

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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NEIL LEVENTHAL,	)	New York County Index No.
as representative of a Class consisting of himself and	)	100530/2011E
all others similarly situated,	)	
	)	Hon. Debra A. James
Plaintiff,	)	
	)	
v.	)	
	)	
BAYSIDE CEMETERY, CONGREGATION	)	
SHAARE ZEDEK AND COMMUNITY	)	
ASSOCIATION FOR JEWISH AT-RISK	)	
CEMETERIES, INC.,	)	
	)	
Defendants.	)	

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**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made by and between NEIL LEVENTHAL, (the “Named Plaintiff”), on behalf of himself and the Class Members as herein defined (collectively, “Plaintiffs”) and Defendant CONGREGATION SHAARE ZEDEK, on behalf of itself and Defendant Bayside Cemetery (collectively “Defendants”).

WHEREAS, Named Plaintiff through the above-referenced action alleges that Defendants breached the terms of certain charitable trusts for the perpetual care of specified graves at Bayside Cemetery, and

WHEREAS, Defendants deny liability and/or any other wrongdoing with respect to Plaintiffs, and

WHEREAS, Michael M. Buchman, Esq., has acted as *pro bono* counsel to the Named Plaintiff, and the Class Members in the above-referenced action (“Class Counsel”), and

WHEREAS, Plaintiff and Defendants (collectively, the “Parties”) wish to avoid further litigation and settle and resolve the controversy between them amicably and expeditiously as described herein (the “Settlement”), and

WHEREAS, Plaintiff has agreed to resolve this litigation in exchange for Defendant’s agreement to irrevocably maintain \$6.5 million in the Reserve Fund established in connection with *In re Application of Congregation Shaare Zedek*, N.Y. County Index No. 155623/2017,

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subject to the provisions of the Order establishing such fund, as it has been amended from time-to-time, including the Reserve Fund Amendments as defined herein.

**NOW THEREFORE, in consideration of the mutual covenants, promises, and warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:**

1. **Definitions:** The following terms shall, in this Agreement, have the meanings ascribed to them in this section, and all other terms shall have their ordinary meaning:

1.1 **"Class Members"** shall mean "all persons who purchased a perpetual care contract from a Defendant or such Defendant's agents or assigns." For the avoidance of doubt, individuals currently acting as the personal representative of a decedent who: (a) died on or after January 13, 2005; and (b) would have been a Class Member had such decedent been alive as of the date of this Agreement shall be deemed Class Members for purposes of this Agreement, including the Named Plaintiff Neil Leventhal, who is acting as the personal representative of his late father Steven R. Leventhal, the original named plaintiff in this action.

1.2 **"Settlement Class"** shall mean all Class Members who do not timely exclude themselves from this Settlement as set forth in paragraph 10 below.

1.3 **"Settlement Notice"** shall mean the Court-approved Notice of Settlement, the form of which is attached hereto as Exhibit B.

1.4 **"Class Counsel"** shall mean Michael M. Buchman, Esq.

1.5 **"Defense Counsel"** shall mean the law firm of Axinn, Veltrop & Harkrider, LLP.

1.6 **"Parties"** shall mean the Named Plaintiff, Defendants, and the Settlement Class, collectively.

1.7 **"Notice Administrator"** shall mean A. B. Data Ltd.

1.8 **"Fairness Hearing"** shall mean the hearing before the Court relating to a Motion for Final Approval.

1.9 **"Preliminary Approval Order"** shall mean an Order substantially in the form of Exhibit A hereto.

1.10 **"Final Approval"** shall mean that the Settlement has been finally approved by the Court and either: (1) upon timely appeal, the Appellate Division, First Department has declined to consider, affirmed, or otherwise approved of the Court's Final Approval and the applicable time for seeking further appellate review has expired, or (2) the applicable time for seeking appellate review of the Court's Final Approval of the Settlement has expired without the filing of a timely notice of appeal or other request for appellate review. For the avoidance of doubt, Final Approval shall be deemed to have occurred, if when the time for the parties who are signatory hereto to file appeals from the Final Approval Order expires, no Notice of Appeal has been filed by any person prior to that time, regardless of the possibility that a person upon whom no Notice of Entry was filed might nonetheless be able to file a subsequent appeal.

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1.11 **“Final Approval Order”** shall mean an Order entered by the Court in the form described in Paragraph 13.

1.12 **“Notice Period”** shall mean the 60-day period beginning with the first publication of the Settlement Notice.

1.13 **“Reserve Fund Proceeding”** shall mean the special proceeding known as *In re Application of Congregation Shaare Zedek*, N.Y. County Index No. 155623/2017.

1.14 **“Reserve Fund Order”** shall mean the Decision and Order of the Court in the Reserve Fund Proceeding entered July 27, 2017, as subsequently amended from time to time.

1.15 **“Reserve Fund Amendments”** shall mean the proposed amendments to the Reserve Fund Order set forth in Exhibit E hereto.

1.16 **“Released Parties”** shall mean Defendant and their respective current, former, or future members, officers, trustees, employees, successors, assigns, agents, or other representatives.

1.17 **Reservation of Claims.** This settlement is not intended to and does not release claims that were not alleged in the Complaint in the Class Action.

2. **The Settlement Agreement:** Plaintiff has agreed to settle all claims with prejudice which were or could have been brought in exchange for Defendants’ agreement to effectuate the Reserve Fund Amendments as more fully described in paragraph 3.

3. **Amendment of the Reserve Fund Order:** In exchange for the dismissal of this action with prejudice, as described herein, and the releases and covenants set forth in paragraph 17 of this Agreement, Defendants have agreed to the proposed amendments to the Reserve Fund Order set forth in Exhibit E hereto and to take reasonable and appropriate steps to obtain the entry of appropriate court orders effectuating those amendments. Nothing herein shall confer any right on the Plaintiff, Class members or any other person to participate in the Reserve Fund Proceeding, as a party or otherwise.

4. **No Admissions:** Nothing contained herein, nor the consummation of this Agreement, shall be construed or deemed an admission of liability, culpability, negligence, willfulness, lack of good faith, or wrongdoing on behalf of either Defendant. Each of the Parties hereto has entered into this Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience, uncertainty, and expenses. In particular, and without limiting the generality of the foregoing, nothing in this Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by either Defendant, or their officers, trustees, members, employees, or agents, who expressly deny any such liability, wrongdoing, impropriety, responsibility or fault whatsoever.

5. **Investigation by Counsel:** Class Counsel and Defense Counsel, respectively, have conducted extensive discovery and investigated the facts relating to the claims alleged, and have made a thorough study of the legal principles applicable to the claims asserted against, Defendants. Class Counsel and Defense Counsel expressly acknowledge that there are

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differences and disputes, stated and unstated, between the Parties as to various matters. Class Counsel, in consultation with the Plaintiff, has exercised his independent judgment and has determined that the Settlement and this Agreement are proper as stated herein after fully taking into account any risk, uncertainty, or unresolved issues relating to discovery or the completeness of his investigation, uncertainty as to facts and circumstances, risk of significant delay, risk of loss or limited recovery, and the defenses asserted by Defendants. Based upon Class Counsel's investigation, legal evaluation, and taking into account the sharply contested legal and factual issues involved as well as Class Counsel's assessment of the uncertainties of complex litigation and relative benefits achieved by this Agreement, Class Counsel has concluded that a settlement with Defendants on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Named Plaintiff and the Class Members. Defendants and Defense Counsel also agree that this Settlement is reasonable and fair.

6. **Cooperation:** The parties agree to cooperate and take all steps reasonably necessary and appropriate to obtain preliminary and final approval of this Agreement and to dismiss the Action with prejudice upon performance of the terms and conditions of the Agreement.

7. **Attorney's Fees and Expenses/Costs:** In light of his *pro bono* representation of the Class Members, Class Counsel hereby agrees to waive any claim for attorney's fees or costs in connection with this Action or the settlement thereof. Each Party shall bear its own costs in connection with this Action, whether accrued prior to or after the date of this Agreement, except insofar as is expressly provided for with respect to notice costs in paragraph 8 below.

8. **Notice Costs:** Defendants agree to pay the actual and reasonable costs of the Notice Administrator, not to exceed \$30,000, without regard to whether a Final Approval Order is ultimately entered. Plaintiffs agree not to oppose an application by the Defendants to the Court for permission to withdraw up to \$30,000 from the Cemetery Reserve Fund in accordance with the terms of the Reserve Fund Order, provided that the Court's denial of such application shall not affect Defendants' obligations under this paragraph.

9. **Duties of the Parties Related to Preliminary Approval:** Promptly upon the execution of this Agreement and the satisfaction of the condition set forth in paragraph 14 below with respect to the approval of the Office of the Attorney General, the Parties shall apply to the Court for an entry of a Preliminary Approval Order substantially in the form set forth in Exhibit A hereto. Such motion shall recommend the provision of notice to the Class Members by the Notice Administrator in the form attached hereto as Exhibit A, in accordance with the proposed Notice Plan attached hereto as Exhibit C which shall provide for the best notice practicable, including direct mail to those members of the Class who can be reasonably identified and for whom a current mailing address is reasonably available. After the Court grants such preliminary approval, the Named Plaintiff shall promptly provide the Class Members with notice of the Settlement in the form and by the means set forth in the Preliminary Approval Order, the costs of which shall be paid as provided in paragraph 8.

10. **Opt-Out Procedure:** Anyone who wishes to be excluded from the Settlement Class shall send a written request to be excluded to the Notice Administrator, and the request for exclusion must actually be received by the Notice Administrator within 30 days from the completion of the Notice period. The claims of any individual who timely and expressly requests to be excluded

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from this Settlement will be dismissed without prejudice, and s/he will not be bound by the Class Release.

11. **Objections:** Any Class Member, other than the Named Plaintiff, must object to this Settlement by filing within 30 days form the completion of the Notice period with the Court and serving upon Class Counsel and Defense Counsel a written objection stating: (a) his or her name and address (and, if different, the name of the individual whose purchase of perpetual care is the basis of the objector's standing to object), (b) the title or caption of this Action, (c) whether the objection applies only to the objector, to the entire Settlement Class, or to a subset thereof, (d) whether the objector or his or her counsel intends to appear at the Fairness Hearing, and (e) the objector's signature. Any such objection shall be accompanied by a copy of the relevant perpetual care contract or other appropriate proof of the objector's status as a Class Member. No individual may be heard at the Fairness Hearing who has not complied with the requirements of this paragraph. Any individual who fails to comply with such requirements will be deemed to have waived any right to object to and any objection to the Settlement.

12. **No Encouragement:** None of the Parties, their counsel, or any person acting on their behalf, shall assist, solicit, or otherwise encourage any person to object to the Settlement, to request exclusion from the Settlement Class, or to appeal from any order of the Court that is consistent with the terms of this Settlement, provided that Class Counsel or Defense Counsel may provide individuals who, without having previously been solicited or encouraged in violation of this paragraph, unilaterally inquire about the Settlement with the terms of this Agreement and refer them to the paragraphs therein describing the procedures for opting-out or objecting to the Settlement. If any of the Parties or their Counsel receive any objection or request for exclusion from any individual, they shall promptly provide copies to the other Parties and file them with the Court, unless it is apparent that that has already been accomplished.

13. **Motion for Final Approval:** Within 30 days after the expiration of the Notice Period, and at least 10 days prior to the Fairness Hearing, the Parties will jointly file a motion for final approval of the Settlement. In connection with that motion, the Parties shall file: (a) a declaration by the Notice Administrator describing the steps taken to publish the notice in accordance with the Court's preliminary approval order, (b) a list of Class Members who timely requested to be excluded from the Settlement Class, together with copies of such requests, (c) a list of Class Members who submitted a timely written objection to the Settlement as provided herein, together with copies of such objections. The motion for final approval shall apply to the Court for an Order finally approving the Settlement as fair, reasonable, and adequate and shall submit a [Proposed] Order and Judgment, which:

(a) Approves the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate as to the Named Plaintiff and the members of the Settlement Class, and directing its consummation;

(b) Effectuates the Reserve Fund Amendments (substantially in the form shown in Exhibit E) to the Reserve Fund Order, or indicates the Court's intention to effectuate such Reserve Fund Amendments by contemporaneously filed order in the Reserve Fund Proceeding;

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(b) Excludes from the Settlement Class those persons who properly and timely have requested exclusion as provided herein;

(c) Dismisses the Action on the merits and with prejudice and permanently bars all Settlement Class Members from prosecuting any claims or objections released or barred by the terms of this Agreement, except for enforcement of the terms of the Settlement Agreement, with each party to bear its own costs and expenses; and

(d) Retains exclusive jurisdiction over the Settlement and this Settlement Agreement.

14. **Approval of the Attorney General:** Prior to the submission of the motion for preliminary approval, the Office of the Attorney General of the State of New York shall have consented (or indicated its non-objection) to the Reserve Fund Amendments.

15. **Resumption of Litigation.** The parties agree, subject to approval of the Court, that in the event that the Settlement Agreement is not approved by the Court or the Settlement does not become final the litigation against Defendants will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto.

16. **Termination and Effect of Termination:**

16.1 **Failure of Preliminary Approval:** If the Court fails to preliminarily approve any material condition of this Agreement which effects a fundamental change to the Settlement, any party adversely affected thereby shall have the right to terminate the Agreement. Any Party seeking to exercise such option shall do so in writing delivered to the other Parties (through their respective counsel) and to the Court at any time prior to the filing of the Parties' joint motion for final approval.

16.2 **Opt-Outs:** If ten or more Class Members request to be excluded from the Settlement Class, Defendants shall have the option (in their sole discretion) to terminate this Agreement. Defendants shall exercise such option in writing delivered to Class Counsel and filed with the Court prior to the filing of the Parties' joint motion for final approval.

16.3 **Failure of Final Approval:** If the Court enters an Order denying the Parties' joint Motion for Final Approval, and such denial has become final and non-appealable, either Party may terminate this Agreement by written notice to the other.

16.4 **Objection by the Attorney General:** If the Office of the Attorney General objects to the Reserve Fund Amendments, or otherwise fails to provide its consent as contemplated in paragraph 14, and despite the Parties' reasonable best efforts they are unable to agree on alternative amendments that are acceptable to the Parties and the Office of the Attorney General, either Party may terminate this Agreement by written notice to the other.

16.5 **Effect of Termination:** If any party exercises its right to terminate this Agreement as set forth herein (or if this Agreement shall otherwise terminate), this agreement shall be void and of no force and effect, with the Parties being returned to their respective positions in the litigation without prejudice to any party, provided that no Party shall be

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permitted to introduce any evidence relating to this Agreement, the Settlement, or its negotiation into this or any other Action.

**17. Releases and Covenants by and of the Settlement Class:** Upon Final Approval of this Settlement by the Court:

17.1 The Named Plaintiff and each Settlement Class Member shall release the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, or liabilities, including any claims or entitlements for equitable relief, arising out of any alleged breach of any agreement or trust for the care of one or more graves at Bayside Cemetery that accrued or allegedly occurred prior to the entry of the Final Approval Order, including without limitation any penalties, liquidated damages, punitive damages, interest, attorneys' fees, or litigation costs incurred in the prosecution of this Action or any appeals therefrom;

17.2 The Named Plaintiff and each Settlement Class Member shall forever be barred from instituting, filing, or maintaining any action, claim, or proceeding seeking equitable, monetary, or declaratory relief relating to or arising out of any alleged breach of any agreement or trust for the care of one or more graves at Bayside Cemetery that accrued or allegedly occurred prior to the entry of the Final Approval Order;

17.3 The Named Plaintiff and each Settlement Class Member shall forever be barred from instituting, filing, or maintaining any action, claim, proceeding, application, or objection, or otherwise opposing any application made by either Defendant in the Reserve Fund Proceeding or otherwise relating to the Reserve Fund Order, if the substance of such action, claim, proceeding, application, objection or opposition is that \$6,500,000 is insufficient to adequately maintain Bayside Cemetery or that Defendants should be required to provide, maintain, or reserve more than that amount of funds for the benefit of Bayside Cemetery. For avoidance of doubt, the Named Plaintiff and each Settlement Class Member expressly reserves the right to pursue enforcement of this Settlement Agreement.

17.4 Defendants agree to release and forever discharge all claims, cross-claims, or counterclaim(s) which could have been brought against Steven R. Leventhal, Neil Leventhal or any Leventhal-related family member or relative, or any Settlement Class Member concerning or relating to this action that accrued or allegedly occurred prior to the entry of the Final Approval Order.

17.5 By this settlement of the claims asserted in this Action, the Released Parties expressly do not waive, and hereby expressly preserve, any and all defenses they have as to any claims that the Named Plaintiff or any Settlement Class Members may bring in the future, including but not limited to defenses based on *res judicata* or claim splitting.

**18. Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to through the execution of such documents and the taking of such other actions as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts

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contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

19. **Enforcement:** This Settlement Agreement shall be enforced solely by action or motion filed in the Supreme Court of the State of New York in and for the County of New York, and the Parties irrevocably submit to the jurisdiction of such Court to enforce this Settlement.

20. **Notices:** Unless otherwise specified herein, all notices, demands, or other communications given hereunder to any party to this Agreement shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by first class or certified mail, or on the first business day after sending by overnight carrier or electronic mail, addressed as follows:

To the Settlement Class:

Michael M. Buchman  
c/o Motley Rice LLC  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10017

[mbuchman@motleyrice.com](mailto:mbuchman@motleyrice.com)

To Defendants:

Russell Steintal  
Axinn, Veltrop & Harkrider LLP  
114 West 47<sup>th</sup> Street, 22<sup>nd</sup> Floor  
New York, NY 10036

[rsteintal@axinn.com](mailto:rsteintal@axinn.com)

21. **Construction:**

21.1 The Parties hereto agree that the terms and conditions of this Agreement are the result of arms' length negotiations between the Parties, has been drafted jointly by counsel for the Parties, and shall not be construed in favor of or against any Party.

21.2 Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

22. **Modification:** This Agreement may not be changed, altered, or modified except in writing signed by the Parties or their respective counsel and expressly referring to this Agreement. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto or their respective counsel. Any material modification to this Agreement shall be approved by the Court in its continuing jurisdiction. No rights hereunder may waived except in writing.

23. **Integration:** This Agreement and attachments thereto constitute the entire agreement between the Parties relating to the Settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. The Parties expressly acknowledge that they have not relied on any representations or promises not expressly contained in this Agreement.

24. **Confidentiality.** The terms of this Settlement Agreement shall remain confidential until Plaintiff moves for preliminary approval of the Settlement, except that the Court and any other



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parties may be informed of the fact of settlement. However, this provision does not apply to statements made in judicial filings necessary to obtain preliminary Court approval of the Settlement, and Defendants shall be entitled to make such disclosures of the Settlement Agreement as they, in their sole discretion, determine are appropriate under the law or to accomplish the goals of this Settlement Agreement.

**25. Binding Scope/Authority**

25.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

25.2 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

25.3 The signatories hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto. The Named Plaintiff and authorized signatories for Defendant Congregation Shaare Zedek shall sign this Agreement before it is filed with the Court as an exhibit to the Parties' joint motion for preliminary approval.

25.4 The Named Plaintiff hereby represents, covenants, and warrants that he has been validly appointed by the Court as the Named Class Representative Plaintiff and that he has taken all steps reasonable and necessary to ensure his substitution as a party in this Action.

25.5 Defendant Congregation Shaare Zedek hereby represents, covenants, and warrants that it has the authority to enter into this Settlement on behalf of and for the benefit of "Bayside Cemetery," which, despite being named as a party to this Action, is not a separately incorporated legal entity.

26. **Counterparts:** This Agreement may be executed in one or more counterparts, and when each of the undersigned has executed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together shall constitute one Agreement, which shall be binding upon and effective as to all Parties. Signatures sent by facsimile or electronic mail shall be deemed original signatures.

27. **Governing Law:** This Agreement shall be governed by and interpreted according to the laws of the State of New York, without regard to conflicts of laws.

**Executed and agreed to:**

NEIL LEVENTHAL

as representative of a Class consisting of himself and all others similarly situated

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\_\_\_\_\_  
Neil Leventhal


Date: \_\_\_\_\_

CONGREGATION SHAARE ZEDEK

By: \_\_\_\_\_  
Michael Firestone  
President

Date: \_\_\_\_\_

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\_\_\_\_\_

Date: 1/11/2024

Neil Leventhal

CONGREGATION SHAARE ZEDEK

By: \_\_\_\_\_

Date: \_\_\_\_\_

Michael Firestone  
President

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which shall be binding upon and effective as to all Parties. Signatures sent by facsimile or electronic mail shall be deemed original signatures.

27. **Governing Law:** This Agreement shall be governed by and interpreted according to the laws of the State of New York, without regard to conflicts of laws.

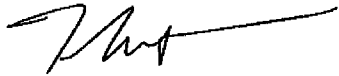
**Executed and agreed to:**

NEIL LEVENTHAL  
as Personal Representative of the Estate of Steven Leventhal, Named Plaintiff

\_\_\_\_\_ Date: \_\_\_\_\_

Neil Leventhal

CONGREGATION SHAARE ZEDEK

By:  \_\_\_\_\_ Date: January 12, 2024

Michael Firestone  
President

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**Index to Exhibits**

**Exhibit A – Form of Preliminary Approval Order**

**Exhibit B – Form of Settlement Notice**

**Exhibit C – Proposed Notice Plan**

**Exhibit D – Reserved**

**Exhibit E – Reserve Fund Amendments**

**Exhibit A – Form of Preliminary Approval Order**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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NEIL LEVENTHAL,	)	New York County Index No.
as representative of a Class consisting of himself and	)	100530/2011E
all others similarly situated,	)	
	)	Hon. Debra A. James
Plaintiff,	)	
	)	
v.	)	
	)	
BAYSIDE CEMETERY, CONGREGATION	)	
SHAARE ZEDEK AND COMMUNITY	)	
ASSOCIATION FOR JEWISH AT-RISK	)	
CEMETERIES, INC.,	)	
	)	
Defendants.	)	
-----	)	

**[Proposed] Order Preliminarily Approving Settlement**

The named Plaintiff in this action, Neil Leventhal, and Defendant Congregation Shaare Zedek having jointly moved, pursuant to CPLR § 905, for an order preliminarily approving a settlement of this action, in accordance with the terms of that certain Settlement Agreement entered into between such parties dated January 12, 2024, and said motion having regularly come on to be heard,

Now, upon reading the motion and the memorandum of law and the Declaration of Michael M. Buchman filed in support thereof, including the proposed Settlement Agreement, Settlement Notice, and Notice Plan attached as exhibits thereto, and after due deliberation having been held thereon, the Court hereby enters the following findings of fact and conclusions of law, solely for the purpose of effectuating the proposed settlement of this action, and without prejudice to any claims or defenses that the parties may have should such settlement not eventually be finally approved by this Court:

FOUND, that the prerequisites set forth in CPLR § 901 for the maintenance of a class action have been satisfied, in that the proposed settlement class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the settlement class which predominate over any questions affecting only individual members, the claims of the named plaintiff are typical of those of the settlement class, the named plaintiff will fairly and

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adequately protect the interests of the settlement class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and it is further

FOUND, in accordance with CPLR § 902, that it is appropriate to preliminarily certify a settlement class in this action, the Court having considered, among other factors bearing on the appropriateness of certification of a settlement class in this action, the interest of members of the settlement class in individually controlling the prosecution of separate actions, the impracticability or inefficiency of prosecuting separate actions, the extent and nature of any litigation concerning the controversy already commenced by or against members of the settlement class, the desirability of concentrating the litigation of the claim in this forum, and the difficulties likely to be encountered in the management of a class action; and it is further

FOUND that the settlement terms set forth in the Settlement Agreement submitted with this motion are fair, reasonable, and adequate, and in the best interests of the members of the settlement class defined below; and in light of the foregoing, it is hereby

ORDERED, that the above-entitled action is, from the date of this Order, to be maintained, solely for the purpose of settlement, as a class action by the plaintiff Neil Leventhal, in his capacity as personal representative of the late Steven Leventhal, on behalf of his decedent and as the representative party of a class consisting of all persons who purchased a perpetual care contract from a Defendant in this action or such Defendant's agents or assigns, including for the avoidance of doubt individuals who are currently acting as the personal representative of a decedent who (a) died on or after January 13, 2005, and (b) would have been a member of such settlement class had they been alive as of the date of this Order, but excluding any person who validly opts-out of the settlement in the manner provided in the Settlement Notice; and it is further

ORDERED, that the proposed Settlement Notice submitted in support of this motion is approved, and service thereof is hereby directed to be made by publication as set forth in the proposed Notice Plan, which is also approved; and it is further

ORDERED, that a hearing shall be held on \_\_\_\_, or as soon thereafter as the matter may be heard, to hear any objections to the proposed settlement that shall have been duly lodged in accordance with the terms set forth in the Settlement Notice, and to consider at such time a motion for final approval of the settlement that shall have been made by the parties; and it is further

ORDERED, that all proceedings in this action shall be stayed until such time as the Court hears and decides such motion for final approval; and it is further

ORDERED, that the certification of a class in this action is expressly made conditional upon and limited solely to the purpose of effectuating the proposed Settlement Agreement, and shall be without prejudice to the right of the Plaintiff to apply for the certification of a differently-defined class or the right of the Defendants to oppose such certification, should this matter be returned to the docket following the termination of the Settlement Agreement in accordance with its terms.

**Exhibit B – Form of Settlement Notices****Form of Postcard Notice:**

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

**You Are Being Provided Notice Regarding****The Bayside Cemetery/Congregation Shaare Zedek Perpetual Care Fund Litigation.**

**Why Am I Receiving This Notice and What Are The Settlement Terms?** Congregation Shaare Zedek's records indicate that you may have purchased a perpetual care contract concerning one or more plots at Bayside Cemetery. A proposed settlement has been reached in the above-referenced litigation which requires Bayside Cemetery/Congregation Shaare Zedek or any successor-in-interest to maintain a Cemetery Reserve Fund of \$6,500,000 in perpetuity, in accordance with the terms of an existing court order governing that Fund. You may contact the Notice Administrator (contact information below) with any additional questions regarding the settlement or the proposed Settlement Class. The full terms of the settlement are available at [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com), or through the Court's docket or by contacting the Notice Administrator at 1-877-388-1756 or contacting counsel for the proposed Settlement Class. YOU SHOULD NOT CONTACT THE COURT.

**How Do I Indicate My Agreement?** You do not have to do anything to if you agree with the proposed Settlement. If the Court approves the proposed Settlement and it becomes final and effective, the Court will enter an order requiring Congregation Shaare Zedek and Bayside Cemetery or any successor-in-interest to maintain a Cemetery Reserve Fund of \$6,500,000 in perpetuity, subject to the terms of an earlier court order governing that Fund.

**Your Rights May Be Affected.** If you do not want to be legally bound by the proposed Settlement, you must exclude yourself from the proposed Settlement Class. To do so, you must send a letter that includes the following: your name, address and telephone number, a statement that you are a Settlement Class member and want to be excluded from the settlement in *Leventhal v. Bayside Cemetery and Congregation Shaare Zedek*, Index No. 100530-2011, and your personal signature. You must mail your exclusion request, postmarked no later than [DATE], 2024 to: Bayside Cemetery Settlement, ATTN: Exclusions, P.O. Box 173001, Milwaukee, WI 53217. If you do not timely exclude yourself, you will release your claims against Bayside Cemetery and Congregation Shaare Zedek concerning or relating to the Bayside Cemetery Perpetual Care Fund Litigation and will not be able to sue Bayside Cemetery/Congregation Shaare Zedek for any claim released under the proposed Settlement. If you stay in the Settlement Class, you may object to the proposed settlement by filing with the Court and sending your objection no later than [DATE], 2024. The Court will hold a hearing on [DATE], 2024 to consider whether to approve the proposed Settlement. You may file an objection to the proposed Settlement, but you must meet certain requirements. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.



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**For more information visit: [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com) or Call 1-877-388-1756**

*Form of Long-Form Notice:*

**Supreme Court of the State of New York**

**If You Purchased A Perpetual Care Contract From Bayside Cemetery or Congregation Shaare Zedek You May Be A Class Member With Interest in the Proposed Class Action Settlement.**

*A New York State Court has authorized this Notice. This is not a solicitation from a lawyer.*

- A proposed settlement has been reached in a class action lawsuit concerning perpetual care of lots, plots, mausoleums and graves at Bayside Cemetery and the alleged abuse of perpetual care funds concerning Bayside Cemetery. Bayside Cemetery and Congregation Shaare Zedek maintain that they have done nothing wrong and that neither has violated any laws.
- Purchasers of perpetual care of lots, plots, mausoleums and graves at Bayside Cemetery may have an interest in this litigation and those legal rights are affected whether you act or do not act. You should read this Notice carefully.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>TO ACCEPT THE TERMS OF THIS SETTLEMENT YOU NEED DO NOTHING</b>	If you are included in the Settlement Class and agree with the proposed terms, you do not have to do anything.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	To retain your right to bring a lawsuit against Bayside Cemetery and Congregation Shaare Zedek about the claims in this case you must timely exclude yourself from this proposed settlement.
<b>OBJECT</b>	If you do not like or approve of the proposed settlement and have not excluded yourself from the settlement, you may timely object to the settlement if you do not exclude yourself.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

- These rights and options — and the deadlines to exercise them — are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the proposed settlement.

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**WHAT THIS NOTICE CONTAINS**

	Page
<b>BASIC INFORMATION .....</b>	<b>4</b>
<b>WHO IS IN THE SETTLEMENT?.....</b>	<b>5</b>
<b>THE SETTLEMENT'S BENEFITS .....</b>	<b>5</b>
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT .....</b>	<b>6</b>
<b>THE LAWYER REPRESENTING YOU .....</b>	<b>6</b>
<b>OBJECTING TO THE SETTLEMENT .....</b>	<b>7</b>
<b>THE COURT'S FINAL APPROVAL HEARING .....</b>	<b>8</b>
<b>IF YOU DO NOTHING .....</b>	<b>9</b>
<b>GETTING MORE INFORMATION .....</b>	<b>9</b>

**EXECUTION COPY****BASIC INFORMATION****1. WHY IS THERE A NOTICE?**

A New York State Court has authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the settlement. This Notice explains the lawsuit, the settlement and your legal rights.

Justice Debra A. James of the Supreme Court of the State of New York is overseeing this putative class action. The case is titled *Leventhal v. Bayside Cemetery and Congregation Shaare Zedek*, Index No. 100530/11. The person or people who sued are called the "Plaintiff," Named Plaintiff" or "Class Representative Plaintiff." The defendants are Bayside Cemetery and Congregation Shaare Zedek.

**2. WHAT IS THIS LAWSUIT ABOUT?**

The lawsuit alleges that Bayside Cemetery and Congregation Shaare Zedek misappropriated perpetual care funds concerning lots, plots, mausoleums and graves at Bayside Cemetery. The complaint in this Action is posted on [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com), and contains all of the allegations and claims asserted against Bayside Cemetery and Congregation Shaare Zedek. Bayside Cemetery and Congregation Shaare Zedek maintain that they have done nothing wrong and that they have not violated any laws.

**3. WHAT IS PERPETUAL CARE?**

Perpetual Care is the payment of a preset amount of money to create a trust, the income of which will be used to pay for the care of one or more lots, plots, mausoleums or graves at a cemetery. It arguably does not include a guarantee that such income will be sufficient to provide any particular level of care.

**4. WHY IS THIS A CLASS ACTION?**

In a class action, one or more people or entities sue on behalf of people who have similar claims. Here, Plaintiff has sued Bayside Cemetery and Congregation Shaare Zedek alleging claims on behalf of all persons who purchased perpetual care from Bayside Cemetery and/or Congregation Shaare Zedek which are part of the Settlement Class, except for those who exclude themselves. For information on how to exclude yourself, see question 10, below.

**5. WHY IS THERE A SETTLEMENT?**

The Court has not decided in favor of either Plaintiffs or Defendants Bayside Cemetery/Congregation Shaare Zedek. Instead, both sides have agreed to the proposed

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settlement. By agreeing to the proposed settlement, the parties seek to avoid the costs and uncertainty of a trial. The proposed Settlement Class members will receive the benefits described in this Notice. Plaintiffs and the attorneys for the Settlement Class think the settlement is in the best interests for everyone in the proposed Class who is affected.

**WHO IS IN THE SETTLEMENT?**

If you received Notice of the proposed Settlement from a postcard addressed to you, then you are in the proposed Settlement Class. But even if you did not receive a postcard with the proposed Settlement Notice, you may still be in the proposed Settlement Class, as described below.

**6. WHO IS INCLUDED IN THE SETTLEMENT?**

You are included in the proposed Settlement Class if you purchased a perpetual care contract, at anytime, from Bayside Cemetery and/or Congregation Shaare Zedek. Excluded from the proposed Settlement Class are Bayside Cemetery, Congregation Shaare Zedek, their parents, subsidiaries, affiliates, officers and directors, all Class member who make a timely election to be excluded, and all judges assigned to hear any aspect of this litigation as well as their immediate family members.

You may contact the Notice Administrator (contact information below) if you have any questions as to whether you are in the proposed Settlement Class. PLEASE DO NOT CONTACT THE COURT DIRECTLY.

**THE SETTLEMENT'S BENEFITS****7. WHAT DOES THE SETTLEMENT PROVIDE?**

Bayside Cemetery and Congregation Shaare Zedek have agreed to maintain a Cemetery Reserve Fund of at least \$6,500,000, the income from which will be used for the benefit of Bayside Cemetery, including to maintain lots, plots, mausoleums and graves there, as more specifically described in the Reserve Fund Order available at [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com). If the Court approves the proposed Settlement and it becomes final and effective, you will automatically be bound by the settlement unless you seek to be excluded from the proposed Settlement.

**8. WHAT AM I GIVING UP TO STAY IN THE SETTLEMENT CLASS?**

Unless you timely exclude yourself from the Settlement Class, you cannot sue, continue to sue or be part of any other lawsuit against Bayside Cemetery and/or Congregation Shaare Zedek or the parties released by the settlement about the issues in this case. It also means that all of the decisions by the Court will bind you. The "Releases" included in the Settlement Agreement describe the precise claims that you give up if you remain in the Settlement Class. The Settlement Agreement is available at [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com).

**EXECUTION COPY****EXCLUDING YOURSELF FROM THE SETTLEMENT****9. EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not wish to be bound by the proposed Settlement, and you want to keep the right to sue or continue to sue Bayside Cemetery and Congregation Shaare Zedek on your own about the issues in this case, then you must take steps to get exclude yourself from the settlement. This is sometimes referred to as “opting out” of the Settlement Class.

**10. HOW DO I GET OUT OF THE SETTLEMENT?**

To timely exclude yourself from the settlement, you must send a letter that includes the following:

- Your name, address and telephone number;
- A statement that you are a member of the Settlement Class and want to be excluded from the settlement in *Leventhal v. Bayside Cemetery and Congregation Shaare Zedek*, Index No. 100530/11; and
- Your personal signature (an attorney’s signature is not sufficient).

You must mail your exclusion request, postmarked no later than \_\_\_\_\_, 2024, to

Bayside Cemetery Settlement  
ATTN: Exclusions  
A.B. Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217

**11. IF I DON'T EXCLUDE MYSELF, CAN I SUE BAYSIDE CEMETERY OR CONGREGATION SHAARE ZEDEK FOR THE SAME THING LATER?**

No. Unless you exclude yourself, you give up the right to sue Bayside Cemetery and Congregation Shaare Zedek and the parties released by the proposed Settlement for the claims that the proposed Settlement resolves. You must timely exclude yourself from this proposed Settlement Class in order to try to pursue your own lawsuit.

**THE LAWYERS REPRESENTING YOU****12. DO I HAVE A LAWYER IN THIS CASE?**

The Court has appointed the following lawyer to represent you and others in the Settlement Class, known as “Settlement Class Counsel”:

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Michael M. Buchman  
c/o Motley Rice LLC  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10017  
[mbuchman@motleyrice.com](mailto:mbuchman@motleyrice.com)

Settlement Class Counsel will represent you and others in the Settlement Class. You will not be charged by Settlement Class Counsel. Settlement Class Counsel has been pursuing this case for over sixteen years without compensation and has undertaken to represent the Class in this matter on a *pro bono* basis. If you want to be represented by your own lawyer, you may hire one at your own expense.

**13. HOW WILL THE LAWYER BE PAID?**

Settlement Class Counsel intends to make no application for fees or expenses in this case.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

**14. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?**

If you are a member of the proposed Settlement Class, you can object to any part of the proposed Settlement, or the proposed Settlement as a whole. To object, you must timely file your objection as indicated herein and include the following:

- The name of this case, which is *Leventhal v. Bayside Cemetery and Congregation Shaare Zedek*, Index No. 100530/11
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a member of the Settlement Class;
- All grounds for the objection, accompanied by any legal support for the objection known to you or to your counsel;
- The identity of all counsel who represent you in connection with the objection;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant final approval to the settlement (the "Final Approval Hearing");
- A list of all persons who will be called to testify at the Final Approval Hearing in support of your objection; and
- Your personal signature (an attorney's signature is not sufficient).

You must file with the Court and serve your objection to the parties at the following addresses, postmarked no later than \_\_\_\_\_, 2024:

<b>Court</b>	<b>Administrator</b>	<b>Counsel to the Parties</b>
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Clerk of the Court Supreme Court of the State of New York 60 Centre Street #5 New York, NY 10007	Bayside Cemetery Settlement Attn: Objections A.B. Data, Ltd. P.O. Box 173001 Milwaukee, WI 53217	Michael M. Buchman c/o Motley Rice LLC 800 Third Avenue, 24th Fl. New York, NY 10017 <i>Settlement Class Counsel</i>  Russell Steinthal Axinn, Veltrop & Harkrider LLP 114 West 47 <sup>th</sup> Street, 22 <sup>nd</sup> Floor New York, New NY 10036 <i>Counsel to Defendants</i>
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**15. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?**

*Objecting* to the proposed Settlement is telling the Court that you do not like something about the settlement. You can object to the proposed Settlement only if you do not exclude yourself from the settlement. *Excluding* yourself from the settlement is telling the Court that you do not want to be part of the settlement. If you exclude yourself from the proposed Settlement, you have no basis to object to the settlement because it no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

The Court will hold the Final Approval Hearing to decide whether to approve the settlement and the request for attorneys' fees and service awards for the class representatives. You may attend and you may ask to speak, but you don't have to do so.

**16. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a Final Approval Hearing at \_\_\_\_\_ on \_\_\_\_\_, 2024, at the Supreme Court of the State of New York, located at 60 Centre Street #5, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com) for updates. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections to the proposed settlement, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**17. DO I HAVE TO COME TO THE HEARING?**

No. Settlement Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**EXECUTION COPY****18. MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that you intend to appear in *Leventhal v. Bayside Cemetery and Congregation Shaare Zedek*, Index No. 100530/11, and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your “Notice of Intention to Appear” at the Final Approval Hearing in;
- The reasons you want to be heard;
- Copies of any papers, exhibits or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your personal signature (an attorney’s signature is not sufficient).

You must submit your Notice of Intention to Appear, postmarked no later than \_\_\_\_\_, 2024, to all of the addresses in Question 14.

**IF YOU DO NOTHING****19. WHAT HAPPENS IF I DO NOTHING AT ALL?**

Unless you exclude yourself, if you so wish, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against Bayside Cemetery and/or Congregation Shaare Zedek relating to the issues in this case.

**GETTING MORE INFORMATION****20. HOW DO I GET MORE INFORMATION?**

The Notice summarizes the proposed settlement. More details can be found in the proposed Settlement Agreement. You can obtain a copy of the proposed Settlement Agreement at [www.baysidecemeterysettlement.com](http://www.baysidecemeterysettlement.com). You may also write with questions to Bayside Cemetery Settlement, P.O. Box 170500 Milwaukee, WI 53217, call the toll-free number, 1-877-388-1756, or contact Settlement Class Counsel. Do not contact Bayside Cemetery and/or Congregation Shaare Zedek, their counsel or the Court for information. PLEASE DO NOT CONTACT THE COURT FOR INFORMATION



**Exhibit C – Proposed Notice Plan**

1. A.B. Data, Ltd. (the “Notice Administrator”) will provide notice to members of the Settlement Class through a robust media campaign that includes targeted print and digital media. The media campaign will utilize the latest technologies and methodologies designed to seamlessly reach potential Class Members through a variety of contemporary channels and platforms. These methods provide significant cost savings and importantly provide much-needed alignment of class action administration with current consumer behaviors.
2. The Notice Administrator will effectuate Notice through a paid media campaign that includes print and digital components, as follows:

**a. Print Media:**

<b>Newspapers</b>	<b>Circulation</b>	<b>Publishing Days</b>	<b>Ad Size</b>	<b># of Ads</b>	<b>Location</b>
<i>Jewish Standard</i>	18,000	Weekly (Friday)	1/8 page	1	New York
<i>Jewish Press</i>	96,000	Weekly (Friday)	1/8 page	1	New York

**b. Digital Media:**

<b>Networks</b>	<b>Estimated # of Impressions</b>	<b>Duration</b>	<b>Placement</b>	<b>Summary</b>
70 Faces Media Network	400,000	30 days	Mobile; In-App; Tablet; Desktop	70 Faces Media is the largest digital publisher in Jewish media with over 2.8M unique visitors. Ads will rotate within their national network that consists of over 70

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				media properties such as The Nosh, JTA News, and many more.
NY Jewish Week	25,000 subscribers	1 week	Newsletters	Ad will be placed within their newsletter edition reaching Jewish New Yorkers
Google Display Network/ YouTube	800,000	30 days	Mobile; In-App; Tablet; Desktop	Ads will target users based on Jewish related content in the New York City area

3. All banner, newsfeed, and mobile ads will include an embedded link to the case-specific website. During the course of the Notice Plan, the Notice Administrator’s digital media experts will monitor the success, conversions, and activity associated with the digital and social media campaigns and will adjust the number of impressions delivered across each platform to achieve maximum engagement and efficiency.
4. The Notice Administrator will host an automated telephone contact center with Interactive Voice Response (“IVR”) technology to provide telephone support for this administration and to address questions from and otherwise provide information to potential Class Members and others regarding the Action.
5. The Notice Administrator will host and maintain a static case-specific website where Class Members will have access to relevant case information, FAQs, and applicable deadlines.
6. The Notice Administrator will process all correspondence received, including exclusion requests, and report to the parties regarding such exclusion requests as necessary.
7. The Notice Administrator will prepare all required affidavits/declarations and reports regarding its notice efforts in this matter, including a declaration opining to the adequacy and effectiveness of the notice plan.

**Exhibit D -- Reserved**

**Exhibit E – Reserve Fund Amendments**

Subparagraph 9 of the fourth decretal paragraph of the Reserve Fund Order shall be amended so as to read (added language in **bold underline**):

9. This Order is without prejudice to Petitioner Corporation's right to apply to this Court for orders pursuant to applicable law, including but not limited to Section 12 of the Religious Corporation Law and Section 555 of the Not-for-Profit Corporation Law, for permission: (a) to sell Bayside Cemetery to a third party, and (b) to transfer the Perpetual Care Funds and some or all of the Cemetery Reserve Fund to the purchaser of Bayside Cemetery, **subject to such terms and conditions as the Court may in such orders provide to ensure that funds transferred from the Cemetery Reserve Fund are, in perpetuity, solely and exclusively expended for the ongoing operation, maintenance, upkeep, and capital or other improvement of Bayside Cemetery under conditions no less restrictive than those applicable to the Cemetery Reserve Fund under this Order**, with the balance of the Cemetery Reserve Fund (if any) reverting to Petitioner Corporation to further Petitioner Corporation's lawful charitable and religious purposes, **at which point this Order shall terminate, provided that in no event shall the aggregate amount transferred to the purchaser from the Cemetery Reserve Fund and subject to such orders be less than \$6,500,000. For purposes of clarity, the new owner would therefore receive the full balance of the Perpetual Care Funds (no less than \$552,346 as set forth in paragraph 6 above), as successor trustee, and no less than \$6,500,000 from the Cemetery Reserve Fund subject to the orders described in the preceding sentence.** This Order is further without prejudice to Petitioner Corporation's right and obligation to seek any other applicable approvals pursuant to Article 15 of the Not-for-Profit Corporation Law for such transactions, whether from this Court or otherwise.

\* \* \*

Subparagraph 10 of the fourth decretal paragraph of the Reserve Fund Order shall be amended so as to read (added language in **bold underline**):

10. This Order is without prejudice to Petitioner Corporation's right to apply to this Court (after reasonable notice to the OAG, unless such notice is duly waived), such petition to be filed no earlier than three years from the date of this Order, for an order releasing funds from the Cemetery Reserve Fund (and modifying the sum shown in paragraph 2 of this Order) upon a showing that the reservation of such funds pursuant to this Order is unnecessary to ensure that Bayside Cemetery is maintained in a safe and respectful condition, **provided that in no event shall such order cause the balance of the Cemetery Reserve Fund to be less than \$6,500,000.** Such petition shall include an independent third-party evaluation finding that the Bayside Cemetery is being maintained in a safe and respectful condition as of the time of the petition. In evaluating a petition pursuant to this paragraph, the Court may consider the independent evaluation and any other available evidence as to the nature of Petitioner Corporation's maintenance of the cemetery from and after the date of this Order, including evidence from any person with a relative buried at Bayside Cemetery or a proximately located Bayside Community neighbor.