

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

BETH MOSES CEMETERY CORPORATION

and

WELLWOOD CEMETERY ASSOCIATION, INC.

Dated as of [Month/ Day], 2024

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AGREEMENT AND PLAN OF MERGER (this “Agreement”) made and entered into on this [] day of [Month], 2024, by and among Beth Moses Cemetery Corporation, a New York not-for-profit corporation (“Beth Moses”), and Wellwood Cemetery Association, Inc., a New York not-for-profit corporation (“Wellwood”) (Beth Moses and Wellwood are collectively referred to herein as the “Parties” and, individually, as a “Party”).

WITNESSETH:

WHEREAS, Beth Moses was incorporated on December 3, 1941 under Article 11 of the New York Membership Corporation Law and is engaged in the business of owning and managing cemeteries;

WHEREAS, Wellwood was incorporated on August 31, 1932 under Article 11 of the New York Membership Corporation Law and is engaged in the business of owning and managing cemeteries;

WHEREAS, Beth Moses and Wellwood are located on contiguous properties in West Babylon, New York and, since the incorporation of Beth Moses, Beth Moses and Wellwood have been under common operational control despite their separate legal existence;

WHEREAS, the New York State Cemetery Board (the “State Board”) has advised Beth Moses and Wellwood that it would be in the best interest of the Parties and their respective stakeholders to formally combine their respective legal entities;

WHEREAS, the Board of Directors of each of Beth Moses and Wellwood, after consideration of the State Board’s advice, desires for Beth Moses to merge (the “Merger”) with and into Wellwood with Wellwood being the surviving corporation on the terms and subject to the conditions contained in this Agreement;

WHEREAS, the Board of Directors of Beth Moses unanimously has determined and resolved that the Merger and all of the transactions contemplated by this Agreement are in the best interest of Beth Moses and its lot owners and certificate holders, and that the Merger is fair and advisable, and has approved this Agreement in accordance with the New York Not-For-Profit Corporation Law (the “New York Law”), and has further resolved unanimously to recommend to the lot owners and certificate holders of Wellwood entitled to vote in accordance with the By-Laws of Beth Moses (the “Beth Moses Members”) that they vote to authorize, approve and adopt this Agreement and the transactions contemplated hereby in accordance with the By-Laws of Beth Moses and the New York Law (the “Beth Moses Member Approval”);

WHEREAS, the Board of Directors of Wellwood unanimously has determined and resolved that the Merger and all of the transactions contemplated by this Agreement are in the best interest of Wellwood and its lot owners and certificate holders, and that the Merger is fair and advisable, and has approved this Agreement in accordance with the New York Law, and has further resolved unanimously to recommend to the lot owners and certificate holders of Wellwood entitled to vote in accordance with the By-Laws of Wellwood (the “Wellwood Members”); together with Beth Moses Members, the “Members”) that they vote to authorize, approve and adopt this Agreement and the transactions contemplated hereby in accordance with the By-Laws of Wellwood and the New York Law (the “Wellwood Member Approval”; together with Beth Moses Member Approval, the “Member Approvals”).

NOW, THEREFORE, in consideration of the mutual premises recited above and the representations, warranties, covenants and agreements contained in this Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the New York Law, at the Effective Time, as defined in Section 1.3 below, Beth Moses shall be merged with and into Wellwood and Wellwood shall be the surviving corporation in the Merger (the "Surviving Corporation") and, as such, Wellwood shall continue its corporate existence, and the separate corporate existence of Beth Moses thereupon shall cease.

Section 1.2 Closing. Subject to the satisfaction or, to the extent permitted by applicable law, waiver of the conditions to consummation of the Merger contained in Article VI hereof, the closing of the Merger (the "Closing") shall take place at 10:00 a.m., New York time, on a date to be specified by the Parties (the "Closing Date"), which date shall not be later than the third business day next following the date that one party notifies the other of the satisfaction or, to the extent permitted by applicable law, waiver of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or, to the extent permitted by applicable law, waiver of those conditions), unless another time or date is agreed to by the Parties hereto. The Closing will be held at the offices of the Parties at 1500 Wellwood Avenue, West Babylon, New York 11704 or at such other location as is agreed to by the Parties hereto.

Section 1.3 Effective Time. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing the Parties shall cause the Merger to be consummated by filing with the Secretary of State of the State of New York (the "Secretary") a certificate of merger (the "Certificate of Merger") duly executed and so filed in accordance with New York Law and shall make all other filings and recordings required under the New York Law to effectuate the Merger and the transactions contemplated by this Agreement. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary (the time the Merger becomes so effective being hereinafter referred to as the "Effective Time").

Section 1.4 Name, Certificate of Incorporation and By-laws of the Surviving Corporation. From the Effective Time and thereafter, the name of the Surviving Company shall be "Wellwood-Beth Moses Cemetery Corporation". The certificate of incorporation of Wellwood in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation until thereafter amended or restated as provided therein or by applicable law, except that the name of the Surviving Company shall be "Wellwood-Beth Moses Cemetery Corporation". The by-laws of Wellwood in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended or restated as provided therein or by applicable law, except that the name of the Surviving Company shall be "Wellwood-Beth Moses Cemetery Corporation".

Section 1.5 Directors and Officers. The directors of Wellwood at the Effective Time shall, from and after the Effective Time, be and become the directors of the Surviving Corporation until their successors shall have been duly elected and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and by-laws of the Surviving Corporation and the New York Law. The officers of Wellwood at the Effective Time shall, from and after the Effective Time, be and become the officers of the Surviving Corporation until their successors shall have been duly appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and the by-laws of the Surviving Corporation.

ARTICLE II

EFFECT OF THE MERGER ON THE LOT OWNERS AND CERTIFICATE HOLDERS OF THE CONSTITUENT CORPORATIONS

Section 2.1 Effect of the Merger on the Lot Owners and Certificate Holders of Beth Moses. At the Effective Time, by virtue of the Merger and automatically without any action on the part of either Beth Moses or Wellwood, each lot owner of Beth Moses, shall be a lot owner of the Surviving Company and each certificate holder of Beth Moses shall be a certificate holder of the Surviving Company. Following the Merger, certificate holders of the Surviving Company who were certificate holders of Beth Moses before the Effective Time shall continue as heretofore to be subject to the terms of the Beth Moses certificates and shall have the same right to receive payments, if any, based on the contractual terms of payment as defined prior to the Merger.

Section 2.2 Effect of the Merger on the Lot Owners and Certificate Holders of Wellwood. Each lot owner and certificate holder of Wellwood prior to the Effective Time shall be a lot owner and certificate holder of the Surviving Company following the Effective Time. Following the Merger, certificate holders of the Surviving Company who were certificate holders of Wellwood before the Effective Time shall continue as heretofore to be subject to the terms of the Wellwood certificates and shall have the same right to receive payments, if any, based on the contractual terms of payment as defined prior to the Merger.

Section 2.3 Description of the Membership and Holders of Certificates. As to each constituent corporation, a description of the membership and holders of any certificates evidencing capital contributions or subventions, including their number, classification, and voting rights, if any, are as follows:

Name of Corporation	Membership	Voting Rights
Beth Moses Cemetery Corporation	19,109 lot owners	Each lot owner is entitled to one vote for each lot owned
	37 certificate holders	Each certificate holder is entitled to one vote for each \$100 of indebtedness remaining unpaid
Wellwood Association, Inc.	18,664 lot owners	Each lot owner is entitled to one vote for each lot owned
	35 certificate holders	Each certificate holder is entitled to one vote for each \$100 of indebtedness remaining unpaid

ARTICLE III

MUTUAL REPRESENTATIONS AND WARRANTIES

Each Party, solely as to itself, hereby represents and warrants to the other Party as follows:

Section 3.1 Organization and Corporate Power.

(a) It is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of New York and has the requisite corporate power and requisite authority to carry on its business as presently being conducted. The sole business of such Party is the ownership and operation of the respective cemeteries described herein (the “Business” and collectively, the “Businesses”).

Section 3.2 Authority; Noncontravention.

(a) It has the corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. Except for the respective Member Approvals, all corporate acts and proceedings required to be taken by or on the part of such Party to authorize such Party to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken. This Agreement constitutes a valid and binding agreement of such Party.

(b) The execution and delivery of this Agreement does not and the consummation of the transactions contemplated hereby will not conflict with or result in a violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation under (i) any

provision of such Party's certificate of incorporation, (ii) any loan or credit agreement, note, mortgage, indenture, lease or other material agreement or instrument, or (iii) any permit, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to such Party or its properties or assets.

(c) The execution, delivery and performance by such Party of this Agreement and the consummation of the Merger by such Party require no consent, approval, order or authorization of, action by or in respect of, or registration or filing with, any governmental body, court, agency, official or authority (each, a "Governmental Entity", collectively "Government Entities") other than (i) the filing of a certificate of merger in accordance with the requirements of the Secretary, (ii) the approval of the State Board, (iii) the approval of the Suffolk County Legislature and (iv) the consent of either (x) the New York Attorney General or (y) the New York Supreme Court, with notice to the New York Attorney General.

(d) The execution and delivery of this Agreement and the consummation of the Merger will not result in the creation of any lien upon any asset of such Party.

(e) The execution, delivery and performance by such Party of this Agreement and the consummation of the Merger by such Party require no consent, approval, waiver or other action by any person (other than the governmental authorities referred to in (c) above), under any indenture, lease, instrument or other material contract, agreement or document to which such Party is a party or by which such Party is bound, or under any permit, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to such Party or its properties or assets.

Section 3.3 Material Contracts. Prior to the date hereof, it has delivered or otherwise made available to the other Party complete and correct copies of its certificate of incorporation and by-laws, each as in effect at the date of this Agreement, and all of its Material Contracts.

Section 3.4 Absence of Litigation. There are no pending and, to its knowledge, threatened litigation, suit, case, prosecution, investigation or arbitration, or no action, inquiry, demand, charge, or investigation by any Governmental Entity and no litigation, action, suit, case, proceeding, investigation or arbitration by any person or Governmental Entity with respect to such Party or any of its properties or permits, is pending or, to the knowledge of such Party, threatened.

Section 3.5 Tax Matters.

(a) It is a tax-exempt corporation under Section 501(c)(13) of the Internal Revenue Code of 1986, as amended ("Code") and has not received from any Governmental Entities any challenge to such qualification.

(b) It has made available to the other Party correct and complete copies of all of its material state and federal tax returns filed within the past three years.

Section 3.6 BUSINESSES AS IS; DISCLAIMERS.

(a) EACH PARTY ACKNOWLEDGES THAT THE BUSINESSES, ASSETS AND OPERATIONS ARE BEING MERGED ON AN “AS IS, WHERE IS” BASIS, WITHOUT WARRANTY OR REPRESENTATION EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREINABOVE.

(b) NEITHER PARTY HAS RELIED AND WILL NOT RELY ON, AND THE OTHER PARTY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE OTHER PARTY AND ITS ASSETS OR RELATING THERETO MADE OR FURNISHED BY SUCH PARTY OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN.

(c) EACH PARTY ACKNOWLEDGES THAT IT HAD THE OPPORTUNITY TO CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE OTHER PARTY AND ITS ASSETS AS IT DEEMED NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE OTHER PARTY AND ITS BUSINESS, ASSETS AND OPERATIONS.

Section 3.7 Board Approval. In accordance with all requirements pursuant to the governing corporate documents of each Party and applicable laws, and after full and deliberate consideration, the Board of Directors of each Party, respectively, has unanimously resolved to (i) approve the Merger, this Agreement and the transactions contemplated hereby, (ii) direct that the Merger, this Agreement and the transactions contemplated hereby be promptly submitted to its Members for consideration and (iii) recommend to its Members to approve this Agreement and the transactions contemplated hereby.

ARTICLE IV

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 4.1 Conduct of Business. Except as required by applicable law or regulation and except as otherwise contemplated by this Agreement, until the earlier of the termination of this Agreement or the Effective Time, each Party shall conduct its business in the ordinary course and consistent with recent past practice.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1 Commercially Reasonable Efforts. Except where otherwise provided in this Agreement, each party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the Merger as soon as practicable after the satisfaction of the conditions set forth in Article VI hereof, provided that the foregoing shall not require Beth Moses or Wellwood to take any action or agree to any condition that might, in the

reasonable judgment of Beth Moses or Wellwood, as the case may be, have a Material Adverse Effect on Beth Moses or Wellwood, respectively.

Section 5.2 Fees and Expenses. The Parties shall each pay one-half of the total amount of all costs, fees and expenses incurred in connection with the Merger, this Agreement (including all instruments and agreements prepared and delivered in connection herewith), and related transactions and proceedings.

Section 5.3 Public Announcements. Except as required by law, no party to this Agreement will issue any press release or other public announcement relating to the subject matter of this Agreement or the transactions contemplated by this Agreement without the prior approval (which approval will not be unreasonably withheld or delayed) of Beth Moses, on the one hand, or Wellwood, on the other hand, provided, however, that after the Closing, the Surviving Corporation will be entitled to issue any such press release or make any such other public announcement without obtaining such prior approval.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or, to the extent permitted by applicable law, waiver by each of Wellwood or Beth Moses on or prior to the Closing Date of the following conditions:

(a) Wellwood and Beth Moses Member Approvals. (i) Wellwood shall have obtained the Wellwood Member Approval and (ii) Beth Moses shall have obtained the Beth Moses Member Approval.

(b) Consent of State Board. The State Board shall have consented to the Merger and the transactions contemplated hereby.

(c) Consent of Suffolk County Legislature. The Suffolk County Legislature shall have consented to the Merger and the transactions contemplated hereby.

(d) Approval of New York Attorney General or New York Supreme Court. The Merger and the transactions contemplated hereby shall be approved by either (i) the New York Attorney General or (ii) the Supreme Court in the State of New York, with notice to the New York Attorney General.

(e) Governmental and Regulatory Approvals. In addition to (i) the filing of the Certificate of Merger provided for under Section 1.3, (ii) the consent of the State Board provided for under Section 6.1(b), (iii) the approval of the Suffolk County Legislature provided for under Section 6.1(c), (iv) the approval of either (x) the New York Attorney General or (y) the New York Supreme Court with notice to the New York Attorney General provided for under Section 6.1 (d) and, all consents, approvals and actions of, filings with and notices to any Governmental Entity required by Beth Moses or Wellwood under applicable law or regulation to consummate the Merger and the transactions contemplated by this Agreement, the failure of

which to be obtained or made would result in a Material Adverse Effect, shall have been obtained or made (all such approvals and the expiration of all such waiting periods, the “Requisite Regulatory Approvals”)

(f) No Injunctions or Restraints. No judgment, order, restraining order and/or injunction (temporary or otherwise), decree, statute, law, ordinance, rule or regulation, entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity or other legal restraint or prohibition (collectively, “Restraints”) shall be in effect preventing or materially delaying the consummation of the Merger; provided, however, that each of the Parties shall have used its best efforts to have such Restraint lifted, vacated or rescinded.

Section 6.2 Conditions to Obligations of Wellwood. The obligation of Wellwood to effect the Merger is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties of Beth Moses. The representations and warranties of Beth Moses set forth herein and in the Schedules attached hereto shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct as of such date).

(b) Performance of Obligations of Beth Moses. Beth Moses shall have performed in all material respects all obligations required to be performed by it at or prior to the Closing Date under this Agreement.

(c) Regulatory Condition. No condition or requirement shall have been imposed by one or more Governmental Entities in connection with any required approval by them of the Merger that requires Beth Moses to be operated in a manner that would have a Material Adverse Effect.

(d) No Material Adverse Effect. There shall not be or exist any change, effect, event, circumstance, occurrence or state of facts either individually or when aggregated with other event(s) that has had, has or which reasonably could be expected to have, a Material Adverse Effect.

Section 6.3 Conditions to Obligations of Beth Moses. The obligation of Beth Moses to effect the Merger is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties. The representations and warranties of Wellwood set forth herein and in the Schedules attached hereto shall be true and correct in all material respects at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct as of such date).

(b) Performance of Obligations of Wellwood. Wellwood shall have performed in all material respects all obligations required to be performed by it at or prior to the Closing Date under this Agreement.

(c) Regulatory Condition. No condition or requirement shall have been imposed by one or more Governmental Entities in connection with any required approval by them of the Merger that requires Wellwood to be operated in a manner that would have a Material Adverse Effect.

(d) No Material Adverse Effect. There shall not be or exist any change, effect, event, circumstance, occurrence or state of facts either individually or when aggregated with other event(s) that has had, has or which reasonably could be expected to have, a Material Adverse Effect.

Section 6.4 Frustration of Closing Conditions. Neither Wellwood nor Beth Moses may rely on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party's failure to use its own reasonable best efforts to consummate the Merger and the other transactions contemplated by this Agreement.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether or not the respective Members of the Parties have approved the Agreement:

- (a) by mutual written consent of Wellwood and Beth Moses;
- (b) by either Wellwood or Beth Moses, if, on or before [December 31, 2021]:
 - (i) Wellwood is unable to satisfy its obligations under Section 6.1(a)(i) of this Agreement;
 - (ii) Beth Moses is unable to satisfy its obligations under Section 6.1(a)(ii) of this Agreement;
 - (iii) the New York Attorney General does not approve to the Merger and the transactions contemplated hereby and such determination is upheld or confirmed by the New York Supreme Court in a proceeding regarding such;
 - (iv) the New York Supreme Court does not approve the Merger and the transactions contemplated hereby;
 - (v) any Restraint having any of the effects set forth in Section 6.1(e) shall be in effect and shall have become final and nonappealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 7.1(b) (v) shall have used its reasonable best efforts to prevent the entry of such Restraint and to have such Restraint vacated or removed if it is in its ability to do so;

(vi) any Governmental Entity that must grant a Requisite Regulatory Approval shall have denied the applicable Requisite Regulatory Approval and such denial shall have become final and nonappealable; or

(c) by Wellwood, if Beth Moses shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach (i) would give rise to the failure of a condition set forth in Sections 6.2(a) or (b), and (ii) is either incapable of being cured by Beth Moses or, if curable, is not cured within 15 days of receipt from Wellwood of written notice thereof; or

(d) by Beth Moses, if Wellwood shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach (i) would give rise to the failure of a condition set forth in Sections 6.3(a) or (b), and (ii) is either incapable of being cured by Wellwood or, if curable, is not cured within 15 days of receipt from Beth Moses of written notice thereof.

The party desiring to terminate this Agreement pursuant to clauses (b), (c) or (d) of this Section 7.1 shall provide written notice of such termination to the other party in accordance with Section 7.2, specifying in reasonable detail the provision hereof pursuant to which such termination is effected.

Section 7.2 Effect of Termination. If this Agreement is terminated by either Party as provided in Section 7.1, this Agreement forthwith shall become void and have no effect, without any liability or obligation on the part of the Parties. This Section 7.2 and Article VIII shall survive such termination, provided, however, that nothing herein shall relieve any party from any liability (in contract, tort or otherwise, and whether pursuant to an action at law or in equity) for any knowing or willful breach by a party of any of its representations, warranties, covenants or agreements set forth in this Agreement or in respect of fraud by any party.

Section 7.3 Amendment. This Agreement may be amended by the Parties at any time in writing signed on behalf of all of the Parties to be bound thereby; provided, however, that after receipt of either or both Member Approvals, and the New York Attorney General or New York Supreme Court, there shall not be made any amendment that by law requires any further approval by the respective Members, the New York Attorney General or the New York Supreme Court without the further approval of such Members, and the New York Attorney General or the New York Supreme Court, as the case may be.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Nonsurvival of Representations, Warranties and Agreements. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 8.1 shall not limit any covenant or agreement of the Parties which by its terms contemplates performance after the Effective Time.

Section 8.2 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice) and in each case shall be deemed given upon receipt:

- (a) if to Wellwood, to:

Wellwood Cemetery Association, Inc.
P.O. Box 340
Farmingdale, New York 11735

- (b) if to Beth Moses, to:

Beth Moses Cemetery Corporation
P.O. Box 340
Farmingdale, New York 11735

Section 8.3 Definitions.

For purposes of this Agreement:

(a) “Material Adverse Effect” means, any change, effect, event, circumstance, occurrence or state of facts that is, or which reasonably could be expected to be, materially adverse to the business, assets, liabilities, condition (financial or otherwise), cash flows, results of operations of either Party, or the ability of Wellwood to continue in the Business of Beth Moses after the Merger in the same manner as it is currently conducted.

(b) “Material Contracts” means all material contracts, license agreements, commitments, leases, or restrictions of any kind, whether written or oral, to which it is a party or by which it is bound or to which any of its assets are subject.

(c) “person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

Section 8.4 Interpretation. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 8.5 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties. A facsimile copy of a signature page shall be deemed to be an original signature page.

Section 8.6 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the Schedules attached hereto and the documents and instruments executed and delivered in connection herewith) (a) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter of this Agreement and (b) are not intended to confer upon any person other than the Parties any rights or remedies.

Section 8.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal substantive and procedural laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state.

Section 8.8 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any of the Parties hereto without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 8.9 Consent to Jurisdiction. Each of the Parties hereto (a) consents to submit itself to the personal jurisdiction of any New York state court located in the County of Suffolk in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a New York state court located in the County of Suffolk. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement in any New York state court located in the County of Suffolk, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 8.10 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 8.12 Enforcement. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

ARTICLE IX

COMPLIANCE WITH NPCL SECTION 1506-d

Section 9.1 The financial assets of each constituent cemetery corporation as of December 31, 2022 for Beth Moses and October 31, 2022 for Wellwood, the date of each corporation's most recent end of year financial statement filed with the Division of Cemeteries, were as follows:

Beth Moses:

Perpetual Care Fund- \$39,282,729
General Fund - \$18,184,122
Permanent Maintenance Fund - \$5,832,442
Perpetual Care Income Fund - \$2,399,432

Total Current Liabilities - \$191,466

Wellwood:

Perpetual Care Fund - \$43,506,387
General Fund - \$14,999,290
Permanent Maintenance Fund - \$7,024,907
Perpetual Care Income Fund - \$2,116,864

Total Current Liabilities - \$282,230

Both cemeteries have had sufficient financial resources to operate as a separate cemetery for many years and nothing will change with regard to this as a result of the merger. This is not a case where a successful cemetery will be called upon to support a financially failing one after the merger.

Section 9.2 The management of financial assets will be substantially unchanged except that in some instances the accounts/trust funds of the two cemeteries may be merged.

Section 9.3 All corporate and cemetery records of both cemeteries will continue to reside in the Beth Moses administration building as they currently do. The records of the merged cemetery will be maintained at the same location.

Section 9.4 Since the two cemeteries are physically contiguous and currently have no fence between them so that employees and visitors drive from one to the other often unaware where one ends and the other begins and are jointly managed today, there will be no change in their operations after the merger with the exception of the elimination of redundant procedures necessitated by the fact that they are two separate corporations. They will continue to operate and be maintained in an equitable manner, as they have been in the past.

Section 9.5 Each cemetery has entrance gates bearing its name and those will initially remain as is. There will be no change in locations. The existing Beth Moses administration building which currently serves both cemeteries will continue to do so. The separate cemetery websites will be merged.

Section 9.6 Lot-owner meetings will continue to be held substantially as they have been in the past except that lot-owners in either cemetery will participate in such meetings of the merged corporation. However, remote access to lot-owner meetings will be afforded by a procedure along the following lines: The notice of meeting on the Cemetery website and when published will advise of the option for remote access and direct lot-owners seeking such access to contact the Cemetery office at least two weeks prior to the meeting to confirm their status as lot-owners and eligibility to vote. They will be requested to submit proof of identity and whatever documentation will establish their eligibility to vote and otherwise participate in the meeting. The Cemetery will verify that eligibility through review of the records in its possession and communicate any issues or questions regarding that eligibility to the presumed lot-owner. Upon verification of lot-owner status and eligibility to vote at lot-owner meetings, the Cemetery will provide a Zoom link to the meeting affording remote access.

Section 9.7 Notice of lot-owner meetings of the merged cemetery will be provided both by publication in a newspaper located in Suffolk County and posted on the merged cemetery's website.

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Section 9.8 The County Legislator in whose jurisdiction the cemeteries are located has already received informal notice of the proposed merger when Cemetery management advised him that the Cemeteries will be seeking County legislative approval of the merger in accordance with NPCL Section 1506(c). The prospect of abandonment is far-fetched and the merger, if anything, makes this even more unlikely than it would otherwise be.

Section 9.9 On August 8, 2023, written notice of the proposed merger was provided by fax to both the Town Attorney and the Town Clerk of the Town of Babylon in which both cemeteries are located.

IN WITNESS WHEREOF, Wellwood and Beth Moses have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

**WELLWOOD CEMETERY
ASSOCIATION, INC.**

By: _____
Name:
Title:

**BETH MOSES CEMETERY
CORPORATION**

By: _____
Name:
Title: