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**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

**BEFORE THE DIRECTOR OF THE DEPARTMENT
OF CONSUMER AND BUSINESS SERVICES**

**In the Matter of:
CHANTELL RENE HERNANDEZ,
ANDRES HERNANDEZ AND TWIN
OAKS MEMORIAL PARK INC.**

Respondents.

**PN-09-0021-1
ORDER to CEASE AND DESIST,
ASSESSING CIVIL PENALTIES
and EXAMINATION COSTS
And
CONSENT TO ENTRY OF ORDER**

The Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter "the Director") acting through the Division of Finance and Corporate Securities (hereinafter "DFCS") conducted an investigation of Chantelle Rene Hernandez, Andres Hernandez, and Twin Oaks Memorial Park Inc. (hereinafter "Respondents") and determined that Respondents engaged in activities constituting violations of Chapter 97 of the Oregon Revised Statutes and OAR 441-930-0010 through 441-930-0360 (hereinafter "the Oregon Prearrangement Law"); and

WHEREAS Respondents wish to resolve and settle this matter with the Director;

NOW THEREFORE, as evidenced by the authorized signature subscribed on this order, Respondents hereby CONSENT to entry of this order upon the Director's Findings of Fact and Conclusions of law as stated hereinafter:

FINDINGS OF FACT

The Director **FINDS** that:

A. Parties

1. Twin Oaks Memorial Park Inc., 34275 South West Riverside Drive, Albany, Oregon was first registered as a domestic business corporation with the Oregon Secretary of State's office on

Division of Finance and Corporate Securities
Labor and Industries Building
330 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387





1 March 2, 1990. Andres Hernandez was listed as the president and registered agent. Chantelle
2 Hernandez was listed as the secretary. Twin Oaks Memorial Park Inc. was administratively
3 dissolved on April 28, 2006 and is no longer an active domestic business corporation.

4 2. Between April of 1990 and November of 2005, Chantelle and Andres Hernandez
5 (married) jointly owned and operated the cemetery located at 34275 Riverside Drive, Albany,
6 Oregon, 97321. Mrs. Hernandez was responsible for all office work occurring during this time,
7 including but not limited to, entering into all sales contracts on behalf of Twin Oaks Memorial
8 Park Inc., paying all business expenses, and keeping all business records. Mr. Hernandez was
9 responsible for all grounds care and outside work necessary to maintain the cemetery.

10 **B. Prearrangement Sales Contracts**

11 3. From April of 1990 through November of 2005 Respondents entered into at least 800
12 "Retail Installment Contracts." These one page contracts were used by Respondents for the sale
13 of goods, services, and the sale of cemetery property. Out of the over 800 "Retail Installment
14 Contracts" entered into by Respondents at least 290 promised the delivery of merchandise or
15 services upon the beneficiaries' death (hereinafter "prearrangement contracts"). Chantelle
16 Hernandez signed each contract on behalf of the corporation. Andres Hernandez knew that
17 Chantelle Hernandez was entering into these contracts.

18 4. Each prearrangement contract entered into lists the merchandise or services sold by the
19 Respondents. The merchandise or services listed on the contract include: vaults, liners, memorial
20 markers, vases, urns, nameplates, as well as miscellaneous services. Each contract documents the
21 amount paid for the listed merchandise or service by the customer.

22 5. The total face value of the over 290 prearrangement contracts entered into by Respondents
23 exceeds \$400,000. This valuation is based on the value ascribed to the merchandise or service at
24 the time the contract was entered into by Respondents. The cost of furnishing the merchandise or
25 services at today's prices far exceeds the face value of the contract.

26 6. The actual total number of prearrangement contracts entered into by the Respondents



1 exceeds 290. During the time that the Respondents owned the cemetery they provided
2 merchandise and services to individuals at the time of need (upon death). These prearrangement
3 contracts, for which goods and services have already been delivered, are not included. Only those
4 contracts that were entered into by Respondents, and for which the merchandise or services
5 contracted for have not been delivered are included in the conservative count of 290.

6 7. None of the funds received by Respondents under any prearrangement contract were ever
7 deposited into any trust account. Respondents only used one bank account to pay for both
8 personal and business expenses. Respondents used all of the funds received under
9 prearrangement contracts for their personal and business expenses. Respondents used funds
10 received from recent customers to cover the purchase price for contracted goods or services
11 purchased by prior customers. This included satisfying prearrangement contracts entered into by
12 prior cemetery owners.

13 8. Between January 1, 2002, and November 25, 2005, Respondents entered into at least 27
14 prearrangement contracts.

15 **C. Prearrangement Sales Provider Certification**

16 9. Beginning January 1, 2002, any provider of prearrangement merchandise or services has
17 been required to be certified by the Director of the Department of Consumer and Business
18 Services. Prior to January 1, 2002, any seller of prearrangement merchandise or services was
19 required to be certified by the Oregon Secretary of State's Office. A certified prearrangement
20 provider is required to file an annual report.

21 10. A review of Twin Oaks records maintained by the Oregon Secretary of State's office
22 revealed that the Respondents only filed three Annual Prearrangement Plan Reports for the years
23 1997, 1998, and 1999. Each of these annual filings was accompanied by a cover letter authored
24 by Chantelle Hernandez. All of the reports indicated that Respondents did not make any
25 prearrangement sales.

26 11. On May 28, 1997, Chantelle Hernandez filed a prearrangement annual report for the



1 period April 1, 1996 to March 31, 1997. The cover letter attached to the report stated that any
2 grave markers sold “are ordered and installed when the customer places the order.” The report
3 showed “\$0” of pre-need merchandise sold. Schedule I, the Prearrangement Trust Fund Balance
4 Sheet was marked with an X and the words “not applicable.”

5 12. A review of the sales contracts for this period shows that Respondents actually entered
6 into 20 prearrangement sales contracts with merchandise sales totaling \$30,184.

7 13. On May 11, 1998, Chantelle Hernandez filed a prearrangement annual report for the
8 period April 1, 1997 to March 31, 1998. The cover letter attached to the report specifically stated
9 “At this time we only sell merchandise at need meaning we supply the items at the time of
10 sale. . .” The report showed “\$0” of pre-need merchandise sold. The Annual Prearrangement
11 Plan Report had the letter “N-A” in large font written across the report.

12 14. A review of the sales contracts for this period shows that Respondents actually entered
13 into 13 prearrangement sales contracts with merchandise sales totaling \$25,930.

14 15. On May 25, 1999, Chantelle Hernandez filed a prearrangement annual report for the
15 period April 1, 1998 to March 31, 1999. The cover letter attached to the report stated “At this
16 time we are not selling merchandise and services that we do not provide at the time of purchase.”
17 The report showed “\$0” of pre-need merchandise sold.

18 16. A review of the sales contract for this period shows that Respondents actually entered into
19 12 prearrangement sales contracts with merchandise sales totaling \$21,890.

20 17. In January of 2003 Chantelle Hernandez told an employee of the Director that she “does
21 not sell preneed never has.”

22 18. Respondents have never been certified by the Director of DCBS to engage in
23 prearrangement or preconstruction sales.

24 **D. Sale of the Cemetery**

25 19. On November 23, 2005, Michael D. Terwilliger (hereinafter “Terwilliger”) contracted to
26 purchase the cemetery located at 34275 Riverside Drive, Albany, Oregon, 97321. Terwilliger



1 purchased the cemetery from Respondents for \$800,000. The contract for the sale of the cemetery
2 included the conveyance of the land.

3 20. Respondents received \$600,000 from the sale of the cemetery. The remaining \$200,000
4 for the purchase of the cemetery was provided in the form of a promissory note from Terwilliger
5 owing to Chantelle and Andres Hernandez.

6 **E. Respondents Use of Cemetery Sales Proceeds**

7 21. A review of Respondents personal and business bank records shows that in November
8 2005, \$600,000 was deposited into a Business Account held in the name of Twin Oaks Memorial
9 Park Inc, account number ending 2456 (hereinafter "account 2456"). Prior to this deposit the
10 account balance was under \$10,000.

11 22. In November 2005, Respondents spent over \$58,000 at a car dealership. This money can
12 be linked directly to the sales proceeds as no other significant funds were deposited into account
13 2456 prior to this expenditure.

14 23. In November 2005, Respondents opened a Business Performance Savings account in the
15 name of Twin Oaks Memorial Park Inc., account number ending 0409 (hereinafter "account
16 0409").

17 24. In December 2005, \$500,000 was transferred from account 2456 to account 0409.

18 25. In February of 2006, the Hernandezes paid \$290,000 for property located at 1775 Yankee
19 Lane SE, Jefferson, Oregon 97352. These funds were withdrawn from account 0409 and used to
20 purchase a money order made payable to a title company. The funds used for the purchase of this
21 property can be linked directly to the funds received from the sale of the cemetery.

22 26. A review of the available financial records shows that the remaining \$252,000 was spent
23 by the Hernandezes on personal and living expenses. By January 31, 2007 the balance in account
24 0409 was less than \$5,000. By January 31, 2007 the balance in account 2456 was less than \$800.

25 27. Since November of 2005 the Respondents have not paid any money toward the fulfillment
26 of the prearrangement contracts they entered into.

1 36. By acting as a certified provider without the required certification and failing to deposit
2 funds received into a trust fund in at least 27 incidents the Respondents are subject to discipline
3 under ORS 97.948.

4 37. The Director may require Respondents to pay the actual and reasonable costs of the
5 examination of Respondents under ORS 97.947, OAR 441-930-0260, and 441-930-0270.

6 ORDER

7 1. The Director, pursuant to ORS 97.948 hereby **ORDERS** Respondents to **CEASE AND**
8 **DESIST** from violating any provision of Oregon's Prearrangement Law and any rule, order or
9 policy issued by the Director.

10 2. Respondents are hereby **ORDERED** to pay the State of Oregon a **CIVIL PENALTY** of
11 Five Hundred and Forty Thousand dollars (\$540,000). This penalty is calculated at \$10,000 for
12 each of the fifty four violations described herein (27 respective violations of ORS 97.941 and
13 97.933). Respondents are further ordered to pay the costs of examination \$4,500 (60 hours at \$75
14 per hour). Respondents are jointly and severally liable for the costs of examination and the Civil
15 Penalty.

16 3. After taking into consideration Respondents' ability to pay, the Director Orders, that this
17 civil penalty and the accompanying examination costs shall be paid in monthly installment
18 payments, due on or before the tenth (10th) calendar day of each month, with the first payment
19 due on or before July 10, 2009, these payments shall first be applied toward the \$4,500
20 examination costs, the remaining payments shall be applied to the civil penalty (timely payment
21 shall be deemed to be of the essence; failure to make a payment in a timely fashion will constitute
22 a violation of this Order). In addition to the monthly payments, Respondents must pay five
23 hundred dollars (\$500) upon the entry of this Order. From July 10, 2009, through June 10, 2010,
24 Respondents shall pay \$100 per month; From July, 10, 2010, through June 10, 2011, Respondents
25 shall pay \$250 per month; From July 10, 2011, through June 10, 2012, Respondents shall pay
26 \$500 per month; From July, 10, 2012, through June 10, 2013, Respondents shall pay \$750 per



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1 month; From July, 10, 2013, onward Respondents shall pay \$1,000 per month until the entire FIVE HUNDRED AND FORTY THOUSAND DOLLARS (\$540,000) has been paid. By stipulation of the parties this civil penalty shall be paid into the FUNERAL AND CEMETERY CONSUMER PROTECTION TRUST FUND. Timely payment shall be deemed to be of the essence; failure to make a payment in a timely fashion will constitute a violation of this Order and will cause the entire civil penalty to become fully due and owing.

4. Furthermore, this Final Order to Cease and Desist, Assessing Civil Penalties, and Examination Costs may be filed with any Oregon county clerk's recording division, or equivalent, to serve as a lien on any real property owned by Respondents, including but not limited to 1775 Yankee Lane South East, Jefferson, Oregon 97352. Proceeds from the satisfaction of said lien shall be applied to the balance of this civil penalty, yet satisfaction of the lien shall not discharge this civil penalty unless proceeds from the satisfaction constitute the entirety of the civil penalty.

5. If any Respondent violates the terms of this Order, the state may seek, and Respondents hereby consent to the entry of a court order authorizing the sale of Respondents real property including but not limited to 1775 Yankee Lane South East, Jefferson, Oregon 97352.

6. The Director further orders that any money awarded on behalf of Respondents, relating to the sale of Twin Oaks Cemetery or Linn County Circuit Court Case # 072457, whether awarded through a court order or settlement, shall be assigned to the Division in partial satisfaction of this Civil Penalty.

The entry of this Order in no way limits further remedies which may be available to the Director under Oregon Law.

Dated this 8th day of July, 2009, at Salem, Oregon.

CORY STREISINGER, Director
Department of Consumer and Business Services

A handwritten signature in black ink, appearing to read "David Tatman".

David Tatman, Administrator
Division of Finance and Corporate Securities

**CORPORATE CONSENT TO ENTRY OF ORDER
(For Twin Oaks Memorial Park Inc.)**

I, Chantelle Hernandez, state that I am or was at all relevant times herein an officer of Twin Oaks Memorial Park Inc. (hereinafter "Twin Oaks"); that I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that Twin Oaks and I have been advised of the right to a hearing; that Twin Oaks has been represented by counsel in this matter; that Twin Oaks, voluntarily and without any force or duress, consents to jurisdiction of the Director in this matter and to the entry of this Order, expressly waiving any right to a hearing or appeal in this matter neither admitting or denying any of the underlying facts; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Prearrangement Law; and that Twin Oaks will fully comply with the terms and conditions stated herein.

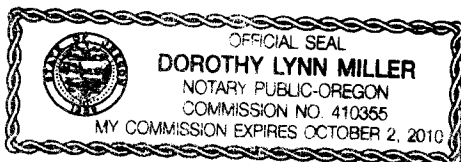
Respondents further understand that this Consent Order is a public document.

Dated this 22 day of June, 2009.

By: Chantelle Hernandez
Chantelle Hernandez
Sec. 1
(Office Held)

CORPORATE ACKNOWLEDGMENT

There appeared before me this 22nd day of June 2009, Chantelle Hernandez, who was first duly sworn on oath, and stated that she was and is an officer of Twin Oaks and that she is authorized and empowered to sign this Consent to Entry of Order on behalf of Twin Oaks to the terms hereof.



Dorothy Lynn Miller
(Printed Name of Notary Public)
Notary Public Dorothy L. Miller
For the State of: Oregon
My commission expires: 10-2-2010

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



**CONSENT TO ENTRY OF ORDER
(For Chantelle Hernandez individually)**

I, Chantelle Hernandez state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Prearrangement Law; and that I will fully comply with the terms and conditions stated herein.

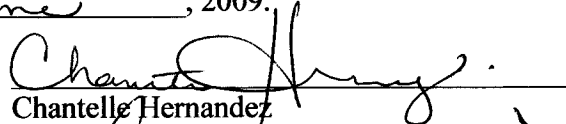
Furthermore, Chantelle Hernandez expressly consents to the reduction of this Order to a judgment, or other legal document, to the extent necessary to record the civil penalty contained in this Order as a lien against any realty titled in his name with any county clerk recording division, or equivalent, and agrees to execute any document(s) that is required for this purpose.

In the event that any Respondent is found in violation of this Order, Chantelle Hernandez expressly consents to the entry of any judgment, or other legal document, action or process, necessary to ensure the sale of any real property owned by Respondents for the benefit of the State of Oregon, and agrees to execute any documents that are required for this purpose.

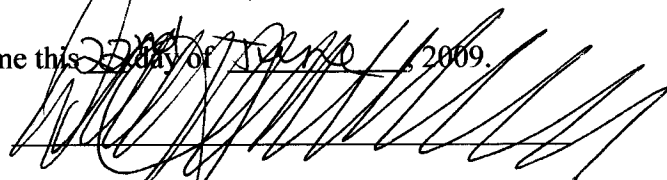
Chantelle Hernandez hereby agrees to assign any money awarded on her behalf, arising out of the sale of Twin Oaks Cemetery or Linn County Circuit Court Case # 072457, whether the award is due to a court order or a settlement agreement, to the Division in partial satisfaction of the civil penalty in this Case.

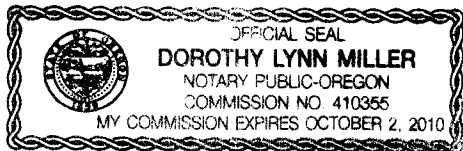
I understand that this Consent Order is a public document.

Dated this 22 day of June, 2009.


Chantelle Hernandez

SUBSCRIBED AND SWORN to before me this 22 day of June, 2009.





(Printed Name of Notary Public),
Notary Public Dorothy L. Miller
for the State of: Oregon
My commission expires: 10-2-2010

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**CONSENT TO ENTRY OF ORDER
(For Andres Hernandez individually)**

I, Andres Hernandez state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Prearrangement Law; and that I will fully comply with the terms and conditions stated herein.

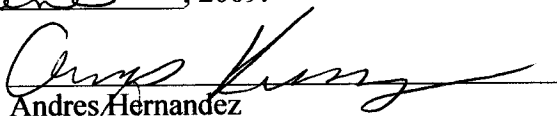
Furthermore, Andres Hernandez expressly consents to the reduction of this Order to a judgment, or other legal document, to the extent necessary to record the civil penalty contained in this Order as a lien against any realty titled in his name with any county clerk recording division, or equivalent, and agrees to execute any document(s) that is required for this purpose.

In the event that any Respondent is found in violation of this Order, Andres Hernandez expressly consents to the entry of any judgment, or other legal document, action or process, necessary to ensure the sale of any real property owned by Respondents for the benefit of the State of Oregon, and agrees to execute any documents that are required for this purpose.

Andres Hernandez hereby agrees to assign any money awarded on his behalf, arising out of the sale of Twin Oaks Cemetery or Linn County Circuit Court Case # 072457, whether the award is due to a court order or a settlement agreement, to the Division in partial satisfaction the civil penalty in this Case.

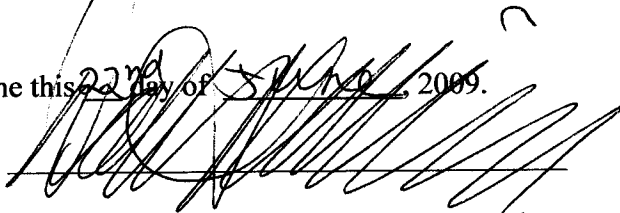
I understand that this Consent Order is a public document.

Dated this 22 day of June, 2009.


Andres Hernandez

SUBSCRIBED AND SWORN to before me this 22nd day of June, 2009.




(Printed Name of Notary Public)
Notary Public Dorothy L. Miller
for the State of: Oregon
My commission expires: 10-2-2010

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