery business appear, including **Lambert Memorial Gardens, Inc.**, **Lambert's Memorials, Inc.**, and **Lambert, Inc.** The former Commissioner of Commerce and Insurance had sued Lambert & Sons, Inc., a/k/a Lambert Memorials, Inc.

Names Associated with Cemetery Shown by Cemetery Records, Business Contracts and Sales Materials

27. Many names for cemetery business entities were included in the records of Galilee that were furnished by the District Attorney's Office to the Special Deputy Receivers, or otherwise obtained by the Special Deputy Receivers as being the business records and files of the cemetery operations. Other variants on names for the business were shown through the claims process submissions by customers. These sources allowed Mr. Moore to testify about some examples of Galilee's business transactions and regularly used forms, both before Jesse Lambert's death (Jesse Lambert era) or as it was carried on by his successors afterward (post-Jesse Lambert era). The following versions of names are included in the record as "doing business as" Galilee Memorial Gardens, as discussed through the testimony of Mr. Robert E. Moore, Jr., for Receivership Management, Inc. (RMI), the Special Deputy Receiver, mainly in TR pp. 161-200:

28. **Galilee Memorial Gardens** – The Court's Order of Receivership makes the Commissioner the receiver of this entity and physical place. The name of the cemetery ground itself, "Galilee Memorial Gardens," has always been one name used to denote both the businesses operating at, and the real property of, the burial ground located at 8283 Ellis Road. Deeds for gravesites were issued in the name of Galilee Memorial Gardens as grantor. (EX 27). Cemetery deeds, interment orders and burial contracts within Exhibits 27, 28 and 29 are issued directly by Galilee Memorial Gardens. (TR 161-163 EX 27; 168-169 EX 28; TR 186, EX 29, Billy Walker).

Standard purchase agreements were generally issued by a company name, usually Lambert, Inc., doing business as Galilee Memorial Gardens.

29. On the form burial contracts within EX 28, the entity shown is just Galilee Memorial Gardens. The premium finance agreement for a commercial liability policy for the cemetery had Galilee Memorial Gardens, at 8283 Ellis Road, as the named insured and premises for the commercial general liability policy and renewal excerpts within EX 28 (11/2011 -2013). (TR 175-177).

30. “**Lambert, Inc. a corporation (dba Galilee Memorial Gardens), hereinafter called Lambert, Inc.**” is reflected on EX 27, Standard Purchase Agreement No. 0172, last page used in 2005, in the Jesse Lambert-era (TR 163-165), and following his death in EX 28, Standard Purchase Agreement No. 2135 used in 2012 (**Lambert Monuments** issued the card receipt for the down payment) (Moore, TR 166-168, re Christine Harris) and also Standard Purchase Agreement No. 1536 used in August 2010. (TR 169-171, re Keith Simpson, decedent). The Simpson interment card showed Galilee Memorial Gardens as the entity. (TR 169-170).

31. In another post-Jesse Lambert era form, JM&M, Inc. and Lambert, Inc. are represented as synonymous. This is shown on the Standard Purchase Agreement, bearing a Galilee Memorial Gardens logo, between the Purchaser and “**JM&M, Inc., a corporation, hereinafter called Lambert, Inc.**” (within August 2013 Boyland materials, EX 28). Also, in this same claim material in EX 28, in August 2013, a promissory note was issued under a “**Lambert Galilee Memorial Gardens**” heading, with the Lender shown as “Jemar Lambert” in an individual capacity. (Moore, TR 171-173).

32. **Lambert Memorials, Inc.** – The Court’s Order of Receivership identified the commissioner as a receiver of this entity. This fictitious name is significant and necessary to this

proceeding because Jesse Lambert in 1993 acquired the control and ownership of the property constituting Galilee Memorial Gardens Cemetery as "Lambert Memorials, Inc." via the Asset Purchase Agreement (EX 40), a company of which he was shown as President on that document.

33. Lambert Memorials, Inc. continued to be used by Jesse Lambert, and thereafter by his successors, his wife Mary H. Lambert, and his adult children, Jemar Lambert and Marje Lambert, for transactions through January 2014. Lambert Memorials, Inc. had been claimed by Jesse Lambert as one of the active names for his cemetery businesses in his Chapter 13 bankruptcy. (EX 1, Docs 24 and 26, voluntary petition and schedules). Lambert Memorials, Inc. carried on in issuing receipts, as reflected in the receipt books that continued to be used, examples of which were admitted as Exhibits 30-33, in the period of 2009-2014. Receipts were issued for gravesites, burials, grave openings and closings, as well as for markers and monuments, from the receipt books preprinted in the names of both Lambert Memorials, Inc. (EX 30, 31 and 33) and Galilee Memorial Gardens (EX 32). (TR 188-200). The book for Galilee Memorial Gardens receipts (EX 32) covering July 21, 2012 to November 10, 2012 overlapped the time period of the Lambert Memorials, Inc. receipt book also used (EX 31), covering May 16, 2012 to July 20, 2013. These receipts also featured in claimants' proof submitted to the receiver for gravesites. (EX 29). The Cogbill and Yancey claim materials within EX 29 reflect receipts in 2013 into January 2014 issued to them for gravesites, pre-need opening and closing from both Lambert Memorials, Inc. and Galilee Memorial Gardens. (TR 177-182).

34. Mr. Moore's review and testimony from examples within the receipt books reflected several instances where a given receipt book issued receipts for both headstones and burial plots. (TR 189-191; EX 30, Lambert Memorials, Inc. receipt book 14735-14905, 4-7-2009 to 5-11-2012, LMI receipt #s 14859 (burial plots), #14860 for headstone, 14885 preneed, 14887,

opening and closing).; TR 191-193, EX 31, Lambert Memorials, Inc. 14906-15073, 5-16-2012 to 7-20-2013, LMI receipt #14906 “marker,” #14907 “pre-need payment,” #14908 installation fees, #14927 “marker,” #14929 “burial” of an individual; TR 193-196, EX 32, Galilee Memorial Gardens receipt book 24507-24671, 7-21-2012 to 11-10-2012, receipt #24510 “burial plot,” #24570 and 24571, “burial” of named individuals; #24574 “headstone;” #24575, “vault”.

35. Mr. Moore testified about the last receipt book (TR 196-200, EX 33, Lambert Memorials, Inc. receipt book 15248-15405, 7-22-2013 to 1-22-2014), and he concluded that the receipts #15320, 15321 and 15322, with named people, represented sales of burial spaces. He identified others through the fall of 2013 as burial space sales.

Summary of Status of Galilee-related Corporate Entities at the Tennessee Secretary of State's Office

36. The corporate status of all the company names apparently used by the Defendants or their predecessor Jesse Lambert, was proved by the records of the Tennessee SOS, either through certified copies of the corporate records on file for specific corporations, or other certified statements by the SOS. Also, the SOS website allows one to search names for business entity information. Searches of this type were performed by the Department as testified by Mr. Green, who was acquainted with the regulatory public records concerning Galilee Memorial Gardens, and its receivership. (TR 90-91).

37. Several of the names in which Galilee Memorial Gardens business was transacted were not true corporations. Even as of the Department's SOS search of the corporate status on all these names in December 2011 (TR 97-105; EX 13), all corporations actually formed under Jesse Lambert were inactive for years, and JM&M Services, Inc. had failed to maintain active status since its initial filing in July 2010 originally under the name Lambert & Son, Inc.

38. The Receiver's Summary of Corporate Entities' Status, filed February 28, 2019, served on Defendants with the Order Setting Hearing, contained information that has not been disputed or rebutted. The hearing proof supported this Summary compilation of the facts on the corporations, businesses, and as to the real property of the cemetery in receivership.

JM&M Services, Inc. – Tennessee Corporation Formed After Jesse Lambert Died

39. The Receiver presented conclusive evidence, from certified records of the Tennessee SOS and other SOS-generated information (EXs 13, 14-21), that only one corporation associated with Galilee was formed by any of the individual Lambert Defendants (i.e. Defendants Jemar Lambert, Marje Lambert or Mary H. Lambert) after the death of Jesse Lambert. This was SOS control # 634691, by the name originally incorporated as **Lambert & Son, Inc.** on July 1, 2010 and changed to **JM&M Services, Inc.**, in December of 2010. This corporation had lengthy periods of being inactive and administratively dissolved because of failure to file annual reports, for instance, August 9, 2011 to September 30, 2011 and August 9, 2012 to August 22, 2013 (EX 14, p. 1), but it was active and reinstated before this case was filed.

40. The pertinent identifiers for this corporation to be dissolved, which is also a named Defendant in this proceeding, are:

JM&M Services, Inc. f/k/a Lambert & Son, Inc.

Control #634691

Address: 8283 Ellis Rd, Memphis

Registered Agent: JeMar Lambert

SOS initially filed 7-1-2010, with name **Lambert & Son, Inc.**

Changed Name 12-13-2010 to **JM&M Services, Inc.**

Administratively Dissolved, failure to file annual report 8-9-2014

Dissolved/Revocation – Revenue 1-20-2015

[EX 14; TR 100-101, 107-110].

Inactive Lambert Corporations Formed in Tennessee by Jesse Lambert

41. The three other corporations formed originally by Jesse Lambert, two in 1993, and one in 2000, had each been administratively dissolved for over a decade before the receivership case was filed in January 2014. These are Lambert Memorial Gardens, Incorporated. - Control #263346; Lambert and Son Incorporated - Control # 270985; Lambert & Son Inc. of Memphis - Control # 395938. (TR 111-116; EXs 13, 15, 16, 17).

Lambert Memorial Gardens, Incorporated

Control #263346

Address: 3069 Park Ave., Memphis

Registered Agent: Jesse Lambert

SOS initially filed 3-5-1993

Inactive – 12-21-2001 Administratively dissolved

Lambert and Son Incorporated

Control # 270985

Address: 3069 Park Ave., Memphis

Registered Agent: Jesse Lambert

SOS initially filed 10-5-1993

Inactive – 4-2-1996 (administratively dissolved)

Lambert & Son Inc. of Memphis

Control # 395938

Address: 8283 Ellis Rd., Memphis

SOS initially filed 9-20-2000

Inactive – 6-21-2002 (Administratively dissolved)

The parameters and identifying documents for these corporations are stated in the Certified Records of SOS found in EXs 15, 16 and 17. Their status as of December 2011 from a search conducted for the Burial Services section, reflecting more chronological status entries, is shown in the printout at EX 13. This information demonstrates that the actual Tennessee corporations were already administratively dissolved before Jesse Lambert claimed in his 2006 bankruptcy that all business entities were still active.

Non-Existent Corporate Names Used for Galilee Memorial Gardens

42. There are other business names that appeared on Galilee Memorial Gardens transactions and accounts for which the Tennessee SOS has no business entities on file. By providing the names to the SOS, that office generated “Certificates of Non-Existence” for:

JM&M Inc.
JM&M Incorporated
Lambert Memorials, Inc.
Lambert Memorials Company
Lambert Memorial Company

(EX 18 [5 individual certificate sheets] in which the following is stated: “I, Tre Hargett, Secretary of State of the State of Tennessee do hereby certify that [each of the foregoing names] was not found listed in our records.”) (TR 116-118).

Corporate Names Used by Defendants Belonging to Unrelated Corporations

43. The proof showed that two of the purported corporate-form names used extensively for Galilee Memorial Gardens contracts and accounts in actuality belonged to unrelated corporations. Both “**Lambert, Inc.**” and “**Lambert & Sons, Inc.**” were corporate names legally registered to do business in Tennessee, but by unrelated persons wholly unconnected with Galilee cemetery.

44. A name that was used pervasively by the Defendants to do business as Galilee Memorial Gardens was “Lambert, Inc.” The search of the Secretary of State’s Office yielded two corporations by that name. These had no relation to the Lambert family, whether Jesse Lambert, or his successors, and they were formed by unrelated persons in different locations, including out of state. The Department’s 2011 search, reflected in Exhibit 13, revealed two companies with names “Lambert, Inc.” that were not related. (TR 101-103). SOS Certifications for these two companies were obtained. (TR 118-122; EXs 19, 20):

(1) A terminated Tennessee corporation “Lambert, Inc.” – SOS control #000222181, located in McMinn County, TN, had been formed by unrelated persons in 1989. (TR 118-119, EX 19; TR 102-103, EX 13).

(2) An unrelated Alabama corporation, “Lambert, Inc.” - SOS control #000354842, was found registered in 1998 as a foreign corporation at the Tennessee SOS. (EXs 13, 20). This corporation registered an assumed name of Lambert & Sons, Inc. In reviewing the Tennessee SOS Business Information Sheet printed on March 14, 2019, Mr. Green testified that the Alabama corporation “Lambert, Inc.” used the assumed name “Lambert & Sons, Inc.” until August 2015. (TR 120-122, EX 21). This corporation is still active. (EX 20).

Corporate Status of Former Cemetery Owner – Ellis Road Gardens, Inc.

45. Ellis Road Gardens, Inc., the corporate name still reflected as the owner of the 8283 Ellis Road parcel by the Shelby County Registrar and Assessor’s Office (TR 122-125, EX 12) was previously a Tennessee corporation. As shown in the SOS Certified Record for Ellis Road Gardens, Inc., control #10327, Ellis Road Gardens, Inc. was formed on February 14, 1966 and dissolved on January 11, 1985. The Charter of Incorporation, a certified record included in EX 22, declared the nature of the business of this corporation to own and operate cemeteries in Shelby County. This corporation is currently in an administratively dissolved status.

TOPIC #2

**FINANCIAL STATUS OF CEMETERY AND INCLUSION OF CEMETERY’S
MONUMENT BUSINESS**

Financial Status of Cemetery

Bank Accounts

46. Carol Allsup, a paralegal employed by Burch, Porter and Johnson, special counsel to the Receiver and deputy receiver, testified about information obtained through subpoenas to

area banks that were required to produce any bank account records related to Defendants from January 1, 2011 to the present. The banks that she subpoenaed appear in Exhibit 23. Ms. Allsup provided the subpoenaed banks with a list (EX 23) of the names, corporations, and people whose account information was sought. Exhibit 23 lists the Individual Lambert Defendants, plus the business entity name Defendants in this case, including variants.

47. Following her receipt of records obtained from the subpoenas, Ms. Allsup created spreadsheets to show all the checks and deposits for all of the accounts for the whole period reflected by the bank statements. This allowed Receiver's counsel to see who was paying money to the various entities and what money was flowing out of the accounts. (TR 130-131). Exhibits 24 and 25 summarize Ms. Allsup's spreadsheet information on each account that she extracted and recorded carefully from the records obtained from Regions Bank and Trustmark National Bank.

48. Ms. Allsup prepared Exhibit 24 as a summary of the findings on the business bank accounts, in which she recorded five accounts at the address of the cemetery, 8283 Ellis Road, under their account names at Regions Bank. (TR 131-138). The chart columns reflect names and addresses on account, the account type and number, the dates of records produced, the beginning and end balance for records received, the transaction totals by year, and a list of the individuals who signed checks in each account, and the entities or individuals to which checks deposited into the accounts were made payable. (TR 132). All of the accounts reflect a zero or negative balance. (EX 24).

49. Moreover, a few of the personal accounts held by Jemar and Marje Lambert in their own names at Regions Bank, and not at the cemetery address, were nonetheless used to transact some cemetery business, based on the source or designation of the payee or purpose of those checks. (TR 138-144; EX 25). The amounts and payees of those checks identified by Ms. Allsup

on Exhibit 25 show personal receipt by one checking account in the name of Marje Lambert (4270), in the period of 1-1-2011 to 6-7-2013, of a check from Ford Insurance Company for \$1095 to a Glenda Harris, a \$100 check for a headstone made payable to Marje Lambert, and a check paid from Marje Lambert to Memphis Vault for an individual's vault.

50. Another account in the name of Marje Lambert (6820), within the period of late 2013 through early 2014 deposited checks for Lambert Memorials, Inc., JM&M, Inc., and Galilee Memorial Gardens, with six items that were related to Galilee business, including \$1675.80 from Iskiwitz Metal Company to Lambert Memorials, Inc., two checks from individuals for pre-need items made out to JM&M, Inc., another personal check to Galilee Memorial Gardens for a preneed opening and closing, and \$1,165.90 to Galilee Memorial Gardens from Ford Insurance Company. (TR 140-142, EX 25).

51. An account for Jemar Lambert (9000), existing in 2011, deposited a check made payable to Jemar Lambert Stone Company for a memorial stone. (TR 143-144, EX 25).

52. Ms. Allsup testified that one other business account was found at Trustmark National Bank. This was a short-lived account held in the account name of JM&M Services, Inc. The last statement balance was \$265.41. (TR 145-146).

53. Ms. Allsup's testimony confirms the Third Interim Report of the Special Deputy Receiver for Galilee Memorial Gardens filed December 11, 2014, Appendix A (Accounts list, with balances), that reported at that time a lack of assets or funds belonging to the cemetery businesses or its operators, and that the account balances were negligible, if any (Third Interim Report, ¶1, p. 2). The totality of the account records and Ms. Allsup's analysis also demonstrate that Defendants failed to maintain any separation or distinction between the business names that they used; that any given named account accepted deposits made out to other payees connected

with Galilee Memorial Gardens-related business; and all forms of business income were deposited at times into any accounts under any business name.

Proceeds Resulting From Auction

54. Mr. Moore testified and discussed a set of exhibits from the special deputy receiver's records about the auction process he arranged for the sale of certain property for the benefit of the cemetery. This process occurred pursuant to this Court's Order on Receiver's Motion to Dispose of Stone Markers and Equipment on the Cemetery Premises, and to Approve Receiver's Procedure to Address Other Remaining Carved Markers, entered April 6, 2018. That Order had found the cemetery entities included within the receivership all represented facets of the cemetery's financial business such that the physical materials on the premises should be disposed of by the Receiver for the cemetery, and the Order authorized the Special Deputy Receiver to hold the funds from the disposition of the property that was allowed to be sold and to expend such funds on matters related to this receivership as the Receiver deemed fit. (Order of April 6, 2018, Para. A, pp. 2-3). Although not generating any proceeds, the Order also allowed people to claim stone markers with names that were of a type that was not used in Galilee cemetery. (*Id.*, Para. B).

55. Mr. Moore obtained the services of Hinson Auction and Real Estate, Inc., Rick Hinson, CAI Auctioneer, to undertake the sale. The list of the remaining inventory at the cemetery was auctioned, including vehicles, equipment and granite stones as listed in Exhibit 34. (TR 202-205). The auction brought in \$4,427.56. The net proceeds from the auction after deducting the auctioneer's fee of \$2000 were \$2,427.26. (TR 205-207, EX 35). This is all of the money that the receivership has received from the assets of Galilee Cemetery. (TR 207).

Other Financial Resources for Cemetery Receivership or Trust Purposes Not Cemetery Assets for Creditor Distribution

56. The exhibits and testimony showed there are still two trusts established for the benefit of Galilee Memorial Gardens: an ICTF and a merchandise and services trust fund, but only one with any substantial balance. Mr. Green testified that the latest account statements supplied by the trust officer, as of December 31, 2018, for the ICTF, reflected it had a cost value of \$528,197.96 and market value of \$521,930.01; and the Pre-Need Merchandise and Services Trust Fund account had a cost and market value of \$3,019.75. (TR 93-94, EX 11).

57. Tenn. Code Ann. § 46-1-204(g) provides: “The improvement care trust fund shall not be a part of the assets of any cemetery company operating under this part, and the improvement care trust fund shall not be subject to the debts of the cemetery company.” As a matter of law, the ICTF, though supplying earnings that may be used for improvement care as defined in the Cemetery Act (perpetual care and maintenance purposes) is *not* an asset of the cemetery that can be distributed or tapped for any of the outstanding claims.

58. Due to the lack of money in the cemetery business accounts or generated by sale of its equipment and stone, the receivership for Galilee Memorial Gardens has essentially all been conducted at State expense. The maintenance and upkeep of the cemetery, corrective actions taken at the cemetery, the receiver’s fees and administration expenses, and legal fees and expenses, have all been paid from the Commissioner’s Cemetery Consumer Protection Account, Tenn. Code Ann. § 46-1-105, which is a state general fund account. Mr. Moore estimated \$535,000 had been paid by the state from this account. (TR 207-208).⁶

Cemetery Obligations for Gravesite Claims and Cemetery Merchandise and Services Are Extensive

⁶ In the Thirteenth Interim Report filed November 30, 2018, the Cemetery Consumer Protection Account had paid as of October 31, 2018 all but \$21,450 of the total expenses of \$748,619.27 – the \$21,450 came from the ICTF earnings for a maintenance expense.

59. Mr. Moore testified about the receiver-instituted claim process that was designed to elicit claims of persons who were entitled to use grave-sites. The cemetery's outstanding obligation was an element of the Verified Petition, at ¶5.5, which noted Galilee was obligated to provide burial plots to 200 people. In confirmation, Mr. Gribble testified that Galilee reported and recorded pre-need spaces sold by Galilee needing to be reserved. The tally after August 2013, prior to the receivership, amounted to 204 spaces needed to fulfill their obligation. (TR 77-82, EXs 7, 8).

60. Claims against the cemetery have been limited by this case. The Order of Receivership has enjoined suits and claims against the entities or property in receivership, except as they might be allowed in this case by this Court. (Order of Receivership, particularly Paras. E. Injunctions and H.) Any recommendation by the Receiver as to whether pre-need contracts may be honored or any burials resumed had to be brought to the Court. (*Id.*, Order, Para. K.4).

61. In reporting on the lack of financial accounts and assets available to the receiver, David Kustoff reported in December 2014 that over 150 persons had already identified themselves as purchasers of pre-need burials, and thus the negligible amount in the Merchandise and Services trust account, \$2,914.17, would not be nearly sufficient. (Third Interim Report of the Special Deputy Receiver, p. 3-4.) In that report, Mr. Kustoff related the Receiver's impression from reviewing the accounts, that the Individual Lambert Defendants lacked financial assets, and this was indicated in part by Mr. Jemar Lambert spending months in jail and not posting bond.

62. Mr. Moore, who conducts a receivership business, began his work for the Galilee Memorial Gardens receivership in February 2015, with his firm Receivership Management, Inc. (RMI), retained to be special deputy receiver alongside Mr. Kustoff. Mr. Moore testified how no general order of notice to file claims with the receiver had been sought by him, due to the lack of

any distributable monetary assets. A process was instituted on a limited basis for persons to submit claims to burial sites. Mr. Moore testified about how and why this process was carried out, and the results of the solicitation of such burial right claims. (TR 150-157). He explained:

After determining that there was a complete and total lack of funds, I wasn't sure that a proof of claim process in the standard notion that you would do in any receivership might be appropriate because I probably didn't have anything to satisfy that type of claim. So it was determined to go ahead and see how many burial rights were out there that people – that had not been used; in other words, they had made a pre-need purchase of a burial space in Galilee Memorial Gardens. The hope was that if we had maybe enough space – because at this time, we – we weren't really sure what the vacancy condition of the cemetery was, but we went ahead and started the burial right process to at least quantify the number of pre-need sold spaces that might be out there.

(TR 155, lns 8-23).

63. Mr. Moore described the cemetery records obtained from several sources, and at different times, that he reviewed to assess the condition of the cemetery. These included records seized by the District Attorney of Shelby County, physical records obtained by the District Attorney, and physical records released by the District Attorney to Jemar Lambert, such as two filing cabinets of documents furnished by his sister, Marje Lambert. (TR 152-155). The receivership also obtained records from people who had claims against the estate of Galilee. The receiver kept records and files about the claim process and claims, ranging from contracts, receipts, and copies of checks that they had written to purchase these items. (TR 154-155).

64. For the claim process, the Receiver posted a metal sign at the cemetery with the number to call, which was RMI's: "Notice Regarding Galilee Memorial Gardens. If you own a vacant lot or believe you own a vacant lot in this cemetery you must contact the court receiver to protect your interests." (EX 26, p. 1). A template letter was sent to people who called the RMI office, or individuals that they had information about, to seek information about whether or not they had purchased a burial space. An affidavit was provided to identify the claimant, the category

of burial right position of the claimant, and a place to sign before a notary. The form required a person to specify that they were the rightful owner of a vacant grave space, whether they had deeds or bills of sale, and whether any other family member was buried near their vacant grave space. (EX 26, pp. 2-3). Examples of actual letters sent out to persons were furnished, including one sent to California. Another form (EX 26, p. 4) was developed to notify persons who had submitted burial right claims whether the claim was incomplete. (TR 155-157, EX 26).

65. Mr. Moore testified about the results of his claims process, by reference to the Ninth Interim Report of the Deputy Receiver, filed in June 2016, that included information he provided at that time to summarize these results. Referring to Ninth Report, p. 4, Paragraph 2.g., Mr. Moore stated that they had mailed out 487 affidavit forms. They processed 288 affidavit forms, which as of the date of the Ninth Report netted claims for 573 grave spaces that were sold on a pre-need basis that had not been exercised. (TR 159).

66. Mr. Moore affirmed the Report's information (p. 5, Paragraph 7) that of the 573 spaces that had been claimed, 279 space claims were complete and valid claims of ownership in a space at the cemetery. Of these complete claims, 41 of the particularly claimed spaces were then believed to be vacant and usable, and 238 of the claimed spaces were either occupied or otherwise unusable, as of the time of the Ninth Report. (TR 159-160).

67. Mr. Moore had done work at the cemetery to determine whether grave spaces are in fact usable, and stated that, as of this time, it is unclear. Mr. Moore stated his belief now, that there may *not* be 41 usable spaces, based upon how the cemetery was operated. He explained the factual reasons for this opinion. Burials occurred at Galilee without following their grid system. Some burials were made into the next grave, some are not parallel, but instead angled and can

extend down in order to use space that wasn't really platted and grid-marked on the layout of the cemetery. (TR 160-161).

68. The Receiver's best efforts to determine the vacancy status of gravesites at the cemetery nevertheless do not render conclusively vacant graves available. The overall result of the Receiver's efforts and the claims process at best means that customers' outstanding and unused deeds and the cemetery's consequent obligation to provide grave sites were calculated as vastly outnumbering the capacity of the cemetery's vacant spaces. This was so even with the benefit of the additional land donated by the Fogelman Trust to the Receiver in 2015. (EX 41). The cemetery lacks money to refund to these purchasers. The cemetery's known liabilities, just for grave spaces, exceed its financial resources and sites for disposition.

69. Further, without a general proof of claim process, which Mr. Moore testified was due to the lack of money to distribute, the actual claims and potential financial obligations of the cemetery for either graves and other types of services and goods could only be more extensive. The sales contracts introduced into evidence, in Exhibits 27, 28, 29, and the receipt books at Exhibits 30-33, reflected that customers bought other types of pre-purchased services and goods, such as vaults, monuments, openings and closings, besides the grave plots that Mr. Moore was engaged in determining.

70. Accordingly, the cemetery is insolvent and lacks any assets to pay claims to any extent.

Inclusion of Cemetery's Monument Business

The Order of Receivership, at Paragraph 8, directed the Receiver to determine if the monument and merchandise business was separate from the cemetery operation, and the Receiver's subsequent determination that these were not separate or separate businesses was the

basis for the Receiver's motion and steps taken to auction and dispose of remaining stone and property kept on the cemetery premises.

This Court's Order of April 6, 2018 found: "The Cemetery entities included within the receivership all represented facets of the Cemetery's financial business such that the physical materials on the premises of the Cemetery should be disposed of by the Receiver for the Cemetery." (Order on Receiver's Motion to Dispose of Stone Markers, Para. A, page 2). This finding was based on the following information in the unopposed motion giving rise to this Order:

As outlined in the initial Petition in this matter, the dealings of those entities (the memorial business and the cemetery business) were intertwined so that no reasonable distinction can be made between the assets of one and the other. This is supported by the fact that the granite and truck, as described below, were located at the cemetery, although the Lamberts have previously averred that they had a separate location where they operated their stone cutting business. It is further supported by the record in this matter, which shows that the Lamberts used numerous businesses, entities, and names interchangeably for the purposes of operating the Cemetery:

1. Lambert & Sons, Inc. – Paragraph 10 of the Affidavit of Robert Gribble, filed on January 24, 2014 as Exhibit 1 in support of the Petition in this matter, ("Gribble Affidavit") states the wire transfer from Regions Bank to the Commercial Bank & Trust Company for the improvement care trust fund, came from an account held in the name of "Lambert & Sons, Inc." This is supported by Exhibit 11 thereto, showing Lambert & Sons, Inc., and an address at the same 8283 Ellis Rd., checking account, as of 10/24/2013. Further, there is no information supporting that this is a valid Tennessee entity and, as such, based on the foregoing it appears to be an assumed name of the Lamberts in operating the Cemetery. JM&M Services, Inc. was the name that Lambert & Son, Inc. was amended to at the Secretary of State's office on 12/13/2010.

2. Lambert Memorials, Inc. –All the receipts attached to the Affidavit of Roy Bozeman, filed as Exhibit 2 in support of the Petition in this matter, are issued by "Lambert Memorials Inc." PO Box 140363, Memphis, Tennessee 38114 (901) 372-8357 to the various funeral homes. This demonstrates that the Lamberts used this entity extensively in their operation of the Cemetery. There is no entity of this name registered currently or in the past under this name. While there was a previous entity registered as Lambert Memorial Gardens, Incorporated, that entity was administratively dissolved in 2001 and was first registered in 1993 and Jesse Lambert, the prior owner of the Cemetery who passed away in 2010, still appears

as the Registered Agent. As such, it does not appear to be a valid corporation for the operation of any business.

3. JM&M Services, Inc. – This was a corporation which appears to have been created in order for the Lamberts to apply for a registration to operate the Cemetery prior to the beginning of this Receivership. This entity was applying to register as of August 28, 2013, as demonstrated by Exhibit 6 to the Gribble Affidavit. In its January 16, 2013, application for registration, as shown by Exhibit 4 to the Gribble Affidavit, the Lamberts themselves indicated that it was formerly “Lambert & Son, Inc.”

4. JM&M Inc. was a fictitious non-entity that made application to operate the cemetery on or about August 31, 2011, as demonstrated by the Gribble Affidavit. The Lamberts made application in this name to register the Cemetery.

5. Lambert Memorial Co. is not a valid Tennessee entity and no bank accounts were located in its name when Special Deputy Receiver Kustoff performed a search for accounts held by the Cemetery or its operators. As such, to the extent it may have been used in the past, it appears to solely be as a d/b/a of the Lamberts or one of the above entities.

Given this information, it is clear that the Lamberts used a mixture of corporations and d/b/a's, all of which are identified as part of the receivership entities, without regard to any actual entity or division between the Cemetery and any other “monument business.” Instead, all of these entities were alter-egos of the Lamberts and, as such, it is just that this property, being kept on the Cemetery ground for apparent use at the Cemetery, should be treated as Cemetery property.”

(Motion to Dispose of Stone Markers and Equipment on the Cemetery Premises, and to Approve Receiver's Procedure to Address Other Remaining Carved Markers, pp. 4-5).

71. Building on that record, in the April 10, 2019 hearing, and consistent with these conclusions, the Receiver furnished cumulative, credible proof obtained from receivership records that all the business activities under Defendants' management of Galilee Memorial Gardens were conducted under multiple names expressly doing business as Galilee Memorial Gardens. This was reflected in the exhibits such as account records, contracts and sales materials, tax returns and receipt books. (EXs 23, 24, 25 (account summaries, as discussed earlier in “Bank Accounts”), 27, 28, 29 (exemplars), 30-33 (receipt books), and 37 (tax returns)). Even the purchase agreement for

the real property by which Jesse Lambert, as Lambert Memorials, Inc., acquired the cemetery land and cemetery business (EX 40) is reflective of the necessary scope of the receivership. Also, the records reflect conclusively that the cemetery burial business and stone monument business were inextricable, integral elements of the operation. (TR 163-166, 185-196, 216-222).

72. Confirmatory that the Defendants' stone monument business was integrated into the financial cemetery business are the tax returns apparently created for the Defendants' corporation, JM&M Services, Inc. Mr. Moore stated that Defendants' counsel furnished the Receiver in 2014 (Special Deputy Receiver David Kustoff) with tax returns for the cemetery business. (TR 216-223, EX 37). JM&M Services, Inc., a corporation with the address of 8283 Ellis Rd, Memphis, had tax returns professionally prepared under EIN 27-3000167, for years 2011 and 2012. (EX 37). This corporation was described as having shareholders, 34% Jemar Lambert, 33% each Marje Lambert and Mary Lambert. (TR 221, EX 37 tab 5). The tax returns at page 3 on both the 2011 and 2012 Form 1120 federal return state that the taxpayer corporation was doing the business activity of "cemetery" and in operating the cemetery, its product or service included *both* selling grave sites and selling markers. (TR 222). In the 2012 federal return, costs for JM&M Services, Inc. included graves, markers, labor 1099, and materials cost for monuments, which reflects that they were in the business of not only setting and placing, but also purchasing and cutting grave markers. (TR 219-220; EX 37, Tab 2, Statement 5, Form 1125-A). It was not known if these returns had been filed. (TR 221).

73. Mr. Moore's review and testimony from examples within the receipt books reflected several instances where a given receipt book issued receipts for both headstones and burial plots. (TR 189-191, EX 30, Lambert Memorials, Inc. receipt book 14735-14905, 4-7-2009 to 5-11-2012, LMI receipt #s 14859 (burial plots), #14860 (headstone), 14885 (preneed), 14887,

(opening and closing); TR 191-193, EX 31, Lambert Memorials, Inc. 14906-15073, 5-16-2012 to 7-20-2013, LMI receipt #14906 “marker,” #14907 “pre-need payment,” #14908 installation fees, #14927 “marker,” #14929 “burial” of an individual; TR 193-196, EX 32, Galilee Memorial Gardens receipt book 24507-24671, 7-21-2012 to 11-10-2012, receipt #24510 “burial plot,” #24570 and 24571, “burial” of named individuals; #24574 “headstone;” #24575, “vault”).

74. Lambert Memorials, Inc. and Galilee Memorial Gardens appeared on the first page and throughout the website maintained by the Lamberts for the cemetery as of February 2014. (TR 60-63, EX 3, Notice of Filing Supplemental Affidavit of Mr. Gribble in Support of Verified Petition dated 2/6/2014). Mr. Gribble’s supplemental affidavit attached all the pages printable by him that day from the website, <http://lambertmemorial.com>, where he found the stone marker business and cemetery gardens reflected in the site, and use of the names Galilee Memorial Gardens, Lambert Memorials, and Lambert Memorials, Inc. The presence of these names together indicated they were businesses associated with Galilee Memorial Gardens. (TR 63).

TOPIC #3

THE DEEDS TO THE CEMETERY PARCELS

75. The Court heard the Receiver’s proof of the deeds to the cemetery parcels that constitute the current cemetery burial grounds of Galilee Memorial Gardens. This proof included the recorded chain of ownership of the parcel of land that constituted the original cemetery.

76. Mr. Moore explained the origin and the extent of the two parcels of real property that constitute the current cemetery burial grounds of Galilee Memorial Gardens, hereinafter referred to as the “Original Cemetery Parcel” and the “Expansion Parcel.” (TR 222-236, EXs 38-41, EX 12).

77. The Receiver offered Mr. Moore's testimony because the Receiver has asked the Court to award the Receiver with exclusive title and ownership to the entire merged properties constituting Galilee Memorial Gardens as a means to assist in future potential conveyances of the cemetery in order to allow this receivership to end and to effectuate injunctions against the Defendants' operation of Galilee Memorial Gardens.

78. Mr. Moore explained that the cemetery land constituting Galilee Memorial Gardens was historically a single parcel of 8.95 acres that was purchased in 1993 by Lambert Memorials, Inc. (the Original Cemetery Parcel). The cemetery was expanded by the Receiver's 2015 acquisition of 3.597 acres of U-shaped property that surrounds the Original Cemetery Parcel on three sides (the Expansion Parcel). The neighboring landowner to the Original Cemetery Parcel donated the Expansion Parcel to the Commissioner in her official capacity as Receiver for Galilee Memorial Gardens. (TR. 224-226).

79. The Expansion Parcel was acquired following the Receiver's inspections of the property that made it clear to the receivership that bodies had been buried improperly and illegally on land not within the boundaries of the Original Cemetery Parcel of Galilee Memorial Gardens. The Receiver, in consultation with the Department, determined that it was necessary to reach an agreement with the neighboring landowner to address these burials outside the existing boundaries, which prevented the neighboring landowner, the Fogelman Trust, from using that land for any other purpose. Negotiations between the Commissioner, as Receiver, and representatives of the Fogelman Trust led the trust and Fogelman family to give the property to the Commissioner as Receiver of Galilee Memorial Gardens. (TR 224-225).

80. This Court, by the Agreed Order Permitting Receiver to Accept Deed of Adjoining Property for the Cemetery and for Cemetery Purposes entered May 27, 2015, authorized the

Commissioner, as Receiver of Galilee Memorial Gardens, to take ownership of that parcel of land from the Fogelman Trust to surround and expand the cemetery on three sides beyond its original borders. The approved deed was recorded on June 1, 2015 as the Special Warranty Deed in Exhibit 41 to this proceeding, **Instrument # 15051288** of the Shelby County Register of Deeds. The Exhibit 41 Special Warranty Deed conveyed 3.597 acres, pursuant to Exhibit A, Property Description, page 4 of the deed. This land exactly abuts and surrounds the Original Cemetery Parcel on all sides except the Ellis Road frontage, as its property description and survey attachments reference the Book 5879 Page 003 Ellis Road Gardens, Inc. property corners and boundaries for the internal parcel.

81. In 2018, Mr. Moore commissioned a survey (EX 38) in order to allow a fence to be erected on the expanded border surrounding the entire cemetery property to protect the property. The survey reflects the merged boundaries of the two parcels, and the combined acreage of 12.547 acres. (TR 222-226). Mr. Moore considers the parcel shown by the survey at the cemetery's address to show the property at Galilee Memorial Gardens, and that it is one plot of land, formed as a result of the merger of the two parcels. (TR 223-224).

82. The survey, however, depicts the internal parcel of the cemetery (the Original Cemetery Parcel) as being owned by Ellis Road Gardens, Inc., citing Deed Book 5879 Page 003.

83. Ellis Road Gardens, Inc. acquired the internal parcel of the cemetery (the Original Cemetery Parcel) in 1966 from "Galilee Memorial Gardens, Inc." pursuant to a court decree following a master's sale. This conveyance to Ellis Road Gardens, Inc. is reflected on the certified record of the Shelby County Register of Deeds. (EX 39).

84. Exhibit 39 details the legal description of the 8.95 cemetery parcel that constitutes the Original Cemetery Parcel. As described in **Book 5879 Page 003 of the Shelby County**

Register of Deeds, otherwise identified as “instrument 5879003C Book 5879, Pages 3 of 11, recorded in the Shelby County Register of Deeds as a Court decree from Okeon Sam Tr, Bearman Leo Tr, First National Bank of Memphis, Galilee Memorial Gardens, Inc. to Block, Richard, Unobsky, Bert, Block, Herman, Koehler, Paul G, Cone, Louise W.” (Language of certification by Registrar in EX 39), the included language of the court decree of March 7, 1966 stated:

All right, title and interest of Galilee Memorial Gardens, Inc., Leo Bearman as Trustee, and all other parties, in and to **the tract of land containing 8.95 acres and described as follows, to-wit:**

Being all of Parcel A and parts of Parcels B and C of the partition of the north 55 acres of Darthula B. Simpson's 109.06 acre tract and more particularly described as follows:

Beginning at a point in the south line of Ellis Road (25 feet from center line) in the west line of the Simpson tract, which point is the east line of the Tyree Rhodes 640 acre grant, 1300 feet east of the intersection of the center line of Germantown Road and the center line of Ellis Road, and running thence eastwardly with the south line of Ellis Road 599.30 feet to a point; thence southwardly by an interior angle of 97 degrees 50 minutes and parallel with the west line of the Simpson tract 615.55 feet to a point; thence westwardly by a right angle 593.70 feet to a point in the west line of the Simpson tract; thence northwardly with the west line of the Simpson tract 697.23 feet to the beginning.

Be and the same is hereby divested out of them and is vested in Ellis Road Gardens, Inc., (the purchaser of said tract of land at the sale conducted by the Master), as an indefeasible inheritance, in fee simple, forever.

(EX. 39) (Bold added).

85. The above-quoted legal description from 1966 in **Book 5879 Page 003** with the metes and bounds of the land is identical, as confirmed by Mr. Moore (TR 231-232), to the tract described in 1993, in **Instrument 03015493**, the Asset Purchase Agreement dated 29 January, 1993, Exhibit 40 to this Proceeding, of real property sold to Lambert Memorials, Inc., a Defendant of which the Commissioner is now the receiver, by the Receiver of Ellis Road Gardens, Inc., as

described at page 11, under “real property” referring to Schedule 1 to Exhibit E of that instrument as follows:

A tract of land containing 8.95 acres and described as follows, to-wit:

Being all of Parcel A and parts of Parcels B and C of the partition of the north 55 acres of Darthula B. Simpson’s 109.06 acre tract and more particularly described as follows:

Beginning at a point in the south line of Ellis Road (25 feet from center line) in the west line of the Simpson tract, which point is the east line of the Tyree Rhodes 640 acre grant, 1300 feet east of the intersection of the center line of Germantown Road and the center line of Ellis Road, and running thence eastwardly with the south line of Ellis Road 599.30 feet to a point; thence southwardly by an interior angle of 97 degrees 50 minutes and parallel with the west line of the Simpson tract 615.55 feet to a point; thence westwardly by a right angle 593.70 feet to a point in the west line of the Simpson tract; thence northwardly with the west line of the Simpson tract 697.23 feet to the beginning.

The above described property BEING the same property conveyed to Ellis Road Gardens, Inc., by order of the Shelby County Chancery Court in the case styled, Richard Block, et al. v. Sam Okeon, at al., No. 679593 R.D., of record in Minute Book 280, pg. 89.

(Exhibit 40, Schedule 1 to Exhibit E of Asset Purchase Agreement, bold added) (TR 230-232).

86. Mr. Moore confirmed that the tract as described by this quoted schedule and legal description in the 1993 purchase, part of Exhibit 40, **Instrument 03015493**, was the original cemetery tract, and the exact same property that had been conveyed to Ellis Road Gardens, Inc., by Exhibit 39, **Book 5879 Page 003**. He confirmed that Exhibit 40, Instrument 03015493, was “how the Lambert entities acquired the original 8.95 acres” of the cemetery. (TR 231-232). Ellis Road Gardens, Inc. had had problems of its own in the 1991-1993 period which resulted in that sale by Jeanne Bryant, the Receiver appointed by the Shelby County Chancery Court over the Ellis Road Gardens-owned cemetery. (TR 230).

87. Based on the foregoing descriptions, it is determinable that the property conveyed by recorded Instrument 03015493 (EX 40) is the Original Cemetery Parcel of Galilee Memorial Gardens cemetery, and that the Original Cemetery Parcel undoubtedly thereby came into possession and ownership of Jesse Lambert and his business known as Lambert Memorials, Inc. Thereafter, the Defendants in this case, after Jesse Lambert died in May 2010, exclusively physically possessed, operated, and represented themselves legally to the Department (as testified by Mr. Gribble) as successor joint owners to this Original Cemetery Parcel in the corporation owned by Jesse Lambert's widow, son and daughter.

88. Mr. Moore also testified that although the Exhibit 40 instrument was a recorded document transferring the original cemetery tract from Ellis Road Gardens, Inc. to Lambert Memorials, Inc., the tax assessor's office in Shelby County still shows the owner of the property as Ellis Road Gardens, Inc., the prior owner. (TR 233). This was shown by the information in Exhibit 12, under which both the Assessor and Register's offices, as searched by Mr. Green on April 9, 2019, still list the owner name as Ellis Road Gardens, Inc. (with no address for that owner) for 8283 Ellis Road in Bartlett, Parcel ID B015800132C, now shown as 12.5470 acres (rounded to 12.55 on Register's site). (TR 94-96, EX 12). That is the sum of acreage of the Original Cemetery Parcel plus the Expansion Parcel.

89. Based on these transactions detailed herein, Shelby County's official property record for the overall cemetery parcel reflects at least erroneous and outdated named ownership of the cemetery, by omitting the step of transfer to Lambert Memorials, Inc. (and to Jesse Lambert), which was recorded whereby Ellis Road Gardens, Inc., through its Receiver, transferred ownership of the Original Cemetery Parcel, as reflected in the Asset Purchase Agreement of 1993 (EX 40).

90. It is known that the purchase under the Asset Purchase Agreement was consummated and approved, in that the Department came to register Galilee Memorial Gardens cemetery to Jesse Lambert's company, Lambert Memorial Gardens, Inc., and dealt with him as the owner until he died. However, the Shelby County Register omits that step, and since the time Jesse Lambert died, neither do the Register's records reflect that this 8283 Ellis Road property ever was conveyed to anyone else, whether JM&M Services, Inc. or the other Defendants. The Receiver has asked the Court to assist in orders that will clarify this inconsistent record for further conveyance of the merged 12.547 acre property, in total, by the Receiver, and the Court finds this request to be well taken.

TOPIC #4

BASES FOR PERMANENT INJUNCTION AGAINST DEFENDANTS' OPERATING OR INTERFERING WITH GALILEE MEMORIAL GARDENS CEMETERY

The Order that set the April 10, 2019 hearing framed the question and facts to be considered on this issue as follows:

The Court will consider entering a permanent order of injunction under Tenn. Code Ann. § 46-1-301 against violations of the Cemetery Act and as appropriate to concluding this receivership under Tenn. Code Ann. § 46-1-312, barring Defendants from operation of Galilee Memorial Gardens, and reflecting, at least the Defendants' lack of registration authority or approval from the Department of Commerce and Insurance to operate and conduct business at Galilee Memorial Gardens. The injunction request may take cognizance of other conditions the Receiver found at the cemetery to justify barring Defendants' involvement with the cemetery business.

(Order Setting Hearing, pp. 7-8).

91. The hearing on April 10, 2019 supplied no reason to disturb the basic findings of Defendants' compounded failures to comply with the Cemetery Act, which were made in the Order of Receivership and Temporary Injunction. This included formally that Defendants lacked registration authority and approval from the Department to conduct business at Galilee. To the

extent that some of the Order of Receivership reflected preliminary rulings, subject to the Receiver's inquiries and attempts to rehabilitate the cemetery which was one purpose of that Order, the witnesses at the hearing confirmed the continuing extent to which the cemetery was, and remains, in violation of and unable to meet the requirements of law. Thus, the Receiver contends it is appropriate that Defendants be permanently enjoined due to their history of having continually violated cemetery regulatory law, with practices that led to cemetery overcapacity and other factors detrimental to any resumption of operations.

92. The Receiver has asked for certain remedies in order to remove Defendants from any further right, title and interest in the cemetery property due to their failure to comply with the Cemetery Act. Some of the statutory failures which were confirmed by additional receivership-generated information and testimony trigger Cemetery Act provisions that authorize the termination of the corporate charter and removal/separation of the cemetery property for sale away from the current owners.

In Keeping with Repeated Arrearages and Untimely Payments by Defendants to the ICTF, the Defendants Entered Receivership Still Owing Money to the ICTF Because They Continued to Sell Plots After Being Prohibited by Burial Services

93. Mr. Gribble testified that Galilee Memorial Gardens, under Jesse Lambert and then the Defendants after his death, did not pay ICTF on time, but instead waited until the Department tallied the deficiency: "Typically, they would wait until an auditor went out there and did an examination, and then they would in some way pay that amount at that time, but it's not in compliance with the cemetery act. It's not as it should be in a timely manner." (TR 86, lns 11-18). With payment to the ICTF always in arrears, the auditors could assess penalties, as shown by the September 10, 2013 examination finding letter that imposes a 10% penalty for delinquency under Tenn. Code Ann. § 46-1-204. (EX 7, p. 2). The audit findings state that no deposits were

made for sales from April 1, 2013 to July 31, 2013, and “[l]ate deposits to the Improvement Care Trust are a systemic pattern for cemetery management and a repeat finding from previous examinations.” (EX 7, p. 3).

94. While at no time after Jesse Lambert’s registration expired as of December 31, 2010, should the Defendants have conducted the business of a cemetery company and cemetery without the granting of a new registration (as confirmed in the Initial Order and Final Order denying their August 2011 application, EX 2, exs 2 and 3), the Defendants persisted in making at-need sales even when explicit directives barred that exact activity. (TR 74-87, 196-200, 210-215).

95. The Defendants violated the terms and scope of the temporary authority granted in the July 23, 2013 letter of Mr. Gribble to JM&M Services, Inc. that denied its January 2013 application for registration. The letter only authorized JM&M Services, Inc. to fulfill prior obligations and provide maintenance; further at-need sales were prohibited. The debarment failed to alter their conduct, and Burial Services sought proof that ongoing business activity at the cemetery exceeded their authority and was not merely servicing prior contracts. Additional interments were counted (EX 2, Para. 11) and the September 10, 2013 examination finding letter (EX 7, pp. 4-5), through direct audit to August 25, 2013, contains an Observation, Operation in Violation of T.C.A. § 46-1-103, stating:

JM&M Services, Inc. was granted temporary authorization, July 23, 2013 to provide improvement care and service existing contracts. However, all at-need sales documented after July 23, 2013 represent activity beyond this limited authorization. (EX 7, p. 4).

The violations also caused Galilee to incur more obligations to customers and additional liabilities to the ICTF that are unmet deficiencies.

96. The Order of Receivership reflected that Defendants did not admit specifically to the continuing existence of an ICTF deficiency; accordingly, that issue has been addressed by the

Receiver at this proceeding. The issue appears in the Order of Receivership, finding paragraph

11:

11. Under Tenn. Code Ann. § 46-1-204, shortly after any transaction selling burial plots, other designated cemetery items and memorial care, a cemetery must deposit minimum prescribed amounts of the sales price into the improvement care trust for such cemetery. From August 25, 2013, until the entry of the Temporary Restraining Order in this case, the Cemetery has sold burial plots but has not made the required deposits into its improvement care trust fund, as required by Tenn. Code Ann. § 46-1-204. *The Defendants deny those allegations.* However, for reasons stated in the Response and Limited Object, and at the February 10, 2014 hearing, the Defendants do not oppose the appointment of a receiver for the Cemetery for the purposes of rehabilitation.

(Emphasis supplied).

97. Even with this dispute of a current deficiency, the Order of Receivership included one trust deficiency related ground, Tenn. Code Ann. § 46-1-312(a)(1)(A): failure to maintain the trust funds in the manner required by chapter 1 of Title 46, the Cemetery Act. (Para. 14).

Defendants Did Not Pay the Trust for any New Lot Sales Galilee Memorial Gardens Made after August 25, 2013

98. The sale of cemetery lots generates amounts owing to the ICTF. Mr. Gribble explained that any sales of gravesites and plots generate sales income, 20% of which is to be deposited into the ICTF. (TR 60). Any opening and closing fees that are received do not generate ICTF obligations. These are considered merchandise and services charges, so, if not immediately provided at-need, but rather, bought pre-need (prepaid), these are supposed to generate required deposits under statute for the pre-need merchandise and services trust, on a different calculation from the lot sales. By statute,⁷ there is a minimum to be deposited, or, if their cost exceeds the minimum, 120% of the cemetery's cost of the opening and closing. (TR 60).

⁷ Mr. Gribble is alluding to the pre-need merchandise and services trust requirements in Tenn. Code Ann. Section 46-1-207.

99. The cemetery records of burials included new plot sales after July 23, 2013 and after August 25, 2013. Mr. Moore testified about the final receipt book (TR 196-200, EX 33, Lambert Memorials, Inc. receipt book 15248-15405, 7-22-2013 to 1-22-2014), and he concluded, based on his experience and review from the records of Galilee, that the receipts #15320, #15321 and #15322, with named people noted, represented sales of burial spaces. The amounts reflected, \$1095, \$1095, and \$960, respectively, represent purchases of burial space sales in September 2013. Similarly, he concluded #15373 (for \$1000 for burial of someone) was for purchase of an at-need burial space. Also receipt #15375 (for \$1095 and a name) and #15376 (for \$1095 and a name) would be for burial spaces, dated November 9, 2013. Mr. Moore was explaining just some of the receipts of this type within EX 33.⁸ Any new sales of burial spaces and other new business in this final receipt book violated prohibitions from the Department (EX 2, Ex 5); and any at-need sales of lots after August 25, 2013, would produce new liabilities to the ICTF that were never paid by the cemetery prior to receivership. (TR 74-77, EX 7, Examination Finding Letter 9/10/2013, for April 1 through August 25, 2013; TR 84-86, EX 9).

100. The EX 33 receipt book almost entirely coincides with the post-July 23, 2013 Burial Services letter restricting Galilee's new business. All sales of burial spaces within it generated ICTF obligations, only some of which have been paid, and all violated regulatory and statutory prohibitions on Galilee at that time.

101. The first month of these violative at-need sales were identified and remarked upon in the examination finding letter of September 10, 2013 (EX 7, page 4-5) that audited the cemetery business's compliance with law for the period April 1 through August 25, 2013. (TR 74-76).

⁸ Several more September-November receipts for \$995 and \$1095 within that book include at least #15306, 15326, 15328, 15335, 15336, 15337, 15338, 15339, 15341, 15342, 15344, 15348, 15355, 15359, 15360, 15364, 15369 which all exceed those amounts.

August 25, 2013 was the last date through which the department identified a total dollar deficiency of \$31,706 (calculated as 225 plots sold for gross dollars of \$158,530, at 20%), payable to the ICTF. (TR 76-77). Jemar Lambert acknowledged they owed this \$31,706 in his 9/18/2013 letter to Mr. Gribble. (EX 9). Via the wire transfer from an account for Lambert & Sons, Inc., \$31,000, not even the whole amount due, was paid into the ICTF for Galilee in late October. (TR 83-86, EX 2, Ex 11).

102. Besides the receipt book, another indicator of plot sales that were made by Galilee managers after August 25, 2013, is the Receiver's tally from the cemetery's records of overall interments from August 25, 2013 until the cemetery was taken over in January 2014, and the Receiver's observations that at-need interments (new purchases) were the majority. (TR 209-215).

103. With the cemetery's own interment activity records that came into the Receiver's possession, Mr. Moore's firm collated all of the information that they had about interments at Galilee and put it in a database that could be manipulated to produce results with different parameters. (TR 209-211). The log of all interments recorded by the cemetery itself was placed in an excel spreadsheet that was an exhibit to the Ninth Interim Report, Collective Exhibit I, GMG Logs – Final, April 21, 2015 Interment Database. The spreadsheet database could also be queried to render just those interments made at or after given dates. Exhibit 36, a collective exhibit of dated burial records, includes two such queries. Mr. Moore testified that EX 36, pp. 1-2, show the receivership-gridded tabulation of all the interments recorded by Galilee after July 23, 2013. These two pages, with rows of information for each named decedent buried, form a longer list than the one-page spreadsheet that followed in Exhibit 36 (p.3) (TR 210), tabulating all the interments recorded by Galilee after August 25, 2013, the cut-off date through which the Department had calculated the last ICTF deficiency. (TR 211).

104. From these three pages of EX 36 sheets of alphabetically listed names of decedents and their interment dates, the total interments listed after July 23, 2013 from 99 rows, yields about 97 interments (excluding likely duplicates Dora (Lee) Wilson, Ivery/Ivory Davis). The post-August 25, 2013 list shows about 45 interments. Demonstrably, more than 50 burials were recorded at Galilee just from July 23 to August 25, 2013.

105. Mr. Moore showed examples from the cemetery's own dated burial sheets, headed "Galilee Memorial Gardens," called "BURIAL FORMS," in the remaining pages of Exhibit 36. The selected burial forms were dated in order from interment dates beginning July 27, 2013 on one page, a next sheet for August 2, 2013 and on into November 2013. These were generated by Galilee Memorial Gardens, and according to information stated to Mr. Moore by Jemar Lambert and Marje Lambert, these were printed out and would have the location often left blank so that the location could be filled in by hand by the grave digger. Per the Lamberts' information, those handwritten documents' information was later entered into the computer form and printed out again with the notations having already been made. These sheets were how the Lamberts recorded their burials on a monthly basis. (TR 211-212). Other burial form sheets with handwritten notes formed the latter part of EX 36. (TR 214-215).

106. Looking at the Burial Form sheets presented in a chronological order, Mr. Moore identified the at-need burials shown by Galilee records as "A/N" between July 27 and August 24, 2013. These at-need burials far exceeded the pre-need "P/N" burials designated in that period. Further, into November 2013, there were pre-need burials indicated, although at-needs are still reflected (October 5, 2013 sheet). (TR 213-215). The chronological sheets from July 27 to August

24, 2013 list about 51 interments with "A/N" notations. The sheets in the handwritten portion of EX 36 for late July and August 2013, starting with "Pollard," had at-need interments.⁹

107. Of the approximately 97 interments recorded into Galilee after July 23, 2013 until the cemetery closed in January 2014, the major percentage of these interments were at-need burials. (TR 211). From the burial forms and the interment record, the receipt book at EX 33, and Galilee's pattern of predominantly making at-need sales before then in 2013, the Receiver has shown a sound factual basis for stating that Galilee owes an indeterminate additional amount to the ICTF because of its new plot sales made after August 25, 2013.

108. Mr. Gribble had commented on the period preceding August 2013, that in general the cemetery performed a very small amount of pre-need burial fulfillments with gravesites, compared to the large amount of at-need interments. He discussed information from EX 7, p. 5 tables two and three, that reflected preneed spaces already sold being reduced by just 7 spaces used between February 21, 2013 to August 25, 2013, compared to 265 at-need grave spaces used. (TR 79-80). There was a concern about the trend and the number of spaces the cemetery had remaining for sale. (TR 77-78). The September 10, 2013 examination letter already described as of August 25, 2013 that JM&M Services, Inc. had conducted sales in violation of their authority.

109. In short, an ICTF deficiency related to 20% of the sale price for all of Galilee's new plot sales made after August 25, 2013, exists.

110. Also, despite their role being reduced to caretaker maintaining the cemetery, the Defendants after July 2013 persisted in transacting all types of new cemetery business not connected with fulfilling old contracts. From the receipt books and contracts in latter 2013 into

⁹ These "P/N" pre-need designations by Galilee for burials may not rule out that Galilee had received at-need payments for the person's gravesite in this period when Galilee was debarred from at-needs. Some "P/N" burials listed reflect names shown on receipts in EX 33 for \$995 or \$1095. (Ex. #15364 for supposedly P/N Calvin T. Blakely, \$1095, #15369, \$1095 for supposedly P/N Sarah Covington, buried on 10/26/13), comparing EXs 33 and EX 36 burial forms.

2014, which reflect extensive income for burials, grave plots, goods and services, there is additional proof that the cemetery management simply disobeyed the law and directives of the Department's Burial Services Section.

111. Mr. Moore testified, as detailed in the findings of fact under Topic #2, about the insufficiency of remaining vacant gravesites for the persons who would have been entitled to them by contracts – and by claims – submitted to the Receiver. The now-identified unfulfilled claims for about 573 grave sites is *almost triple* the 204 pre-need spaces set aside per Galilee management's own count to Department auditors as of August 25, 2013. (EX 7). Moreover, because of the limited claims process used, it is possible additional people could still assert claims. The Defendants managed Galilee without officially reporting the required true actual conditions of space and contractual obligations.

Defendants Made Improper and Illegal Interments

112. As explained in detail in the findings of fact under Topic 3, the Defendants improperly and illegally buried bodies on land not within the boundaries of the Original Cemetery Parcel of Galilee Memorial Gardens, which led to the neighboring landowner donating the Expansion Parcel to the Commissioner. (TR 224-225).

113. Additionally, Mr. Moore testified about the Defendants' failure to properly abide by a grid system as they buried bodies. For instance, "[s]ome burials are into the next grave, some are not even parallel, they're angled and extend down in order to be able to get into a space that wasn't really platted and grid-marked on the layout of the cemetery." (TR 160-161).

TOPIC #5

THE DETERMINATION OR BAR OF ANY CLAIMS OF DEFENDANTS

114. As set forth in the “Introduction” of this Memorandum and Order, the Order that set the hearing at issue herein (“Order Setting Hearing”) directed the Defendants to file “on or before March 20, 2019” their witness lists, exhibit lists, and any other written material in response to the topics or relief to be considered. The Order Setting Hearing further informed Defendants that March 20, 2019, was the date by which the Defendants were to file notice if they opposed the relief sought by the Receiver or had any intent of participating in the March 25th hearing.

115. The Defendants did not file any witness list, exhibit list, or any other written material by the Court’s deadline of March 20, 2019; nor did the Defendants notify the Court of any opposition to the relief sought by the Receiver or any intent to participate in the March 25th hearing.

116. On March 21, 2019, the Receiver filed a motion to continue the hearing, which the Court granted that same day. The Court entered an Order that reset the hearing for April 10, 2019, and directed counsel for the Receiver to send a copy of the Order to the individual Defendants by overnight courier to ensure that they received notice of the Court’s action as quickly as possible.

117. At the start of the hearing on April 10, 2019, the Court announced that it had not received any opposition from any of the involved Defendants, and counsel announced that the Attorney General’s Office had not had any contact from them. (TR 8). This default status was affirmed in the Court’s oral ruling, that the Defendants had not made any claims on the receivership for the hearing. (TR 8, 239-241).

118. Thus, based on the Order Setting Hearing, of which adequate notice was given to Defendants, this Court finds that a deadline for opposition was established, none was filed, and no one appeared at the April 10, 2019 hearing to oppose the relief sought by the Receiver. (TR 8, 239).

119. Defendants' non-participation and non-opposition are pertinent to as to whether the Defendants could assert or have any distribution rights out of the receivership that are superior to priorities of the Cemetery Act, or whether any claim(s) that Defendants might have are barred or should be determined as lacking any value. The Receiver framed the issue in Paragraph 3.E of the Motion to Set, as follows:

E. No Monetary Claim of Defendants on Receivership: Whether in connection with these types of relief, the individual Lambert Defendants should be determined to be left with no possible monetary claim against the businesses being dissolved in receivership, as it is clear they would have no distribution rights whatsoever out of the receivership superior to the priorities expressed by the Cemetery Act in favor of restoring deficient trusts of the cemetery, and attempting to satisfy outstanding business obligations of the cemetery business. As by every measure this receivership has no distributable assets, the former owners of the cemetery business, (even without regard to any claims against them), simply will never have a claim to be paid out of this estate.

(Order Setting Hearing, p. 3).

120. In turn, the Court framed Topic #5 as follows:

In light of the proof taken and rulings that may be authorized concerning all the other relief sought by the Receiver, the Court shall hear whether thereafter the Defendants assert or have any remaining claim on the receivership estate, and if they have a claim, whether that claim has any chance of receiving distribution from the receivership estate. The Receiver contends any claim by Defendants lacks merit or any monetary value, because the Cemetery lacks distributable assets, the claim is moot, and because the Cemetery has unfulfilled obligations to interests that would be given higher priority under Tenn. Code Ann. Title 46 (the Cemetery Act) to the statutory trusts and to customers' unfulfilled burial claims.

(Order Setting Hearing, p. 8).

121. This record makes clear the Defendants have no cognizable claims on the receivership anymore, regardless of any earlier contentions in their Response and Limited Objection to Application for Restraining Order and Temporary Injunction and Order to Show Cause Setting Hearing on the Verified Petition, which they filed in 2014. The Court determines that the Defendants have not made any claims; the Defendants are barred from making any further

claims; and Defendants have no claim whatsoever of any interest in any part of the receivership estate to the extent such an estate exists, because there are no assets. (TR 241).

122. Having already been given notice that their claims could be barred or adjudicated, Defendants are not entitled to any further bar date.

123. The question of whether Defendants' claims would be inferior to other claimants on the cemetery, or whether they would be offset by claims the estate could make on them, is a matter of law. On this record, the inquiry is moot.

CONCLUSIONS OF LAW

The Court, in reliance on the foregoing Findings of Fact, and the entire record, concludes as follows:

L1. The Court has exclusive jurisdiction over the matters brought by the Commissioner under Tenn. Code Ann. § 46-1-312 and is authorized to make all necessary or appropriate orders to carry out the purposes of that statutory part 3 of chapter 1, providing various enforcement mechanisms. Receiverships instituted under Tenn. Code Ann. § 46-1-312 are the sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery. Tenn. Code Ann. § 46-1-312(a)(2) and (3).

L2. The order granting receivership and temporary injunctive relief reflected the scope of this proceeding obtained under grounds Tenn. Code Ann. § 46-1-312(a)(1)(A), (B), (E) and (G), and included the terms of the preliminary injunction under Tenn. Code Ann. § 46-1-301(c) to prevent further violations of the Cemetery Act. (Cemetery Act of 2006, chapters 1 and 2 of Title 46, Tennessee Code Annotated.) The Commissioner was made Receiver in her official capacity, and with her successors in office, of the Defendant Galilee Memorial Gardens and of all entities

doing business as the Cemetery (Order of Receivership, pp. 6-7), including specifically JM&M Services, Inc., Lambert Memorial Co., Lambert Memorials, Inc., and Lambert & Sons, Inc. These entities, and the individuals who operated or owned them, were enjoined.

L3: The Receiver has carried out the receivership since February 2014, and, as specified in the Findings of Fact (hereinafter “F.¶”), and based on the proof cited above, gained information indicating the originally named entities should be expanded. The Court will expand the names to reflect the actual universe of names used by the sued Defendants for Galilee business, so that they can be reflected in the orders of this Court which wind them up. The cemetery and cemetery business that comprise this receivership, and over which this Court has jurisdiction, are referred to in this Order as “the Lambert entities.”

L4. The Cemetery Act defines what is meant by the cemetery under receivership and the scope of this proceeding as follows in Tenn. Code Ann. § 46-1-102(1) and (2):

- (1) “Cemetery” means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;
- (2) “Cemetery company” means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of the cemetery;

The listing by the Court defines the scope of the “cemetery company” which is in receivership, and enjoined, and which must be terminated on the facts shown.

L5. Those owning and operating Galilee Memorial Gardens cemetery were required by law to obtain registration. Tenn. Code Ann. § 46-1-103 makes it unlawful, unless an exception applies, “for a cemetery company to operate a cemetery or separate geographical site of a cemetery in this state without a valid certificate of registration of the cemetery or separate site of the

cemetery.” Tenn. Code Ann. § 46-1-102(2)’s definition of “cemetery company” enables the conclusion that multiple business entities or individuals may qualify as the “cemetery company” because of their activities and ownership of the cemetery. Where, as here, no person or entity had obtained proper registration to operate Galilee Memorial Gardens, and where the ownership of the relevant cemetery parcel in Shelby County is out of date, potentially all those business entities and individuals may be regarded as the cemetery company and need to be enjoined from further involvement. By force of law, the Receiver’s appointment encompassed both the cemetery and whatever or whomever was the cemetery company.

L6. Much of the record made at the April 10, 2019 hearing from cemetery, receivership, corporate, and regulatory records was dedicated to defining this universe within this Court’s jurisdiction. (Topic 1, above). Mr. Gribble’s testimony and exhibits (TR 41-89, EXs 1-10) in particular, illustrated how the Defendants, after Jesse Lambert died, failed to obtain registration to fully operate the cemetery, except for a temporary status that expressly barred new business undertakings. JM&M Services, Inc. was eventually the only Tennessee corporation applicant for registration formed by these Defendants, and it was owned by the Individual Lambert Defendants. Within all the testimony and exhibits, as shown for Topics 1 and 2 (F.¶¶ 1-74) above, all the other names that represent Defendants’ myriad trade names and continuing business entities shown on cemetery records have been gleaned.

L7. Tenn. Code Ann. § 48-24-202 (c) states “A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 48-24-105 and notify claimants under §§ 48-24-106 and 48-24-107.”

L8. Under Tenn. Code Ann. § 48-24-202, three old corporations, Lambert Memorial Gardens, Inc. - Control #263346; Lambert and Son Incorporated - Control # 270985; Lambert & Son, Inc. of Memphis - Control # 395938; are reflected officially as administratively dissolved, (EXs 15, 16, 17 and 13) require perhaps no further adjudication. Their administrative dissolutions occurred all before 2006. (F.¶ 41). The Court cannot conclude whether the old corporations merged stock or assets into JM&M Services, Inc. Any such process is simply outside the record, other than the representation that “JM&M” became owners of the cemetery by stock transfer from the deceased Jesse Lambert. (Ex 1 to EX 2; F.¶ 6). To reduce the loose ends of this status, in furtherance of their business necessary to wind up and liquidate their business and affairs, the Court will authorize judicial dissolution and final termination of the old corporations through this receivership order, and the Receiver will notify the SOS by filing a copy of this order in all these corporations.

L9. This Court has the power under both Tenn. Code Ann. § 46-1-301 and under the plenary powers granted by the cemetery receivership statute to prevent the further violations of Tenn. Code Ann. § 46-1-103 and the other violations of law and cemetery regulation committed by Defendants demonstrated on this record.

L10. Because of the multiple forms of names and capacities in which Defendants owned, controlled, and operated the cemetery business and land, any or all of them could be regarded as the “cemetery company” that lacked the required registration, and thus they all should be encompassed by this proceeding and enjoined from such further violation of the law. This Court under the authority of this Receivership action has jurisdiction over all of the entities operating the cemetery known as Galilee Memorial Gardens, including any and all trade names or assumed names.

L11. Identification of “the Lambert Entities” - Businesses in Receivership including Corporations to be Judicially Dissolved - This Court will list in its order below all the names of the business entities and the individuals related to the Lamberts’ operation of the cemetery, and all these names of entities comprise and define the universe of entities and individuals that must be addressed by the Court and that orders of the Court must concern.

L12. The Court has considered from Topic 1 (as well as those supporting Topic 2), all of the exhibits and testimony, and the several types of records reflecting publicly facing or common uses of the business names for Galilee Memorial Gardens employed by Defendants after, and while, Jesse Lambert was alive. While all the Findings of Fact had some bearing on the forms this business took, in particular these included the whole range of SOS materials with the official status of any Tennessee corporations, the Jesse Lambert personal bankruptcy materials, the application and regulatory filings and correspondence introduced by Mr. Gribble and Mr. Green, the website used by the cemetery, the deeds and the records of the cemetery itself as reviewed by Mr. Moore, with contracts, tax returns, policies, and receipts bearing various names, and the Defendants’ bank records shown by Ms. Allsup, which were sought by the Receiver to assess the financial condition of the cemetery. (F.¶ 1-74). In total, the Receiver showed over thirteen names and variants that were in use in different contexts supported by these exhibits and testimony.

L13. The Court finds the Receiver has proved that Defendants’ operation of Galilee Memorial Gardens cemetery was conducted by their use, or Jesse Lambert’s use, of all of the similar names for transactions of the cemetery and intermingled stone monument business, listed within Findings of Fact ¶ 1-74, and all to be listed in the order as “the Lambert entities,” whether or not they had been truly incorporated by them, and thus each of those names, inclusive of their variants, will be included in the order to dissolve and enjoin these actors conducting any business

or having any further involvement or ownership/ of Galilee Memorial Gardens cemetery as requested by the Receiver.

L14. All those exhibits within the Findings of Fact conform with page 5 of the Order Setting Hearing concerning the entities who have been involved related to the cemetery, who have operated or ostensibly taken on its operations. These are entities which are either inactive or have been dissolved by the SOS, (if they existed at all). The Receiver seeks for the Court to order dissolution, which the Court is going to do with respect to those that had been formed at the Tennessee SOS. The Court will enter the order of dissolution of all Galilee-related corporate entities based upon the proof that was provided in Topics 1 and 2 and Findings of Fact ¶ 36-42 (corporate status).

L15. The bankruptcy discharge of Jesse Lambert, by virtue of the Consent Order with the Department of Commerce and Insurance, (EX 1, Doc 62 of the Bankruptcy) did not discharge his prior or ongoing obligations under cemetery regulation for Galilee cemetery, which were declared as personal to him. (F.¶ 17-26). Thus, the Court with an abundance of caution has still included Jesse Lambert's trade names for the Galilee cemetery business, (EX 1, Docs 24 and 26, Chapter 13 amended petition and financial schedules) as many cemetery obligations that he undertook could have been pre-sold before his heirs took over. Mr. Moore received claims with contracts for gravesites and other services from the Jesse Lambert-era. (EX 27; F.¶ 27-28, 30-33).

L16. This Order Does Not Include or Affect SOS Control #s 000222181 and 000354842 - Lambert, Inc. – Two Corporations Unrelated to Galilee Cemetery: Based in Findings of Fact ¶ 43-44, above, (Green testimony, EXs 13, 19, 20 and 21), the Court finds that two true Tennessee SOS-authorized Lambert, Inc. corporations, Tennessee SOS control numbers 000222181 and 000354842, were completely unrelated to these Defendants or the Galilee

Memorial Gardens because they were formed by unrelated persons in another part of Tennessee, and in Alabama. Due to Defendants' extensive use of "Lambert, Inc." and "Lambert & Sons, Inc" for cemetery transactions, the Court's order includes those names, but will expressly exempt these two unrelated corporations that have nothing to do with the Lambert entities or the Defendants.

FOUNDATIONS TO DISSOLVE AND LIQUIDATE ALL THE CORPORATE ENTITIES AND THE ASSETS OF THE GALILEE CEMETERY BUSINESS INCLUDING THE LAND

L17. This Court has the power under the overall circumstances shown by the Receiver to dissolve and terminate each manifestation of the business of Galilee Memorial Gardens, and every assumed or trade name of that business, of or relating to the Defendants, by judicial order. The Court finds this is an appropriate extension of the necessary permanent injunction against further unregistered operation and other violations of cemetery law committed by Defendants. Further, the powers of the court under the cemetery receivership act to resolve the circumstances are broad, flexible and remedial in nature because this Court exercises its jurisdiction to address the potential liquidation of the cemetery when rehabilitation is futile. *See State ex rel. Johnson v. Mount Olivet Cemetery Co.*, 834 S.W.2d 306, 309-310 (Tenn. Ct. App. 1992) perm. to appeal denied, held that the trial judge had discretion under the predecessor to Tenn. Code Ann. § 46-1-312 to decide how a cemetery in receivership could be preserved where cemetery had been mismanaged, and was not strictly bound by technical provisions of the Cemetery Act.

L18. In addition to exercising the Court's power to fashion a complete and effective injunction under Tenn. Code Ann. § 46-1-301(c), the foundation for dissolution of the corporate charters and ending these businesses is foremost, and most specifically and comprehensively, based on the cemetery receivership court's power under Tenn. Code Ann. §§ 46-1-312(d) and 46-1-309. Together these provisions empower the court to both dissolve the corporate charter and to sell the cemetery itself under certain conditions that pertain to Galilee. Tenn. Code Ann. §§ 46-1-

312(d) incorporates the charter dissolution and potential sale provisions of Tenn. Code Ann. § 46-1-309 as follows: “Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, the court may proceed to order the sale of the cemetery as provided in [Tenn. Code Ann.] § 46-1-309, or may otherwise order termination of the use of the cemetery as provided by law.”¹⁰

L19. Tenn. Code Ann. § 46-1-309 allows the court to revoke the charter or certificate of authority of a corporate cemetery company for failure to comply with ICTF law, Tenn. Code Ann. § 46-1-204, or financial reporting requirements under Tenn. Code Ann. § 46-1-215. Tenn. Code Ann. § 46-1-309 also permits seizure and sale of the cemetery company’s assets or sale of the whole company property, to set up the ICTF as required. In similar fashion, the other cemetery law for liquidation of any types of cemetery trust deficiencies in Tenn. Code Ann. § 46-1-307 allows receivership or seizure and sale of the assets of the cemetery company. These statutes each empower the Court to terminate the charter and order the sale of the cemetery and whole cemetery property. They show the preference of the Cemetery Act for filling up the trust deficiencies above other obligations that would be made on the cemetery.

L20. **ICTF Deficiencies Still Exist.** Another ground for revocation of the corporate charters and termination of these companies flows, under the foregoing statutes, from the cemetery’s lack of assets, as shown by Findings of Fact in Topic 2. Because there is proof that Galilee has a deficiency in its ICTF, without means to pay even that first obligation of the Cemetery Act, the charters are revocable and the cemetery property may be sold or conveyed from its owners. Findings of Fact ¶ 91-113 in Topic 4 yield this result. Galilee’s deficient ICTF was shown by any

¹⁰ Tenn. Code Ann. Title 46, Chapter 4 termination of cemetery use is for cemeteries seeking removal of several graves and repurposing cemetery land for uses other than burials and is not relevant here.

new sales of lots they made after August 25, 2013. (Moore TR 196-200, 209-215, EXs 36 dated burial records, EX 33 receipts after 7-22-2013; Gribble TR 85-86, EX 2, ex. 11 (last ICTF deposit \$31,000 still leaving some deficiency), EX 7 and EX 9).

L21: While judicial dissolution under the corporation code, Title 48, has similar remedies, it expressly does not replace more specific regulatory schemes. Tenn. Code Ann. § 48-24-301, which provides for judicial dissolution of corporations generally, in proceedings by the Attorney General, enumerates grounds similar to those that gave rise to Galilee's cemetery receiver under Tenn. Code Ann. § 46-1-312, based on a corporation's illegality, violation of law resulting in the forfeiture of its charter, exceeding or abusing its legal authority, or carrying on business in a persistently fraudulent or illegal manner. Tenn. Code Ann. § 48-24-301(1). These grounds "shall not exclude actions or special proceedings by the [Attorney General] or other state officials for the dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state." *Id.*

L22. Further statutory provisions give the courts of equity in a judicial proceeding to dissolve a corporation the power to appoint receivers to wind up and liquidate. Such receivers may dispose of all or any part of the assets of the corporation through public or private sale as authorized by the court. Tenn. Code Ann. § 48-24-303. After the decree dissolving the corporation and specifying the effective date of the dissolution, the clerk of the court shall deliver a certified copy of the decree to the secretary of state. After entering the decree of dissolution, the court shall direct the winding up and liquidation. Tenn. Code Ann. § 48-24-304. This provision is fairly duplicative of and less specific than the Galilee receivership that was ordered originally in 2014, so this Court is well past that process. The Court finds as a matter of law that the exercise of Tenn. Code Ann.

§46-1-312 cemetery receivership court powers and cemetery act statutory remedies provide ample authority for this order of corporate dissolution and termination.

L23. Therefore, the Court believes these statutory schemes of Title 48 and 46 work together, and the more specific cemetery receivership remedy authorizes the termination of the corporate charter and the liquidation of all the assets and property of the cemetery in light of trust deficiencies and other outstanding claims on the cemetery.

L24. **The Cemetery Entities Lack Distributable Assets.** The proof for Topic 2 (F.¶ 46-74) demonstrates the current financial status of the cemetery and its businesses – that they have no remaining assets and produced no distributable funds at auction. This issue buttresses the dissolution and termination of these cemetery entities with the practical consideration that, without money to distribute, it is factually impossible for such a no-asset receivership estate to satisfy any financial claims against the cemetery. The ICTF is not an asset and is unavailable to pay the debts of the cemetery company under Tenn. Code Ann. § 46-1-204. The Court accepts and incorporates by reference the charts by Ms. Allsup of the bank account balances in various bank accounts located by the Receiver for Defendants’ cemetery and personal business (EXs 24 and 25). Therefore, no recoverable assets were located for distribution. Many of those accounts were closed by the bank after a negative balance had been achieved. Others had zero or de minimus balances. This confirms the Third Interim Report of the Deputy Receiver, filed in December 2014, regarding these inquiries made in 2014, that the cemetery lacked assets for distribution.

L25. **Stone Monument Business is Inseparable from the Cemetery Plot and Burial Business.** An outstanding issue from the Order of Receivership was the Defendants’ claims that the stone monument business could and should be separated from the cemetery business, whereas the Receiver has found them to be consolidated with each other financially, and thus inseparable.

The Defendants failed to prove up their earlier contentions and should be regarded as having abandoned them at this time.

L26. Again from the Findings of Fact in Topic 2 (F.¶46-74), even though Defendants have not made any claim upon the Receiver, nor opposed this proceeding, there is nothing to return to any Defendants even were their earlier contention of separateness of the stone business valid, which it is not. Financial and operational intermingling of the stone and burial businesses within the cemetery was proven. (F.¶ 71-74).

L27. Because there is no money in any of the cemetery business accounts (EX 24), and very minimal net proceeds of \$2427.26 from the court-ordered auction of the remaining personal property and equipment of the unused raw stones and vehicles (EXs 34-35; F.¶ 54-55), the point is moot as to whether the businesses even need to be declared inseverable at this time. The Court will authorize the Receiver to apply the net auction proceeds to receivership administrative expense.

L28. The Receiver proved as well from this meagre amount generated by the sale of the personal property, equipment and stone, that the Receiver lacks distributable funds to give claimants or to Defendants in any fashion.

L29. Because the Cemetery Act prefers remedying any statutorily deficient improvement care trust fund, and the removal or liquidation of deficiencies of the pre-need cemetery merchandise and services trusts, those goals cannot be satisfied where there are no assets and no viable source for recovery. Cemetery law regarding how to remedy deficiencies by providing means for the court or receiver to sell the cemetery itself shows how even such drastic remedies are appropriate for making up trust deficiencies, before any owner were to be paid out of these

assets. Further, this does not consider any rights of offset that the receivership estate might have against them before money would be paid out.

L30. Based on these statutes, the deficient trust supplies this Court an independent ground from the injunctive relief to authorize the dissolution of the corporations, termination of the businesses, and removal of the whole Galilee cemetery property from its owners.

VIOLATIONS OF LAW SUPPORTING PERMANENT INJUNCTION AGAINST THE DEFENDANTS

L31. The Receiver, with Findings of Fact in Topics 1, 2 and 4, showed a history of operation of Galilee cemetery by the current Defendants in which they repeatedly ignored, evaded and disobeyed the law and direct orders of the Department to cease operations. The mistakes to be remedied in the chain of Deeds in Topic 3 also showed Defendants neglected to take sufficient actions to clarify their ownership of the cemetery property.

L32. Even though the hearing mainly concerned business technicalities, it has also been shown by the entire record presented that Galilee's owners failed to meet these important regulatory laws and standards imposed in the Cemetery Act. The condition and finances of the cemetery prevent any resumption of cemetery operations and leave these Defendants totally out of compliance with the law. Receiver's requests for relief against Defendants are interrelated because the request for all corporate and business dissolution and termination relate not only to the lack of registration, but also to the lack of cemetery money to address trust deficiencies and to the lasting damage to the cemetery grounds and records. The violations of law cannot be remediated. These all still support the need for permanent injunction of all these entities.¹¹

¹¹ A Memorandum of Law in Support of the Motion for Temporary Restraining Order and Temporary Injunction was filed with the Verified Petition, briefing the factual and legal statutes and reasoning justifying the preliminary injunctive relief that issued, including the Restraining Order that issued January 24, 2014. The Court looks to the

L33. Based on all the Findings of Fact, especially those respecting the claims process (F.¶ 65-69) and why the Expansion Parcel was sought (F.¶ 78-79), the cemetery is indeed full; it indeed lacks any distributable assets (F.¶ 46-48); it indeed has a deficiency in its ICTF and other trust fund (F.¶ 93-109); it has a deficit of available usable burial spaces (F.¶ 65-69); and it has hundreds of claims presented to it by the Receiver for which it has no way to satisfy them even, in part, by money or in-kind property. Also, the cemetery was and remains unregistered, lacking a cemetery company registration because of inability to meet the qualifications for an operating cemetery.

L34. In the Topic 4 Findings of Fact ¶ 93-113, particularly the testimony of Mr. Gribble (TR 58-60, 74-77, 83-86), and Mr. Moore (TR 196-200, 209-215), it was proven that Galilee regularly violated the basic regulatory requirement to maintain the required amount of improvement care trust fund, and to pay into that ICTF fund timely. Further, Galilee was left at the point of receivership owing some amount for sales of plots it should not even have been making after 8/25/2013, the last date through which the Department had calculated its obligation. Further Galilee apparently had few funds, around \$3000, none of which was earmarked to the purchaser and purchaser's contract as required (Green, TR 125), in a preneed merchandise and services trust fund for pre-sold merchandise and services. (Tenn. Code Ann. §§ 46-1-204, 46-1-206, -207, -208). These two types of protections in registered compliant cemeteries secure the future maintenance of the cemetery and ensure funds are set aside for the future provision of goods and services, even if the original cemetery owner that sold them to a given customer is gone. The regulatory statutes

same law that supports a permanent injunction against Defendants and any further operation of the cemetery by them, Tenn. Code Ann. § 46-1-301(c), because the pessimistic predictions have been borne out by the factual conditions found at Galilee by the Receiver.

are intended and designed to allow a cemetery, ordinarily, to continue even into successive ownership, while still fulfilling its public purpose.

L35. Neither, according to the proof from the limited claims process and the gravesite study, has Galilee reserved its sold gravesites, aligned them properly, or even recorded their proper locations, so that they can be accessed by purchasers. (F.¶ 59-70, 112-114). The cemetery disciplinary statute evidences concern with this standard. It is grounds for refusal to issue or renew a registration of a cemetery, and for revocation or suspension, for “selling an interment site or interment right that the cemetery or cemetery operator knew or should have known had been purchased previously by another consumer.” Tenn. Code Ann. § 46-1-306((a)(16). Moreover, the record keeping requirements of the cemetery act in Tenn. Code Ann. § 46-1-111 since 2007 require a cemetery map that Defendants were never able to generate.

(d) After January 1, 2007, all cemetery companies applying for and obtaining a new registration in accordance with § 46-1-103 shall develop and maintain a map of the cemetery detailing the location of interment sites. For all cemetery companies registered January 1, 2007, a map must be developed and maintained for all interments sites newly developed or planned for development before the sites may be made available for sale to consumers.

Tenn. Code Ann. § 46-1-111(d).

L36. Findings of Fact ¶ 59-70 discussed the proof from the claim process and Mr. Moore’s testimony that the cemetery failed to set aside vacant available spaces for the over 573 gravesites that were claimed through the receivership claim process and failed to reserve even the number of pre-need spaces reported by the cemetery after August 2013. Mr. Moore could not certify any available vacant, useable spaces, due to burial misalignments. (Moore, TR 159-161). The cemetery also lacked any correct record of every interment site or interment right sold to a

consumer, as would also be required under Tenn. Code Ann. § 46-1-111(b). (Ninth Interim Report, *passim*).

L37. The Court is also guided by that part of the cemetery act that allows discipline to be imposed for dishonesty, fraud or gross negligence on the part of a cemetery company or any cemetery operator in the performance of services regulated by chapters 1 and 2 of title 46. Tenn. Code Ann. 46-1-306(a)(5). These same types of acts by them supply valid reasons to enjoin the unregistered cemetery company and its operators.

L38. The Court authorizes a permanent injunction with respect to the Defendants' operations, which is based upon *all* of the testimony and exhibits that have been admitted into evidence, and all of the Findings of Fact in this Order, because they show:

a) All of the actual corporations, including JM&M Services, Inc. after receivership began, are administratively dissolved at the Secretary of State. None of the Lambert entities, as shall be listed in the order, is registered to conduct ongoing business as a cemetery as required by Tenn. Code Ann. § 46-1-103. These entities and businesses are no longer operating, and they lack the capacity to fulfill the requirements for any operating registered cemetery.

b) The exhibits also evidence the further irresponsible actions by the Defendants in operating the cemetery. They violated explicit orders of the Commissioner and Burial Services. They were told not to sell any more at-need contracts or additional pre-need contracts, actions that impose trust obligations, but continued to do so even after the 7/23/2013 letter, (EX 2 ex. 5) limited the cemetery to grounds upkeep and fulfillment of prior obligations. The proof in Findings of Fact ¶ 94-111 showed numerous instances of new interments and new sales. Thus, Defendants went outside the scope of authority granted by that letter.

c) Before that time, the Defendants violated cemetery laws and regulatory orders of the Department including the initial summary judgment order and the Commissioner's Final Order, which required them to cease all business while lacking registration. (EX 2 exs 2 and 3, and EX 7, Examination Finding Letter 9/10/2013). They did not have registration and yet they continued to operate. (F. ¶ 5-14, 33, 94).

d) The Receiver's investigations have proved that Defendants violated the laws requiring the cemetery to keep appropriate records of the cemetery as needed for business or interment sites, Tenn. Code Ann. § 46-1-111, as well as the disciplinary prohibitions against double-selling gravesites and committing deceptive practices. This conduct was summarized in the Ninth Report, filed in June 2016, which Mr. Moore affirmed at the hearing had revealed gross discrepancies in grave locations, alignment, such that the records cannot be relied upon, and inadequate vacant spaces remain to fill outstanding burial rights. Galilee Memorial Gardens' operators had buried numerous bodies over the boundary lines into the neighboring property owner's land, (Para. 4.10, Verified Petition), a situation only partially mitigated by the neighbor Fogelman Trust's donation of the property to the Receiver. (The Expansion Cemetery Parcel – EX 41) (Moore, TR 224-225). These areas are also full, as Mr. Moore testified that hardly any vacant space was detected. (F. ¶ 66-68).

e) The record is clear that the Defendants did not perform the duties required of them in connection with making timely, or often, any trust deposits, and that they had a pattern of violating the trust law.

f) There was also business income belonging to the cemetery that was deposited into individuals' accounts. (EX 25, explained by Ms. Allsup, F. ¶ 49-51). These Findings of Fact reflected commingling of business and personal finances.

Accordingly, the record is clear with respect to misconduct that warrants a permanent injunction from them operating.

L39. A permanent injunction is warranted against Defendants operating or interfering with Galilee Memorial Gardens Cemetery or their standing in any relation to the cemetery to commit further violations of law.

THE COURT IS EMPOWERED TO CONVEY THE CEMETERY FROM DEFENDANTS

L40. The same cemetery laws that concern the dissolution of the cemetery corporate charter support the power of this court to remove the Defendants' rights, title and interest as owners of the original cemetery parcel of 8.95 acres due to the existing trust deficiencies. Tenn. Code Ann. Sec. § 46-1-312 states: "Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, *the court may proceed to order the sale of the cemetery as provided in § 46-1-309.*" This remedy also flows from Defendants not opposing the Receiver's requests for this hearing and not making any claim on this receivership estate. (Topic 5, F.¶ 114-123).

L41. Receivership under the Commissioner is the sole means of "liquidating, rehabilitating or conserving a cemetery" under Tenn. Code Ann. 46-1-312(a)(3). These terms are not explained in the Cemetery Act, but they mirror provisions of the Tennessee insurers rehabilitation and liquidation act, which is designed principally for dealing with financially impaired and insolvent insurers in this state. (Tenn. Code Ann., Title 56, chapter 9). The lack of distributable assets against overwhelming claims means the cemetery business must be liquidated and is hopelessly insolvent. Accordingly, this Court is empowered by the cemetery receivership statute and has considered the applicability of remedies and methods of fully addressing the

cemetery's financial straits of liquidation, and has determined it is the kind of insolvent estate that cannot even meet its claims and liabilities on any pro-rata basis. (e.g. Tenn. Code Ann. § 56-9-330, priorities of claims on an insurer in liquidation, where one class must be paid in full before the next class may be paid in whole or pro-rata).

L42. Statutes Authorize the Receiver's Desired Remedy of Selling or Conveying Cemetery Away from its Defendant Owners to Remedy Trust Deficiencies. The Court takes cognizance of the Findings of Fact in Topic 4 reflecting an outstanding ICTF deficiency as testified by Mr. Moore and Mr. Gribble and the status of the tiny unarmarked Merchandise & Services trust, because the cemetery receivership statute authorizes several remedies related to unmet deficiencies in the trusts. (*See* above, L17-23, regarding Tenn. Code Ann. §§ 46-1-312, 46-1-307 and 46-1-309). In receivership of a cemetery, if the operations of the cemetery cannot supply the deficiency, the whole property of the cemetery may be sold off (meaning the cemetery company would no longer be the owner).

L43. The Cemetery Act centers around ownership of the overall cemetery ground parcel. The abandonment of the parcel is not favored, even though maintenance can be reimbursed by ICTF earnings to a non-owner under Tenn. Code Ann. § 46-1-204(e)(3).

L44. Relying on the proof in Topic 3 (F.¶ 75-90), the Court recognizes and declares that all 12.547 acres of the Cemetery is now in the possession of the Receiver because of the registered instruments introduced into evidence as Exhibits 40 and 41, and the merger of those two parcels, as testified to by Mr. Moore, who had the property surveyed (EX 38), and had done relevant investigation into the nature of the official record. Similarly, the Court agrees that the Assessor and Register's records, (EX 12) that Mr. Green searched, erroneously reflect the owner of the

whole property Parcel ID B015800132C as Ellis Road Gardens, Inc., an entity that has been defunct and wound up by receivership for over 26 years. This error will be corrected.

L45. The boundaries of real property constituting the entire cemetery burial ground of Galilee Memorial Gardens Cemetery is reflected in the Exhibit 38 survey, and thus Galilee Memorial Gardens Cemetery is now to be accurately reflected as the merger of the two (2) parcels taken together that are recorded in the Shelby County Register's Office in Memphis, Tennessee as the Original Cemetery Parcel (EXs 39, 40) and the Expansion Parcel (EX 41).

L46. The Receiver seeks, and the Court will grant, a Court order suitable for filing with the Register of Deeds to declare the Original Cemetery Parcel and the Expansion Parcel at the Register of Deeds (as defined), as reflected by Assessor's Parcel ID B01 58 001 32C, are both held by "Julie Mix McPeak, Commissioner of Commerce & Insurance in her capacity as receiver for Galilee Memorial Gardens Cemetery" with the goal that both parcels of the real property of the cemetery that is Galilee Memorial Gardens be capable of transfer by the Receiver cleanly to any new holder or caretaker entity at the conclusion of the receivership. Any such conveyance of the parcel as a whole is limited to potentially divesting these Defendants from the ownership of the cemetery parcel, and the Court preserves all other easements to the cemetery parcels and reserves for separate order and will not affect any matters relating to the rights of persons who are interred in the cemetery, or holding rights to burial in the cemetery.

L47. To the extent the Original Cemetery Parcel, shown by EX 40, has not been reflected as a transference of ownership from Ellis Road Gardens, Inc. to Lambert Memorials, Inc., and it is necessary to the record of the Shelby County Register of Deeds and Assessor's Office that such even occurred in 1993, the Court will order that to be remedied. Further it is a conclusion of law that the Commissioner, by virtue of being the receiver of all the entities doing business as Galilee

Memorial Gardens, and of the cemetery itself, that the Commissioner presently holds all the property that makes up the cemetery.

L48. Evidence presented from the Shelby County Register's or Assessor's Office shows no record of any deed of the cemetery held in JM&M Services, Inc. as named owner of the original 8.95 acre parcel, (or to "JM&M, Inc."), or by any individuals or other persons since Jesse Lambert died. (EX 12; and Topic 3 F.¶ 75-90) This Court accordingly will enter such orders as correct the missing ownership record at the Shelby County Register as well as match the ownership the Receiver has of the Expansion Parcel donated by the Fogelman Trust, so that these two parcels, together, may be further conveyed by the Receiver with approval of this Court.

L49. The Counsel for the Receiver requested, and the Court agrees that based on these finding and conclusions that the property be transferred from Lambert Memorials, Inc., the recipient of the 1993 asset purchase agreement (EX 40), into Commissioner of Commerce and Insurance, Julie Mix McPeak, in her capacity as receiver of Galilee Memorial Gardens cemetery, to match the title in which the Commissioner holds the expansion parcel, the add-on property as represented in the Special Warranty Deed, (EX 41). Additionally, the Commissioner's successors in office are contemplated by such designation. (See T.R.C.P. Rule 25.04).¹²

L50. There is good cause for this Court to convey the property directly to the Commissioner as Receiver of Galilee Memorial Gardens, to remove the Defendants as they would have been removed had the cemetery property been at all marketable to produce funds for the benefit of the trusts that are deficient, or thereafter any other business obligation of the cemetery, before any such residual value would be returned to the Defendants out of receivership. This

¹² T.R.C.P. Rule 25.04 states that "When an officer of the State... is a party to an action in the officer's official capacity and during its pendency dies, resign, or otherwise ceases to hold the office, the action does not abate and the officer's successor is automatically substituted as a party."

avoids the anomaly of binding a cemetery to owners that have placed it in a grossly deficient state. The Commissioner, as Receiver of all of the cemetery, has good cause to obtain transferable title in the entire cemetery, as preparation for the ultimate orders to end the receivership by providing for a future caretaker of the cemetery or local government to assume ownership.

DEFENDANTS ARE BARRED FROM CLAIMS AND FORFEITED ANY RIGHTS TO
OBJECT

L51. As stated at the outset of this Order, and in Topic 5, Defendants have waived and forfeited any right to claim any kind of value out of the receivership estate, by failing to appear and object to this course of action, which was clearly specified in the Order Setting Hearing.

L52. The Cemetery Act, because of the remedies provided for addressing deficiencies in the cemetery trusts, runs exactly contrary to the notion that the owners and operators should benefit from any assets of the cemetery company before these outstanding cemetery obligations were paid off. *See, e.g.* Tenn. Code Ann. § 46-1-310. Even when a cemetery proposes to change owners, Tenn. Code Ann. § 46-1-107 promotes the outcome that any outstanding indebtedness to the trusts be addressed by one or the other party to the transaction, to the satisfaction of the Commissioner.

L53. The Court is convinced by the proof obtained in this hearing that those Defendants that were parties served in this matter were appropriately identified, and the Court has given notice since the inception of this case to all the **indispensable** and necessary parties within this Court's jurisdiction, who are persons, in fact, who collectively exclusively owned and controlled the Galilee cemetery property and business as of January 2014. No other parties are legal or beneficial owners of the cemetery property nor operators of the cemetery such that they would be necessary or indispensable to granting complete relief in the subject of this receivership action by the State.¹³

¹³ Since the Commissioner's acquisition, as receiver of Galilee, of the Expansion Parcel detailed in EX 41, no land used for the purposes of interment by Galilee's operators falls outside the scope of the Receiver.

L54. After notice of the motion to set was given, no Defendants filed any response or opposed the setting of these matters, nor did any Defendants appear for the hearing. The question of whether the estate owes Defendants anything is moot. Defendants have simply never made any claim on the receivership, and have forfeited this opportunity to make any claim. Accordingly, there is good cause to bar them from any further interest whatsoever in any of the property and business in receivership and to determine their claim as worthless.

L55. As an alternative, even though Defendants have waived and relinquished any possible property or other claims against the cemetery estate, the Court finds as a matter of law that such claims would be inferior to and below the priority given in the Cemetery Act to the claims of the customers of the cemetery upon their outstanding and future obligations (anything not furnished "at need"). The Cemetery Act prioritizes satisfaction of the improvement care trust fund deficiencies by providing multiple remedies for their fulfillment, as well as through Tenn. Code Ann. § 46-1-204 which authorizes the permanent maintenance of the cemetery even if no further business is conducted. Also, the Cemetery Act prioritizes through trusting requirements the fulfillment of merchandise and services (i.e. future burials, openings and closings, placement of monuments and commodities), which are obligations in the future, over the rights of the cemetery owners.

WHEREFORE, based upon the Findings of Fact and Conclusions of Law recited herein, along with the entire record in this cause, it is HEREBY ORDERED ADJUDGED AND DECREED that:

1. This Court under the authority of this Receivership action has jurisdiction over all of the entities operating the cemetery known as Galilee Memorial Gardens, including any and all

trade names or assumed names. The corporations, individuals and other entities bound by this Order are as follows:

Tennessee corporations:

JM&M Services, Inc., formerly known as Lambert & Son, Inc., a Tennessee corporation, (Secretary of State or SOS #634691, administratively dissolved since receivership imposed.)

Lambert Memorial Gardens, Incorporated, a Tennessee corporation (SOS # 263346, incorporated under Jesse Lambert, who died in May 2010, and administratively dissolved.)

Lambert and Son Incorporated, a Tennessee corporation (SOS # 270985, incorporated under Jesse Lambert, and administratively dissolved)

Lambert & Son Inc. of Memphis, a Tennessee corporation (SOS # 395938, incorporated under Jesse Lambert, and administratively dissolved)

Unincorporated trade names:

JM&M, Inc. (not incorporated)

JM&M, Inc. a corporation dba Galilee Memorial Gardens, hereinafter called Lambert, Inc. (also not incorporated)

Lambert Memorials, Inc. (not incorporated)

Lambert Memorial Company or Lambert Memorials Company (not incorporated)

Lambert, Inc. (not incorporated by Defendants)

Lambert, Inc. dba Galilee Memorial Gardens, (not incorporated by Defendants)

Lambert & Sons, Inc. (Not incorporated by Defendants)

Lambert Sons, Inc. (not incorporated)

Galilee Memorial Gardens, as itself and dba any of the foregoing or below, and including as Galilee Memorial Gardens, Inc. or Galilee Memorial Gardens, a corporation.

Lambert Galilee Memorial Gardens

Jemar Lambert as "Lender" related to cemetery business.

Any cemetery related business carried out by any of the Individual Lambert Defendants, Jemar Lambert, Marje Lambert and Mary H. Lambert.

Lambert Monuments, Inc. (not incorporated)

Galilee Lambert Memorial Gardens

Classic Images Remembrances (trade name reflected in Jesse Lambert Bankruptcy)

Individuals:

Jemar Lambert

Marje Lambert

Mary H. Lambert

These corporations, individuals and other entities bound by this Order shall hereafter be referred to in this Order as “the Lambert entities.”

2. Recognizing that the proof submitted in this matter shows that two Tennessee corporations with names that were utilized by the Lambert entities in the operation of Galilee Memorial Gardens were incorporated by individuals having nothing to do with the Lambert entities or the operation of Galilee Memorial Gardens, the Court expressly EXCLUDES from the definition of the Lambert entities and the scope of this Order the following:

Lambert, Inc., Tennessee SOS control # 000222181, (EX 19 Tennessee-domiciled Lambert, Inc.)
Lambert, Inc., Tennessee SOS control # 000354842 (EX 20-21, Alabama-domiciled Lambert, Inc., f/k/a Lambert & Sons, Inc.)

3. Any and all claims and rights of the Lambert entities to Galilee Memorial Gardens, including the cemetery grounds at 8283 Ellis Road in Shelby County, TN, any assets of the cemetery, any proceeds of the sale of any assets of the receivership, specifically including but not limited to the sale of stone markers and other physical items found at the cemetery site, and any and all assets or property under the control of the Court as part of this Receivership are HEREBY TERMINATED, and are to be considered as null and void.

4. The Lambert entities, whether acting individually or in concert with others are HEREBY PERMANENTLY ENJOINED AND BARRED from engaging in the business of operating Galilee Memorial Gardens, all of them lacking the registration and authority from the Tennessee Department of Commerce & Insurance necessary to operate the cemetery, and also having committed violations of cemetery and other law as enumerated above in the Findings of Fact and

Conclusions of Law. This includes PERMANENTLY ENJOINING those actions listed below which were the subject of the Preliminary Injunction entered by the Court on February 21, 2014, after a Hearing at the commencement of this Receivership action:

- 1) from the transaction of further business of the Cemetery;
- 2) from the waste, transfer or disposition of property of the Cemetery, including but not limited to all assets that are held, or supposed to be held, in trust to meet the obligations under pre-need cemetery merchandise and services contracts, and/ or maintenance, improvement and care of its cemeteries and mausoleums;
- 3) from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the receivership properties;
- 4) from the institution or further prosecution of any actions or proceedings, except within this receivership itself;
- 5) from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Cemetery;
- 6) from the withholding from the Receiver of books, accounts, documents or the records relating to the business of the Cemetery;
- 7) from any other threatened or contemplated action that might lessen the value of the Cemetery's assets or prejudice the rights of investors, creditors or any proceeding under the Receivership;
- 8) or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Cemetery or against its assets or any party thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Cemetery, in any property, whether such acts are part of a judicial proceeding or otherwise; and
- 9) from accelerating the due date of any obligation or claimed obligation;

5. The Court does recognize that the individuals Jemar Lambert, Marje Lambert and Mary H. Lambert have or may have relatives buried at Galilee Memorial Gardens and as long as they do not violate any other portion of this Order, this Permanent Injunction does not create any new prohibition against any of them going to the grounds of Galilee Memorial Gardens to visit the

graves of those relatives during such time that the cemetery is open for visitation by the general public. Similarly, this Order does not abrogate or interfere with any other Order or sanction which any of them may be under that may otherwise limit or prohibit them from such visitation.

6. The Lambert entities having any and all of their claims against Galilee Memorial Gardens terminated by this Order, and further, they having been permanently enjoined from any future actions operating or interfering with the operation of Galilee Memorial Gardens, the corporations formed by the Lamberts for the purpose of operating Galilee Memorial Gardens no longer have any reason to continue. Accordingly, they are **HEREBY TERMINATED AND DISSOLVED**. The Receiver in this Action is **FURTHER ORDERED** to file with the Tennessee Secretary of State such documents that the Secretary of State or his designees may reasonably require in order to formally and finally terminate the following Tennessee corporations and to have that termination reflected in the records of the Secretary of State:

JM&M Services, Inc., formerly known as Lambert & Son, Inc., a Tennessee corporation, (SOS # 634691, administratively dissolved since receivership imposed.)

Lambert Memorial Gardens, Incorporated, a Tennessee corporation (SOS # 263346, incorporated under Jesse Lambert, who died in May 2010, and administratively dissolved.)

Lambert and Son Incorporated, a Tennessee corporation (SOS # 270985, incorporated under Jesse Lambert, who died in May 2010, and administratively dissolved)

Lambert & Son Inc. of Memphis, a Tennessee corporation (SOS # 395938, incorporated under Jesse Lambert, who died in May 2010, and administratively dissolved)

7. It is also **ORDERED BY THE COURT** that Receiver is authorized and directed to apply the sum of \$2427.26 held in the trust account of Receivership Management, Inc, and representing the net proceeds of the sale at auction of the assets the Receiver found located at Galilee Memorial Gardens, toward the expenses of operating the Receivership and maintaining the grounds of Galilee Memorial Gardens during the pendency of this Receivership.

8. In order to facilitate the final resolution of the Receivership and to bring clarity and certainty to the ownership, title and current scope and size of the grounds of Galilee Memorial Gardens, it is ORDERED BY THE COURT that all rights, title to and interest in the 8.95 acre parcel which originally made up the grounds of Galilee Memorial Gardens are HEREBY TRANSFERRED from Ellis Road Gardens, Inc and/or Lambert Memorials, Inc and/or Jesse Lambert (deceased) Jemar Lambert, Marje Lambert and/or Mary H. Lambert or any other Lambert entity to Julie Mix McPeak, Commissioner of Commerce & Insurance, or her successors in office, in her capacity as receiver for Galilee Memorial Gardens Cemetery in Cause No. 14-102-II (III) of the Chancery Court of Davidson County, Tennessee 20th Judicial District at Nashville, Part II (III) the following described property:

A tract of land containing 8.95 acres and described as follows, to-wit:

Being all of Parcel A and parts of Parcels B and C of the partition of the north 55 acres of Darthula B. Simpson's 109.06 acre tract and more particularly described as follows:

Beginning at a point in the south line of Ellis Road (25 feet from center line) in the west line of the Simpson tract, which point is the east line of the Tyree Rhodes 640 acre grant, 1300 feet east of the intersection of the center line of Germantown Road and the center line of Ellis Road, and running thence eastwardly with the south line of Ellis Road 599.30 feet to a point; thence southwardly by an interior angle of 97 degrees 50 minutes and parallel with the west line of the Simpson tract 615.55 feet to a point; thence westwardly by a right angle 593.70 feet to a point in the west line of the Simpson tract; thence northwardly with the west line of the Simpson tract 697.23 feet to the beginning.

The above described property BEING the same property conveyed to Ellis Road Gardens, Inc., by order of the Shelby County Chancery Court in the case styled, Richard Block, et al. v. Sam Okeon, at al., No. 679593 R.D., of record in Minute Book 280, pg. 89, and found at Book 5879 Page 003 R.D.

The above described property also BEING the same property further conveyed to Lambert Memorials, Inc., by virtue of the Asset Purchase Agreement between Jeanne B. Bryant and Lambert memorials, Inc., dated the 29th day of January 1993, Instrument No. 03015493 R.D.

9. The Receiver is HEREBY ORDERED to file this Order with the Shelby County, TN Register of Deeds, along with any other documents reasonably required by the Shelby County Register of Deeds so that the records of that Office reflect the current title of the entire property known as Galilee Memorial Gardens rests with the Commissioner of Commerce & Insurance as Receiver.

This transfer is done to unify the recorded title and ownership of the entire 12.547-acre parcel that now makes up Galilee Memorial Gardens in order to facilitate any final transfer of the cemetery property and the conclusion of this Receivership.

10. Finally, the Court finds as to the Lambert entities as defined above, that this Order deals with all of their claims to, rights against and dealings with Galilee Memorial Gardens and the Receivership generally. Making this Order final as to them will facilitate the Court's ability to deal with the claims of persons potentially having burial and other associated rights at Galilee Memorial Gardens or loved ones already buried there. Therefore, pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure, the Court HEREBY FINDS that there is no just reason for delay in making this Order a Final Order as to the Lambert entities and EXPRESSLY DIRECTS that this Order shall be considered as a FINAL JUDGMENT as to each and every person, corporation or other entity making up the Lambert entities as described above.

It is so ORDERED.



HON. ELLEN HOBBS LYLE
CHANCELLOR, PART III

APPROVED FOR ENTRY by:



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Special Counsel to the Receiver

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Proposed Order has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email if an email address is listed, this 5th day of June, 2019:

One package also to Lamberts by expedited trackable delivery.

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SARAH ANN HIESTAND



MAILED
6-13-19