

**ORDER NO. 2013-004**

**DOCKET NO. BE-12-12-189**

**IN THE MATTER OF:** § **BEFORE THE BANKING**  
§  
**THE PALMS MEMORIAL GARDENS, INC.,** §  
**DBA THE PALMS MEMORIAL GARDENS** § **COMMISSIONER OF TEXAS**  
**(CERTIFICATE OF AUTHORITY NO. 272)** §  
§  
**PORTLAND, TEXAS** § **AUSTIN, TRAVIS COUNTY, TEXAS**

**AGREED ORDER**

On this day, the matter of Palms Memorial Gardens, Inc., dba Palms Memorial Gardens, of Portland Texas (Respondent), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action. This matter concerns the correction of violations of the Texas Health and Safety Code (Health Code), assessment of administrative penalties, and whether the Order to Cease and Desist Activity, Order No. 2012-028, should be made final. In lieu of the scheduled hearing, the Texas Department of Banking (Department) and Respondent wish to enter an agreement regarding these issues according to the terms described below.

1. Respondent and the Department jointly request the Commissioner to dispose of this matter pursuant to the provisions of the Government Code § 2001.056 by entering this Agreed Order and agreeing to comply with the terms of this Order. Because this Agreed Order settles all the violations and requirements cited in Order No. 2012-028, Respondent withdraws its request for a hearing on Order No. 2012-028, and the Department requests that the Commissioner likewise withdraw and cancel Order No. 2012-028.
2. Respondent agrees to this Order solely for the purpose of this proceeding, and without admitting or denying any violations of law or regulations.
3. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Health Code Chapters 711 and 712, and Texas Government Code §§ 2001.171 et seq., and that the Commissioner has the authority to issue this Agreed Order under Texas Government Code § 2001.056.
4. Respondent is a perpetual care cemetery (PCC) corporation operating under certificate of authority number 272. It is located in Portland, Texas, and is owned by Mr. Carlos Aparicio,

President. Ms. Helen Aparicio, Vice President, is responsible for daily administration and management of the cemetery. The Department regulates PCCs under the authority of Health Code Chapter 712.

5. On August 28, 2012, the Commissioner issued Order No. 2012-028, which subject to Respondent's right to a hearing before becoming effective, required Respondent to cease and desist from operating a perpetual care cemetery without a valid permit. Order No. 2012-028 also would require Respondent to continue maintaining the cemetery grounds and to continue performing burials and setting markers, for which Respondent is liable under Health Code Chapter 712, for persons who purchased them, if any, prior to the effective date of the Order. Lastly, Order No. 2012-028 also would require Respondent to deposit within 5 days of the effective date of the Order all perpetual care funds due at that time into the perpetual care trust account. Because Order No. 2012-028 shall be withdrawn and cancelled upon issuance of this Agreed Order, it will not become effective. The Commissioner based Order No. 2012-028 on findings, which Respondent neither admits nor denies, that Respondent violated Health Code §§ 711.034, 711.038, 712.003(c), 712.0032, 712.0034, 712.0036, 712.0037, 712.021(b), 712.028, 712.029(c), and 712.041(c).
6. Before the effective date of Order No. 2012-028, and in accordance with Health Code § 712.0443(b), Respondent requested a hearing which has not occurred, and such Order No. 2012-028 has not, and will not, become effective or final.
7. Health Code § 712.0441 authorizes the Commissioner to assess administrative penalties in this matter. The imposition of an administrative penalty against Respondent in the amount of Two Thousand and no/100 Dollars (\$2,000.00) is appropriate and reasonable given the nature of this matter. Respondent has been notified of its right to a hearing with regard to this administrative penalty and hereby waives that right, but does not admit any fault or wrongdoing in connection with the penalty or payment.
8. Any violation of this Order could subject Respondent to additional regulatory enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, the Finance Commission of Texas, or any other Texas state agency, nor restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of

law in future proceedings. However, Respondent will have no liabilities for any such alleged violations which are the subject of, or settled by, this Agreed Order.

9. For purposes of this proceeding, Department and Respondent knowingly and voluntarily waive:
  - a. Service upon Respondent of this Agreed Order;
  - b. Any further notice or hearing prior to imposition of the administrative penalty provided for herein;
  - c. Review of, or action on, this Agreed Order by the Texas Finance Commission; judicial review of this Agreed Order as provided by Texas Government Code §§ 2001.171 et seq.; and any other challenge to the validity or effect of this Agreed Order.

### **ORDER**

WHEREFORE, based on the foregoing, the Commissioner ORDERS that this matter is resolved in accordance with the following terms:

10. By signing this Agreed Order, Respondent hereby withdraws its appeal of Commissioner's Order No. 2012-028.
11. Upon issuance of this Agreed Order, Order No. 2012-028 is cancelled and withdrawn, and all violations cited within are considered cured subject to Respondent's performance of the terms of this Order.
12. Respondent shall correct the perpetual care fund shortage according to the following terms. Respondent has made an initial deposit of Three Thousand and No/100 Dollars (\$3,000.00) to the fund on January 28, 2013. After this initial deposit, Respondent shall make quarterly deposits of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) at the end of each calendar quarter until Respondent has corrected the deficiency noted as of October 31, 2012: Fourteen Thousand Seven Hundred Fifty Eight Dollars and Eighty Cents (\$14,758.80). The first deposit of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) will be due no later than March 31, 2013, with each subsequent deposit due on the last day of the third month after the previous deposit, until the last deposit of One Thousand Seven Hundred Fifty Eight

Dollars and Eighty Cents (\$1,758.80) is made, no later than March 31, 2014. After making each deposit, Respondent shall provide documentation of the deposit to the Department.

13. Failure to make a scheduled deposit by the 5th business day after the due date of the deposit under Paragraph 12 above constitutes a violation of this Order that may result in further enforcement action against Respondent.
14. During this time, Respondent shall make such other deposits to the perpetual care fund for which Respondent is liable under Health Code § 712.028 within the time mandated by Health Code § 712.029(c). Additionally, Respondent shall monthly submit to the Department a written statement of sales and deposits, concerning deposits to the perpetual care fund for which Respondent is liable pursuant to the provisions of Health Code Chapter 712. This requirement will remain in effect until the first to happen of the following events: (1) All requirements of this Agreed Order have been satisfied, or (2) Respondent has no further liability to make deposits to the Perpetual Care Fund pursuant to the applicable provisions of Health Code Chapter 712.
15. Respondent and the Department agree that an administrative penalty of Two Thousand and No/100 Dollars (\$2,000.00) is fair, appropriate, and satisfactory. The administrative penalty shall be paid to the Department in full, no later than the last day of the calendar quarter after the final shortage deposit required by Paragraph 12 is made.
16. Failure to pay the administrative penalty by the 5th business day after its due date will constitute a violation of this Order that may result in further enforcement action against Respondent. Failure to pay the administrative penalty within 30 days after its due date will result in referral of this matter to the Office of the Attorney General for collection.
17. Upon issuance of this Agreed Order, all impediments to renewal of Respondent's certificate of authority cited above shall be considered removed. However, under Health Code § 712.0036, even if renewed at this time, Respondent's certificate of authority would shortly expire on March 1, 2013. Therefore to avoid unnecessary regulatory burden, upon issuance of this Agreed Order Respondent will not be considered in violation of Health Code § 712.0032 for operating a PCC without a certificate of authority, and may continue normal operations of its PCC until March 1, 2013. On March 1, 2013, the certificate of authority will expire again as mandated by Health Code § 712.0036 unless Respondent submits all required materials for renewal.

