

DIVISION OF CEMETERIESSTATE OF NEW YORK
DEPARTMENT OF STATESTATE OFFICE BUILDING
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CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIRLETITIA JAMES
ATTORNEY GENERALDR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH**TO:** New York State Cemetery Board**FROM:** Brendon Stanton, Investigator**SUBJECT:** Southern Tier Memorial Cremation Corporation, #07-065**RE:** Compliance with Not for Profit Corporation Law**DATE:** April 2, 2021**Exhibits**

- a) Email from Jeffrey Present
- b) New building lease and board minutes approving the same
- c) Memorandum of Division Senior Accountant Kathleen Richardson

At its January 12, 2021 meeting, the Cemetery Board approved an application from Southern Tier Memorial Cremation Corporation of the town of Falconer, Chautauqua County, to replace a retort. This approval was conditioned on the crematory coming into full compliance with the Not for Profit Corporation Law, specifically with regard to its management agreement with Southern Tier Casket Company, a related entity. The Board requested that the Division follow up with the crematory within 90 days to ensure that it had come into full compliance as ordered.

On April 1, 2021, I received an email from Jeffrey Present, trustee of Southern Tier Memorial Cremation Company (Exhibit A). Mr. Present stated that the agreement between Southern Tier Memorial Cremation Company and Southern Tier Casket Company was terminated, with the final payment being made on April 1, 2021. Going forward, all crematory operators will be employees of Southern Tier Memorial Cremation Company as opposed to Southern Tier Casket Company. Furthermore, Southern Tier Memorial Cremation Company has executed a new lease for the crematory building (Exhibit B). The non-affiliated trustees of the crematory approved this lease, having explored alternative commercial property in the area and documenting their reasons for choosing to continue in the same location. Finally, all utilities and other bills have been transferred to Southern Tier Memorial Cremation Company. There is no longer any relationship between Southern Tier Memorial Cremation Company and Southern Tier Casket Company.

**Department
of State**

Additionally, there were concerns raised in the Division's audit report regarding internal controls and segregation of duties. The attached memorandum from Division Senior Accountant Kathleen Richardson indicates that she has been in contact with the crematory and they are taking steps to alleviate these issues (Exhibit C).

EXHIBIT A

From: [Jeffrey Present](#)
To: [Stanton, Brendon \(DOS\)](#)
Subject: Southern Tier Memorial Cremation Co.
Date: Thursday, April 01, 2021 10:06:34 AM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

All of the following matters have gone into effect this date (April 1 2021):

The management and labor agreement between Southern Tier Memorial Cremation Co. and Southern Tier Casket Co. Inc. has been terminated, with the final payment being made on this date.

The final payroll payments from Southern Tier Casket Co. Inc. have been made this date, and a new payroll account has been established for Southern Tier Memorial Cremation Co. The first payroll payments from the cremation company will be made on the first business day of each following month, commencing on May 3, 2021, which will be payroll for April. This schedule will continue into the future with pay being dispersed for the previous month.

The previous building lease between the cremation company and the casket company has been terminated. A new triple net lease has been executed, showing that the cremation company will be responsible for all expenses relating to the building

All utilities and other on-going expenses have been changed to reflect the cremation company as being responsible for payments.

EXHIBIT B

SPECIAL MEETING OF TRUSTEES OF SOUTHERN TIER MEMORIAL CREMATION CORP.

MARCH 13, 2021

10:00 A.M.

In attendance: Jennifer Welsh, President, Lawrence Wallace, Vice President, Jeffrey Present, Julia Steen, and Aaron Destro, Operators.

Jeff: You may recall from the meeting of November 2, 2020 that you have approved the separation of the operations of the casket company and the cremation company with the payroll and other expenses being taken over by the cremation company. This is scheduled to take place effective April 1, 2021. The Division of Cemeteries has now directed that we also enter into a new lease for the building, with the new lease being a "Net-Net-Net" lease, so that the cremation company will be responsible for all expenses relating to the building itself.

Jennifer: How much is the lease now?

Jeff: \$2,000.00 per month. You may also recall that we had a real estate agent do a search of other available properties in the area, who found that this amount is fair, and actually below what is being charged for other properties.

Larry: How long has this lease been in effect since it was last raised?

Jeff: It has been in effect since at least 2010, probably longer. I would have to dig into some old records (if I can find them) to find the actual date.

Jennifer: So it has been the same for at least 11 years, probably longer without being raised?

Jeff: Yes.

Larry: Based on what we saw about the other available properties, I move that we enter into a new lease as the state wants, increasing the rent to \$2,400.00 per month.

Jennifer: Seconded.

The motion was unanimously approved to enter into a Net-Net-Net lease with Southern Tier Casket Co. for the amount of \$2,400.00 per month.

Jeff: I will contact attorney Peter Pillitteri as soon as possible and ask him to prepare such a lease with an effective date of April 1, 2021 if he is able to do that.

Jeff: Just to bring you up to date, the new retort which the state approved at its January meeting is scheduled to be delivered on June 7.

There being no other business, the meeting was adjourned at 10:20 A.M.

Lease Agreement

This Lease is made this 1st day of April, 2021, by and between:

Southern Tier Casket Co., of 46 E. Falconer Street, Falconer, New York 14733, hereinafter referred to as the *Lessor*, and

Southern Tier Memorial Cremation Corp. of 46 E. Falconer Street, Falconer, New York 14733 hereinafter referred to as the *Lessee*.

WITNESSETH:

In consideration of the mutual agreements herein contained, the Lessor hereby leases to the Lessee all of 46 E. Falconer Street, Falconer, New York 14733, with the exception of the most westerly room that is reserved for use by the Lessor. Lessor reserves the right to enter said room through the Lessee's premises (the *Leased Premises*).

1. **TERM.** The Lessor shall lease to the Lessee the Leased Premises for a term of one (1) year. The term shall begin on the 1st day of April, 2021, shall renew yearly unless the Lessee provides the Lessor with notice of its intent not to renew said lease on or before December 31.

2. **RENT.** The Lessee agrees to pay the Lessor the yearly sum of Twenty-eight Thousand Eight Hundred and 00/100 Dollars (\$28,800.00) as rent, payable in twelve (12) equal monthly installments of Two Thousand Four Hundred and 00/100 Dollars (\$2,400.00). Should the Lessee renew the Lease, the Lessee agrees to pay the Lessor the sum as agreed upon by and between the parties on December 31 of each year.

3. **MAINTENANCE AND REPAIRS BY THE LESSOR.** The Lessor shall not be responsible for any replacement or repairs to any part of the building or any of the equipment or facilities therein. The Lessor shall not be required to repair damage to the exterior of the building. The Lessee shall promptly pay the cost of any such replacement or repair.

4. **REAL ESTATE TAXES.** Lessee will pay all real estate taxes and assessments which are assessed against the Premises during the term of the Lease with the exception of the most westerly room that has been reserved by the Lessor. The current taxes will be prorated proportionately to the square footage used by Lessee to the entire square footage of the building as of the date of commencement of the within Lease. Said payment will be made to Lessor within thirty (30) days of the Lesser presenting same to Lessee. All future payments of real property taxes will be paid by Lessee prior to their respective due dates.

5. **DUTIES AND RESPONSIBILITIES OF THE LESSEE.** All damage or injury to the Leased Premises and to its fixtures, appurtenances, and equipment, including the heating, electrical, and plumbing systems or fixtures, appurtenances, and equipment, caused by the Lessee, its agents, servants, employees, visitors, or licensees in (i) moving property in or out of the building, or (ii) installing or removing furniture, trade fixtures, or other property, irrespective of the Lessee's negligence, or resulting from the activities of the Lessee, its employees, agents, or invitees, shall be promptly repaired, restored, or replaced by the Lessee at its sole cost and expense. All aforesaid repairs, restorations, and replacements shall be in quality and class equal to the original work and condition existing on the date of the commencement of this Lease. If the Lessee fails to make such repairs, restorations, or replacements, the same may, after the Lessor has given fifteen (15) days written notice of its intent to the Lessee, be made by the Lessor at the expense of the Lessee and shall be collectible as additional rent or otherwise and shall be paid by the Lessee within fifteen (15) days after rendition of a bill or statement therefor.

(a) The Lessee shall make no structural changes in said premises without the consent of the Lessor. No material change or addition to the wiring or plumbing in said Leased Premises shall be made without consent of the Lessor.

(b) Comply with all laws, zoning codes, orders, and regulations of federal, state, county, and municipal authorities and with any direction of any public officer or officers, whether imposed upon or communicated to either the Lessee or the Lessor, with respect to the Lessee's use or occupation of the Leased Premises, except that this provision shall not be interpreted to require the Lessee to effect structural changes or structural replacements to the Leased Premises, or any changes, replacements, or repairs to the outside thereof. The Lessee shall not do or permit to

be done any act or thing upon said premises which will invalidate or be in conflict with fire insurance policies covering the building of which the Leased Premises form a part, or the fixtures and property therein, and shall not do or permit to be done any act or thing upon said premises which shall or might subject the Lessor to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon said premises or for any other reason, and the Lessee will defend, indemnify, and save the Lessor harmless from all liability thereunder.

(c) Give notice to the Lessor of any defect in or damage to any part of the building.

(d) Permit the Lessor and its employees and agents to enter the Leased Premises at any reasonable time to enter the most westerly room.

(e) Provide any signs, advertising aids, and devices required by the Lessee, at its own expense. Such signs and other equipment shall be approved by the Lessor as to size and type and shall be maintained to the standard set by the Lessor.

(f) The Lessee shall be responsible for the maintenance and repair to all interior and exterior portions of the Leased Premises, including, but not limited to all interior surfaces, lighting, HVAC, plumbing, electrical wiring, parking lot repairs, snow removal, landscaping and lawn care.

(g) The Lessee shall contract in its own name for and pay the utility bills for the Leased Premises: gas, electricity, water charges, sewer charges and solid waste disposal.

6. LIABILITY INSURANCE AND INDEMNIFICATION. The Lessee shall indemnify, defend, and save the Lessor harmless from any claim made against the Lessor arising out of any occurrence in, upon, or at the Leased Premises or by reason of the use or misuse of the premises by the Lessee, its agents, servants, or employees, and from any liens or charges made against the premises by reason of any act or omission by the Lessee.

In case the Lessor shall be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect, defend, and hold the Lessor harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by or on behalf of the Lessor in connection with such litigation. The Lessee shall

also pay all costs, expenses, and reasonable attorney's fees that may be incurred by the Lessor in enforcing the covenants and agreements of this Lease.

The Lessor shall maintain public liability insurance with respect to the Leased Premises which provides single limit coverage not less than One Million Dollars. The Lessor shall deliver to the Lessee a certificate of insurance showing the Lessee to be an additional insured under the policy. The certificate and policy shall provide that the Lessee shall receive not less than twenty (20) days written notice of cancellation.

7. CONDEMNATION. If the whole or any part of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then and in that event the term of this Lease shall cease and terminate from the date of title vesting in such proceeding, and the Lessee shall have no claim against the Lessor for the value of any unexpired term of said Lease.

8. DEFAULT. If the Lessee defaults in fulfilling any of the covenants of this Lease, including the covenants for the payment of rent or building maintenance, or if the Leased Premises become deserted, then in any one or more of such events, the Lessor may serve a written fifteen (15) day notice upon the Lessee specifying the nature of said default and demanding immediate cure. If, upon the expiration of said fifteen (15) days, the Lessee shall have failed to comply or to remedy such default, the Lessor may serve a written ten (10) day notice of cancellation of the Lease upon the Lessee, and upon the expiration of said ten (10) days, this Lease and the term thereunder shall end, and the Lessee shall then quit and surrender the Leased Premises to the Lessor, but the Lessee shall remain liable as hereinafter provided.

9. USE OF THE PREMISES. The Lessee shall not use the Leased Premises for any purpose other than the conduct of its Southern Tier Memorial Cremation Corp. business.

10. SUBLETTING, ASSIGNMENT. This Lease, or any part thereof, shall not be assigned or mortgaged by Lessee without written consent of the Lessor. Neither the Leased Premises nor any part thereof shall be let or underlet without the prior written consent of the Lessor, which shall not be unreasonably withheld so long as the Lessee continues to be responsible for any default by a subtenant or assignee.

11. GOVERNING LAW. The laws of the State of New York shall govern all issues concerning the construction, validity, and interpretation of this Lease. All

parties consent to exclusive venue in Chautauqua County, State of New York, of any dispute arising from the terms of this Lease or breach thereof.

12. SURRENDER OF PREMISES. At the termination of this Lease, the Lessee shall quit, surrender, and deliver up the Leased Premises in as good condition as at the beginning of the term, except for results of ordinary use and wear, and the Lessee may remove from the Leased Premises leasehold improvements installed and paid for by the Lessee and is used in its profession and shall repair any damage occasioned by such removal in a good, workmanlike manner.

13. REMEDIES PERFORMED BY THE LESSOR. If the Lessee shall default in the observance or performance of any term or covenant on the Lessee's part to be observed or performed under or by virtue of any of the terms or provisions in any paragraph of this Lease and shall not have remedied the same as hereinabove provided, the Lessor may immediately, or at any time thereafter and without further notice, perform the same for the account of the Lessee, and if the Lessor makes any expenditures or incurs any obligations for the payment of money in connection therewith, including, but not limited to, attorney's fees, in instituting, prosecuting, or defending any action or proceeding, such sums paid or obligations incurred, with interest and costs, shall be deemed to be additional rent hereunder and shall be paid by the Lessee to the Lessor within five (5) days of rendition of any bill or statement to the Lessee therefor.

In Witness Whereof, the Lessor and the Lessee have executed this Lease the day and year first above written.

Lessor:

Southern Tier Casket Co.

By _____

Lessee:

Southern Tier Memorial Cremation Corp.

By _____

EXHIBIT C

MEMORANDUM

NEW YORK STATE - DEPARTMENT OF STATE

DATE: 3/18/21
TO: Lewis Polishook, Director
FROM: Kathleen Richardson, Senior Accountant
SUBJECT: Southern Tier Cremation #07-065
RE: Internal Controls

The auditor's report stated that there was a lack of internal controls, specifically regarding a segregation of duties.

Southern Tier Cremation has been and is currently in discussions with their Accounting firm to strategize and implement policies and procedures to address these internal control issues.

These changes will be implemented no later than May 1, 2021. The Division will contact the crematory no later than April 15th to ascertain progress.