

**PLAN OF MERGER  
OF  
THE MOUNT OLIVE CEMETERY ASSOCIATION  
INTO  
THE BUFFALO CITY CEMETERY, INC.**

---

**Under Section 902 and Section 1506-d of the New York Not-For-Profit Corporation Law**

1. The constituent entities to the merger are as follows:
  - a. The Mount Olive Cemetery Association, a cemetery corporation formed in New York, (the “*Association*”); and
  - b. The Buffalo City Cemetery, Inc. d/b/a Forest Lawn (“*Forest Lawn*”), a New York not-for-profit cemetery corporation and cemetery corporation (together with the Association, the “*Parties*”, and each individually, a “*Party*”.)
2. The name of the surviving corporation is The Buffalo City Cemetery, Inc.
3. As to each constituent entity, the following is a description of the members.
  - a. The members of Forest Lawn consist of 80,000 lot owners (as defined in Section 1512 of the New York Not-for-Profit Corporation Law, the “*NPCL*”) of Forest Lawn Cemetery in Buffalo, New York and the other cemeteries in the Forest Lawn Group, including any and all others added from time to time.
  - b. The members of the Association consist of 75 lot owners (as defined in Section 1512 of the NPCL of The Mount Olive Cemetery Association in the town of Newstead, State of New York.
  - c. Neither entity has any holders of any certificates evidencing capital contributions or subventions.<sup>1</sup>
4. The terms and conditions of the proposed merger are as follows:
  - a. Approvals. The constituent entities shall obtain all necessary approvals, including, without limitation, the approvals of the members of each constituent entity and all applicable government agencies.
  - b. Effective Date. The merger shall be effective as of the date on which the Certificate of Merger is filed with the New York State Department of State or such later date (not later than 30 days after the filing date) as may be specified in said Certificate of Merger (the “*Effective Date*”). If filing with the New York

---

<sup>1</sup> In the unlikely event that the target has issued any certificates representing capital contributions or subventions, they must be listed. Otherwise, this clause should be used.

State Department of State is not possible because a constituent entity is not a New York not-for-profit corporation, the merger shall be effected by such means as the relevant New York government agency or agencies may approve.

- c. Bylaws. The bylaws of the surviving corporation will be the bylaws of Forest Lawn as they exist on the Effective Date.
- d. Consideration. The surviving corporation will, on the Effective Date, (i) assume unrestricted title and interest in and to all assets of the Association, tangible or intangible, including, but not limited to, any and all goodwill of the Association and any actual or assumed names associated with the Association, and (ii) assume all liabilities of the Association.
- e. Board of Trustees. The board of trustees of the surviving corporation shall be the board of trustees of Forest Lawn as it exists on the Effective Date.
- f. Certificate of Incorporation. This merger will require the listing of the [Town/City/Village] of [Name of county], in which the Association is located, to the Certificate of Incorporation of Forest Lawn pursuant to Section 1505 of the NPCL. The surviving corporation shall continue as a corporation organized under the Certificate of Incorporation of Forest Lawn as it exists on the Effective Date.
- g. Members. The members of the Association shall become members of Forest Lawn upon the Effective Date. No cash or other consideration shall be paid to or delivered in exchange for membership or other interest in a constituent entity as a result of the merger.
- h. The Parties agree that this Plan of Merger complies with the additional requirements of Section 1506-d of the NPCL. The form attached hereto as Schedule A addresses the Parties' compliance with each provision of Section 1506-d required to be incorporated into this Plan of Merger.

[SIGNATURE PAGE TO FOLLOW]

**THE MOUNT OLIVE  
CEMETERY ASSOCIATION**

By: David Hofmeier

Name: David Hofmeier

Title: Secretary/ Treasurer

Date: March 15, 2022

**THE BUFFALO CITY CEMETERY, INC.**

By: Joseph P. Dispenza

Name: Joseph P. Dispenza

Title: President

Date: March 16, 2022

**SCHEDULE A**

**Additional Requirements under Section 1506-d of the New York Not-for-Profit Corporation Law**

*Attached.*

### **Additional Requirements for Cemetery Mergers**

**(a)(1) The plan of merger or consolidation is economically feasible and financially responsible:**

Forest Lawn is a nationally recognized cemetery group with a significant track record of successful mergers with cemeteries. These multiple mergers have proven (through annual independent audits of the financial operations of the Forest Lawn Group, the annual State Cemetery Board required annual reports, and periodic audits) to strengthen the combined operations of the constituent cemeteries, in addition to providing a sustainable paid staff for the constituent cemetery, thus preventing **The Mount Olive Cemetery Association** [referred to as the Association] from becoming a burden on the municipality through inevitable abandonment.

Forest Lawn has a successful history of reducing expenses through their shared/leveraged labor mobile operating model and centralized professional services. This model uses a full service mobile operating unit to maintain several locations and is outfitted with the best equipment for effective and efficient operations and interments vs a single shop at each cemetery or outsourced interments and care and maintenance to local vendors whose experience and expertise is often in lawn care, not the delicate requirements of cemetery operations.

- Example: use of excavators and skid steers vs. backhoes and dirt haulers. By using this equipment, the same work is accomplished with less staff and in a fraction of the time. With this model, two men can prepare a grave for interment in 20 minutes. By reducing the time it takes to prepare a grave, the Forest Lawn Mobile Cemetery Service Operating Unit can prepare more graves in a workday, which in turn increases revenue and decreases expenses for all constituent cemeteries.
- This same mobile operating initiative is also deployed for grounds care and maintenance. Full-service mowers, trimmers, necessary materials, and staff to do infield repairs as well as pour foundations which also assures faster, more efficient, and productive care and maintenance over more properties in the same day.

Thus, using the innovative strategies of the shared/leveraged labor mobile model and Forest Lawn's professional paid staff with experience in sales, finance, IT, marketing, and administration is an effective way of reducing expenses.

Past mergers prove that Forest Lawn and the Association will typically achieve additional revenues, or at minimum comparable revenue at lesser costs and with a sustainable team in place to assure continuity. Therefore, the notion of abandonment due to lack of volunteers, affordable or available vendors, outdated financial controls, the inability to comply with

modern banking requirements for accepting credit cards and managing receivables, and limited consumer purchasing options (pay in full by cash or check) is removed.

Previous mergers (as indicated in the [Mergers and Acquisitions Historical Sales Increases document](#)) have shown that the increase in first year sales are significant while subsequent years are conservative in comparison. The increase in sales volume at a newly merged cemetery will be achieved as it always has been, through the “new broom effect”:

- a) Pre-need options for grave sales that includes the ability to pay over time which is currently unavailable at Association, inclusive of no-interest payments vs the current option of payment in full by cash or check.
- b) Forest Lawn accepts debit and credit cards vs accepting only cash or check which are the only options presently allowed at Association for both at-need and pre-need sales.
- c) Immediate access to sales staff that will be hired within the community. (Post-merger, Forest Lawn will engage with Association trustees who may have a desire in providing sales help on a part-time basis) thus adding continuity to the transition and knowledge of the community. If trustees are not interested, we look for candidates in the local community.
- d) Introducing effective and proven targeted advertising to build community awareness including placemats at local diners, local community papers, senior citizens newsletters, history tours of the cemetery, various social media platforms such as Facebook, and most importantly, a website for Association with 24/7/365 phone/email/text, answered by trained Forest Lawn staff.

Forest Lawn is conservative in its analysis of the preceding 5-years of financial reports from the Association, and Forest Lawn expects to achieve similar beneficial results through the merger with the Association as it had done with its other mergers.

Forest Lawn bases the financial feasibility and responsibility of a merger by using the data and input from several sources including:

- Forest Lawn’s Management and Trustee review
- analysis of the Annual Financial Reports
- discussions with local Funeral Directors and the public
- a hands-on inspection of the cemetery records and property, and
- information from the Association

The following are the most important financial metrics Forest Lawn considered as part of its analysis as per last annual report as filed with Division of Cemeteries:

**The Mount Olive Cemetery Association had:**

- Association had one reported burial in 2020.
- Association’s cemetery includes:
  - total of 2.04 acres

- Number of available acres for future development .74
- Approximate 2,000 full body grave spaces or 8,000 of cremation grave spaces
- Permanent Maintenance Funds: \$ 18226
- Perpetual Care Funds: \$ none

Forest Lawn (March 31, 2021) has:

- Based on the latest available financial information, Forest Lawn has:
  - Permanent Maintenance Funds: \$31,350,000
  - Perpetual Care Funds: \$ 6,360,000

Combined Forest Lawn and Association Assets:

- Permanent Maintenance Funds: \$31,368,226
- Perpetual Care Funds: \$ 6,360,000

NYS does not have a formula to determine what is considered sufficient PM funds to support the promise of perpetual care. Combining PM funds assures the best likelihood of perpetual care for Association and Forest Lawn. Forest Lawn receives the tremendous and otherwise unattainable injection of Permanent Maintenance restricted dollars from the Association at merger. This benefit is clearly demonstrated by looking at the numbers whereby for every \$1,000 worth of the Association's PM, Forest Lawn would have to sell \$10,000 worth of graves (since 10% of every grave sale goes to the PM). When you apply Association's PM numbers to this formula:

Association PM: (Forest Lawn Grave Sales (10%))  
 \$18,226 (X(10%)) X=\$182,260

Forest Lawn would have to sell \$182,260 worth of graves in one year to equal the amount that \$17,519 provides via this merger- a significant influx of money to the PM fund.

For the Association, merger with Forest Lawn provides an immediate combined PM of \$31,368,226 assuring an unprecedented and unattainable PM for the Association.

Merger with Forest Lawn provides new and necessary economic viability for the Association in five distinct areas:

- 1) Professional Endowment Investment Management and Performance Standards**
- 2) Operational Efficiencies via the Cluster Model/ Shared Services Model for Mobile Staff and Equipment**
- 3) Professional full-time and part-time paid staff in: Management, Finance, IT, and Marketing**

#### **4) Modern Best-In-Class Electronic Cemetery and Accounting Operating Systems**

#### **5) Revenue Generation through shared marketing, advertising, and sales professionals**

##### **PROFESSIONAL ENDOWMENT INVESTMENT MANAGEMENT AND PERFORMANCE STANDARDS**

Endowment funds are invested and managed by professionally independent advisors who meet regularly with the board and investment committee. They are accountable to the Investment Policy Statement and preapproved benchmarks. The professional financial advisor team has the resources and expertise to manage these funds which typically only large endowments and professionally managed organizations can utilize. By merging, Forest Lawn brings professional expertise and investment management to the smaller Associations.

- The Association's current investment income has averaged \$154 over the past five years. This represents 7% of the Association's current total annual care and maintenance costs.
- Assuming a 3.25% return (standard ROI for Forest Lawn's Fund) the endowment will provide \$592 annual return. This represents 27% of the annual care and maintenance costs, an increase of 20%.
- The Association, as reported in its most recent Annual Report, had an operational gain of \$6,471. This improvement in investment income would increase the operational gain by 7%.

#### **1) OPERATIONAL EFFICIENCIES VIA THE CLUSTER MODEL/ SHARED SERVICES MODEL FOR MOBILE STAFF AND EQUIPMENT**

The Cluster Model/ Shared Services Model uses centralized hubs for cemetery care and maintenance with a full service mobile operating unit outfitted with the best % equipment for effective and efficient operations and interments to maintain several locations.

The Cluster Model/Shared Services Model system works because it streamlines operations for both staff and resources. By using a single fully equipped mobile traveling unit, it can service 45-50 cemeteries within a designated area versus a typical stand-alone service, building, and equipment at each cemetery.

- This mobile operating unit uses geographical proximity of cluster cemeteries to share resources.
  - The mobile interment unit is comprised of:
    - one licensed and insured trailer
    - equipped with one excavator, one skid steerer
    - CDL licensed operators
    - shovels
    - water pumps to pump out graves

- track mats and plywood to cover graves in wet conditions
- The mobile care/maintenance unit is equipped with:
  - 6 operators
  - 4 lawn mowers
  - 6 weed wackers
  - 3 blowers
  - 2 hedge trimers
  - all required supplies and tools for in-field repairs and replacement

Purchasing, annual upgrades, and/or replacement of equipment for the single-cemetery shop model is expensive to purchase and maintain. The equipment is underutilized on a day-to-day basis because the specialized work it is designed to accomplish doesn't allow it to be deployable for other operations, so it remains idle as a result. Today, most cemeteries are held hostage by local landscapers and gardeners in the area who have the equipment but not the cemetery experience, and lack of competition allows these vendors to set their price at whatever they want.

Combining these resources through the Cluster Model/ Shared Services Model is an economically responsible way to manage both staff and equipment by maintaining several cemeteries with the same equipment and level of care as one cemetery currently does. As a result, this reduces the cost per acre and eliminates the need for full-service shops, staff, equipment, fuel, etc. at each cemetery.

This shared services model has been implemented by many business sectors and proven to show that it saves time and money. Businesses across the nation use this model because of the effect it has on their bottom line.

A few examples of industries using this model include:

- Schools: share computer operating systems for students to monitor grades, retention, COVID testing, etc.
- Health Care: Urgent Care Centers vs Emergency Rooms
- Same-Day Surgery Centers share multiple surgeons, primary care physicians, insurance companies etc. as needed vs every doctor, every surgeon having their own center
- Pharmacies: Increasing consolidation and vertical integration to address the challenges and consumer trends such as online and mail orders, distribution hubs vs having a pharmacy on every corner
- Retail: MA Bell vs. multiple independent service providers
- Municipalities: Shared purchasing for multiple municipalities of equipment such as plows, street sweepers, salters, etc. vs unused capacity at each municipality

## **2) PROFESSIONAL FULL-TIME AND PART-TIME PAID STAFF IN: MANAGEMENT, FINANCE, IT, AND MARKETING**

Forest Lawn uses a team of professional full-time and part-time management and staff to run their departments. Full-time staff members are provided with career benefits. These individuals come with experience, and in many areas are degreed experts who have access to not-for-profit sales and cemetery sales management resources.

Currently, the Association does not typically have the support from “experts in their field” who have the experience with state-of-the-art systems to perform their duties with accuracy and efficiency. Merger with Forest Lawn provides the Association with those professionals.

### **3) MODERN BEST-IN-CLASS ELECTRONIC CEMETERY AND ACCOUNTING OPERATING SYSTEMS**

A merger with Forest Lawn provides the Association with modern, state-of-the-art systems. Utilizing these is a cost-effective way to manage a business because an automated, integrated, user friendly system is designed to reduce errors, and further increases operational efficiencies by streamlining workflow. Additionally, these systems ease access to data and help prevent loss.

- **Accounting:** Forest Lawn uses an Accounting System called Sage 300. Unlike a typical cemetery (that at best is looking at 30, 60, 90 day or older financial income statements) that doesn’t have the ability to react to the impact of their financial statements, or spot leading indicator trends and act on them, Forest Lawn can use the digital world to modernize our departments. Sage 300 provides both real-time and near-time forecasting modules that enable accountability for cemetery management to act, react, and prepare in real or near time.
- **Sales and Interment:** Electronic Cemetery Operating System called ByondPro, a Sage CRM based Cemetery Management System developed by Opus/Xenta. All locations, interment services, cremation services and all pre-need and at-need sales are entered, tracked, and reported in this system.
- **Marketing:** Sage CRM (ByondPro) for sales leads tracking and reporting. Domani Care, a text-based aftercare and next of kin engagement platform for websites and website available memorial pages to increase customer interaction. (See #5 below). All these services are provided at no charge to the association’s families.
- **IT:** A staffed department that can troubleshoot and solve technical issues as they happen.

### **4) REVENUE GENERATION THROUGH SHARED MARKETING, ADVERTISING, AND SALES PROFESSIONALS**

Forest Lawn uses a strategy of repeatable and consistent marketing, and sales enhancements to help generate revenue.

Marketing Engagements:

Marketing provides economic viability by helping direct the best and most affordable methods to reach potential customers and the community. Marketing helps nurture sales opportunities, identifies trends, collects data, etc. all of which enables Forest Lawn to measure the business impact of its strategies that in turn, is used to make informed business decisions. This is something the Association isn't currently able to do.

There are several marketing strategies Forest Lawn will use to reach lot owners and the community:

➤ **Lot Owner Engagements by:**

- Connecting with lot owners and the community through a “Friends Organization” which will be invited to meet twice annually, or more frequently if the community is so inclined, to discuss cemetery initiatives, community-based support engagement with the cemetery, and to engage with local historians and local newspapers.
- Assuring the pricing schedules for services and burial rights will remain the same with only annual ECI service fee increases until demand and remaining space warrants adjustments. Rules and regulations, at the individual cemetery will remain the same as an addendum to the general Forest Lawn rules and regulations as we have done with previous mergers.
- Develop and launch a website for every Association inclusive of social media that supports the trend for online interactions.
- Free memorial pages. A lasting memorial that tells a loved ones' story. Next of kin will be provided with a letter and a free wallet card containing a linked QR code for easy access to their loved ones' free online memorial page. This page is initially set up with the Death notice and a photo provided by the Funeral Home with acknowledgement to the Funeral Home by existing Forest Lawn Staff and remains as an online resource for the family of the deceased as well as a subtle advertisement for the Funeral Home. The family can add to this page at will.
- Innovative, no charge 12-month text-based aftercare program through a national provider called Domani Care designed to deepen the relationship with next of kin and promote loyalty. There are a few metrics the Forest Lawn Group has experienced since using this company to measure the success of this engagement initiative:

Domani Care metrics\*:

17.4 % response rate (based on 1,220 contacts made)

64 Incremental Google reviews

4.7 out of 5-star average Customer satisfaction rating

30 pre-planning leads

\*Data as of March 13, 2022

➤ **Community Engagements by:**

- Social media platforms such as Facebook, roadside signage, sponsorship of/involvement in community events, placement of ads in local print publications and the use of targeted direct mail should prove to be effective in reaching the target audience.
- Actively connecting with local veterans, police, and firemen organizations who still adhere to rituals of burial
- Communicate with local organizations - churches, government officials, fraternal organizations, and prominent community members to weave the cemetery more closely into the community fabric
- Awareness of the cemetery and its historic significance will be raised to reach local and “far flung” families
- Establish “interpretive programming” to tell the stories of those interred at the cemetery
- Increase share of mind via local history contributions to the community newspaper
- Create/enhance Memorial Day, Easter sunrise services, etc. with veterans’ groups, fire departments, schools, etc.

These encounters are designed to create awareness to community groups. Being in the community, through the engagements listed above, will foster a positive reputation for Forest Lawn with both lot owners and the community at large which in turn has always increased pre-need and at-need sales.

These items bring nominal cost and effort to Forest Lawn. With a \$1,500 budget, we anticipate a very robust ROI for this modest expenditure. Even a few incremental sales will offset costs while magnifying the impact on the cemetery who would otherwise be unable to launch or implement such efforts without the merger.

- Sales: review

Forest Lawn’s template for increasing revenues and ensuring sustainability by:

- Add capacity by developing surveyed access points
- Expand burial rights (grave capacity: one casket and three urns or four urns, vs the typical one casket and one urn per grave). We do not charge “bury over or

probing fees”, we simply allow the expanded burials based on the NYS Cemetery Law and Degree of Consanguinity. Patrons are only charged the approved cremains interment fee.

- Pet burials
- Dedicated areas for veterans/fire/police, etc.)
- Implementation of pre-need, no-interest policies and payment via credit card, debit card, or monthly invoicing for ease of buying.
  - Forest Lawn’s proven marketing of burial rights on a pre-need basis by making it easy for people to buy on installments pre-need, or when at-need the ability to buy pre-need adjacent spaces on terms will help assure the success of operations for Association’s cemetery by gaining heritage burial rights (casket or cremation) sales for each at-need interment.
  - Forest Lawn’s proven programs of offering and managing no-interest pre-need term sales (receivables) are expected to conservatively increase sales operations by 259% in the first year of merger and then remain stable in subsequent years. This estimate is conservative compared to actual results from previous mergers (as indicated in the [Mergers and Acquisitions Historical Sales Increases document](#)).

**(a)(2) The merger or consolidation does not harm the interests of each cemetery corporation, their lot owners, the communities in which the constituent cemeteries are located, or the state:**

The existing lot owners of Forest Lawn will continue to receive the same services and attention they have experienced and more due to increased viability of its financial assets, most notably Permanent Maintenance growth through merger with the Association’s PM.

The Association and community will have a well-maintained cemetery with services at or better post-merger. The Association will retain its name with the required notation that it is part of the Forest Lawn Group; liability will fall under that umbrella. We make it clear that we will not raise prices, and this is outlined in our PowerPoint presentation that is distributed at both board and lot owners’ meetings. However, we also make it clear that service fees will go up by the state’s annual allowed ECI. Pricing is addressed on two pages of that PowerPoint presentation. [Page 16](#) states that “pricing structures already in place at individual cemeteries will be honored, and will be managed to ensure compliance with regulatory and legal requirements” and [page 19](#) affirms that “the pricing structures, as well as rules and regulations for memorials, etc. already in place at individual cemeteries will be honored...”

Services will be at, or better through the Cluster Model/Shared Services Model. (See-(a)(1)2))

Lot owners will have access to technology, (a must for any not-for-profit organization in today’s world) that enables the Association to operate in a 24/7/365 environment. This includes a website that provides easy access to records, staff, products, and arrangements. Representatives will be available to lot owners seven days a week and all holidays (as they

are now at existing Forest Lawn Group Cemeteries). Emails are monitored on a 24/7/365 basis.

The community's history/legacy will be secured as Forest Lawn ensures that the cemetery's historic documents and records are forever preserved.

- All paper documents/records are scanned. Once scanned, historic records are stored in Forest Lawn's state-of-the-art archival vault located at the Margaret L Wendt Archive and Resource Center. This vault is secured (entry access code, user protected) and equipped with a fire prevention and mitigation system that actively monitors for fire.
- Digitized documents once scanned, will be accessible to the public on the cemetery's website, allowing families to search for information about their loved one(s).
- Digitized records are stored in a Virtual Data Server hosted by IEvolve Technology Services in their Data Center. Security and backups are done by IEvolve (both local and at IEvolve) and offsite (cloud based) daily. Working copies of digitized records are uploaded and linked in the Opus/ByondPro Cemetery Management System (ByondPro software is browser based by OpusXenta on Amazon Web Services A).

**(a)(3) The surviving or consolidated corporation will have the resources, ability and commitment of directors and officers to ensure that all the constituent cemeteries are properly operated and maintained, that they will not fall into disrepair and dilapidation and become a burden upon the community, that they will be operated for the mutual benefit of lot owners, and that they will continue to serve the local communities in which they are located:**

The combined resources of Forest Lawn and Association will greatly strengthen the operations of both entities in ways not possible on their own.

The officers and the directors of both organizations have approved the Plan of Merger and have enthusiastically supported this merger process. Forest Lawn's Trustees have approved with unanimity in 2019, the merger /shared services business initiative after extensive review, development with management, and guidance from an independent group of professional business development specialists: Instyle Consulting in Buffalo, NY.

As outlined in (a)(1)(3), Forest Lawn's Cluster Model / Shared Services Model effectively reduces costs and increases revenues. The maintenance provided by Forest Lawn for constituent cemeteries has been and will remain at existing standards.

The services provided to lot owners will continue in the same manner as currently exists with a focus on leveraging operational savings and enhanced services. Both of which are regulated. Inquiries and complaints are received by professional staff 24/7/365 via text or email. And as stated at lot owners' meetings, lot owners have additional recourse by contacting the Division of Cemeteries to express their concerns.

Additionally, the communities served will have greater access to historical documents, research, and a variety of traditional cemetery offerings. These enhancements will serve the community as well as the larger cemetery operations, and their lot owners. (See (a)(2) for a detailed outline).

**(a)(4) The municipalities which would be required to assume the care and control of any part of the cemetery if the surviving or consolidated cemetery corporation were to be abandoned have been notified of the proposed merger or consolidation:**

The localities which would be required to assume control and responsibility of any part of the Association cemetery should it be abandoned have been notified of the proposed merger pursuant to letters dated March 25, 2022.

The letter to David L. Cummings, Town Supervisor of Newstead, New York was sent on March 28, 2022 and Affidavit of Mailing and the Certified Receipt was received on March 30, 2022, as noted in **Exhibit A**.

**(a)(5) The plan of merger or consolidation submitted to the cemetery board shall include the following:**

**(i) A description of the financial assets of each constituent cemetery corporation demonstrating that the surviving or consolidated cemetery will have sufficient financial resources to operate all locations subsequent to merger or consolidation.**

Based on the information contained in the Annual Financial Reports of Association and Forest Lawn, the added investment of the Association PM and operational cash will further strengthen Forest Lawn's overall financial position for the long-term for all operations as outlined in (a)(1).

Economies of scale dictates that there are cost advantages to both sides through merger.

- For Association, merger enables their PM to be managed by independent professional investment advisors, resulting in higher yields and professional standards. These results and benchmarks are reviewed quarterly by Trustees. The Investment Policy Statement provides 3.25% minimum annual return. Whether funds are comingled or not, the minimum income is 3.25%.
- Forest Lawn's \$31.3 million permanent maintenance fund assures the best likelihood of perpetual care for Association and all target cemeteries. Consolidation with Association strengthens Forest Lawn's overall financial position because it provides Forest Lawn with a tremendous and otherwise unattainable injection of Permanent Maintenance restricted dollars. For every \$1,000 worth of the Association's PM, Forest Lawn would have to sell \$10,000 worth of graves to equal that amount (since 10% of every grave sale goes to the PM). This is a significant influx of money to the PM fund.

- Forest Lawn’s [Mergers and Acquisitions Historical Sales Increases document](#) illustrates how increase in sales volume at a newly merged cemetery is achieved, as it always has been, through the “new broom effect”:
  - a) Pre-need options for grave sales that includes the ability to pay over time which is currently unavailable to Association, inclusive of no-interest payments vs the current option of payment in full by cash or check.
  - b) Forest Lawn accepts debit and credit cards vs accepting only cash or check which are the only options presently allowed at Association for both at-need and pre-need sales.
  - c) Immediate access to sales staff that will be hired within the community.
  - d) Introducing effective and proven targeted advertising to build community awareness including, placemats at local diners, local community papers, senior citizens newsletters, history tours of the cemetery, various social media platforms such as Facebook, and most importantly, a website for Association with 24/7/365 phone/email/text, answered by trained Forest Lawn staff.

**(ii) A proposal for management of financial assets of the surviving or consolidated cemetery, including management of trust funds of the constituent cemeteries;**

As stated in (a)(1), the proposal for the management of financial assets of the surviving cemetery is outlined in these five areas:

1. Professional Endowment Investment Management and Performance Standards
2. Operational Efficiencies via the Cluster Model/ Shared Services Model for Mobile Staff and Equipment
3. Professional full-time and part-time paid staff in: Management, Finance, IT, and Marketing
4. Modern Best-In-Class Electronic Cemetery and Accounting Operating Systems
5. Revenue Generation through shared marketing, advertising, and sales professionals within the cluster of cemeteries

To support the management of financial assets, the following professional staff is in place:

- Forest Lawn is comprised of four full-time staff employees: VP, Senior Accountant, Accountant, and Payroll and Revenue Accountant
- An audit is conducted on an annual basis by an independent auditing firm Tronconi Segarra & Associates. Their Engagement Team is comprised of:
  - James Segarra, CPA (Partner)- Responsible for coordinating all Tronconi Segarra & Associates LLP’s (“TSA”) services to the Cemetery. Also responsible for providing leadership for the audit of the Cemetery and resolving any audit-related matters with the Board of Trustees and management as deemed appropriate.
  - Richard Wiktorowski, CPA (Audit Principal)- Responsible for coordinating the audit of the Cemetery and supplying ongoing guidance to management

regarding new developments in accounting and financial reporting. In collaboration with James Segarra, also responsible for providing leadership for the audit of the Cemetery and resolving any audit related matters with the Board of Trustees and management as deemed appropriate.

- Jeffrey Stelianou, CPA (Audit Manager)- Responsible for managing the audit of the Cemetery, staff supervision during fieldwork, responding to technical accounting issues and initial review of audit evidence supporting the financial statements.
- Dominic Eusanio, CPA (Senior Accountant)- Responsible for executing all of TSA's fieldwork and financial statement reporting relating to the Cemetery's audit matters.
- Jenny Willis, CPA (Supervising Senior Accountant)- Responsible for managing tax engagement.
- Diane Straka, CPA (Tax Partner)- Responsible for executing all of TSA's tax compliance and assisting with the Cemetery's tax consulting matters.

At the conclusion of the annual audit, the auditors present their findings to the Forest Lawn Board of Trustees. Members of Forest Lawn's Board of Trustees are appointed to serve on the Forest Lawn Audit Committee. The current committee appointments are:

- Richard Day, Practicing Attorney and Partner with Barclay Damon LLP
- Kurt Rich, Business Development Manager at Firstronic
- Mary Ann Kresse, retired Computer Systems Designer and Board Member to several charitable and cultural institutions including Western New York Heritage Magazine, and the Buffalo and Erie County Botanical Gardens Society, Inc.
- Hugh Russ III, Partner, Hodgson Russ LLP and President, Bar Association of Erie County

During the auditor's presentation to the Trustees, their findings are presented to the Board. Joseph Dispenza (President and Trustee) and Annette Wargo (VP of Finance) attend the presentation portion of the meeting. The Forest Lawn trustees will then go into executive session with the auditors, whereby all officers including Joseph Dispenza and Annette Wargo are excused (or disconnected from video/phone lines) to allow for confidential discussion between the auditors and the trustees.

All special trust funds maintained by Association will be added to Forest Lawn's professionally managed Perpetual Care funds and will continue to be maintained and managed as separate trust funds in accordance with all applicable trust documents.

**(iii) A proposal for maintenance, storage, and availability of all corporate and cemetery records of the surviving or consolidated cemetery including procedures for physical or remote access to such records by persons entitled to access;**

Forest Lawn has a proven track record related to digitizing documents and providing storage and retrieval of corporate records and historical documents. Following the merger, Forest Lawn will digitize Association's cemetery records and will make those records available to

Association's lot owners either electronically via the website or, for those lot owners who prefer hard copies, records will be sent by mail or other similar means. Preservation of original historic documents are held in Forest Lawn's state-of-the-art, fire-safe archival center (Margaret L. Wendt Archive & Resource Center). Physical access to the original records, DVDs, etc. is limited but available upon request (see (a)(2) for a detailed description). Digital copies are kept on a drive in the Forest Lawn server and backups are kept on a Virtual Data Server hosted by IEvolve Technology Services in their Data Center. Security and backups are done by IEvolve (both local and at IEvolve) and offsite (cloud based) daily. Working copies of digitized records are uploaded and linked in the Opus/ByondPro Cemetery Management System (ByondPro software is browser based by OpusXenta on Amazon Web Services A).

Forest Lawn will provide specific contact information, including other important information on its website, to all lot owners of Association, to allow lot owners to request copies of applicable records.

Forest Lawn has a professionally staffed office with representatives available six days a week and monitors incoming emails on a 24/7/365 basis. Forest Lawn's website, as well as the website it will create for the Association, will be a comprehensive source of information and contact for lot owners.

Forest Lawn's experience with many smaller and rural cemeteries is that their books and records are not readily available or accessible. Many are not maintained on computers or available electronically at all. Forest Lawn intends to implement a much more professional and robust recordkeeping system for the Association's records and is confident that under its ownership, recordkeeping will be complete, accurate, safe, and easily available to all lot owners and other stakeholders.

**(iv) A proposal for maintenance, storage and availability of all corporate and cemetery records relating to the constituent cemeteries, including procedures for physical or remote access to such records by persons entitled to access;**

Forest Lawn's experience with many smaller and rural cemeteries is that their books and records are not readily available or accessible. Many are not maintained on computers or available electronically at all. Forest Lawn intends to implement a much more professional and robust recordkeeping system at each merged cemetery and is confident that under its ownership, recordkeeping will be complete, accurate, safe, and easily available to all lot owners and other stakeholders.

Forest Lawn will gather the Association's paper documents/records and either have them scanned by a scanning agency or more typically, by Forest Lawn trained and experienced staff using Forest Lawn's scanners. Once scanned, the records are maintained at Forest Lawn on DVD along with the hard original copies in the Forest Lawn archive vault located at the Margaret L. Wendt Archive and Resource Center. The vault is secured (access code, user access only) and protected by an actively monitored fire prevention and mitigation system (also outlined in (a)(2)). Digital copies are kept on a drive on the Forest Lawn server and backups

are kept on a Virtual Data Server hosted by IEvolve Technology Services in their Data Center. Security and backups are done by IEvolve (both local and at IEvolve) and offsite (cloud based) daily. Working copies of digitized records are uploaded and linked in the Opus/BeyondPro Cemetery Management System (BeyondPro software is browser based by OpusXenta on Amazon Web Services A).

Forest Lawn will provide specific contact information, including other important information on its website to all lot owners of Association, to allow lot owners to request copies of applicable records. These digitized documents will be accessible to the public on the cemetery's website, allowing families to search for information about their loved one(s). Forest Lawn will ensure hard copies are made available by email or other means for those lot owners who prefer hard copies of records.

Forest Lawn has a professionally staffed office with representatives available six days a week and monitors incoming emails on a 24/7/365 basis. Forest Lawn's website, as well as the websites it plans to create for each merged cemetery will be a comprehensive source of information and contact for lot owners.

**(v) A plan for maintenance and operation of all locations in an equitable manner;**

Forest Lawn intends to introduce Operational Efficiencies via the Cluster Model/Shared Services Model for Mobile Staff and Equipment to service all locations in an equitable manner. This system uses a single unit to service and maintain a group of cemeteries in geographical proximity.

- The mobile interment unit is comprised of:
  - one licensed and insured trailer
  - equipped with one excavator, one skid steerer
  - CDL licensed operators
  - shovels
  - water pumps to pump out graves
  - track mats and plywood to cover graves in wet conditions
- The mobile care/maintenance unit is equipped with:
  - 6 operators
  - 4 lawn mowers
  - 6 weed wackers
  - 3 blowers
  - 2 hedge trimers
  - all required supplies and tools for in-field repairs and replacement

These mobile land services are highly efficient and enable the maximization of scheduling services and maintenance.

All administrative services will be centralized. This means that all constituent parts will receive the same equitable services. There will be a significant increase in the accessibility

of administrative support and organizational resources for Association based on Forest Lawn's existing model of operations.

**(vi) An agreement that contact information for the surviving or consolidated cemetery will be posted at the entrance to each location of the surviving or consolidated cemetery and on any website maintained by it;**

Forest Lawn currently provides signage at all our merged cemeteries and will do so moving forward with our new merged cemeteries in compliance with statutes. Signage will contain the necessary contact information at the entrance to Association's cemetery including the call/text number 716-885-1600, and an email address. The local Division of Cemeteries number is also listed on that sign.

Additionally, contact information will be posted on all Forest Lawn websites (including the new website to be created for the Association). Access to support services provided by Forest Lawn will represent a significant increase in services for Association's lot owners.

**(vii) A proposal for the conduct of annual and special lot owner meetings that permits lot owners who were lot owners of a constituent cemetery to attend, actively participate in, and vote at such meetings remotely; and**

On November 8, 2021, Governor Hochul signed S1182/A01237 into law, which amended section 603(a) of the New York Not-for-Profit Corporation Law, making permanent the allowance for member meetings to take place remotely by utilizing electronic and/or audio-visual communication technologies.

Since the Spring of 2019, Zoom technology has proven to be an effective method to conduct meetings. Forest Lawn will continue to use Zoom technology to manage the logistics of local cemetery meetings, annual corporate meetings, and lot owners' meetings. Forest Lawn will publish notices of annual lot owners and any special meetings in each locality in the same manner that it currently publishes notices in its principal location in Buffalo, including by newspaper publication and/or electronic means in accordance with the NPCL. In the case of the Association, legal notice will be placed in the local paper and Forest Lawn will post meeting notices and other information to the Association's website which it has committed to creating for each local cemetery (many of which have little or no on-line presence currently).

Forest Lawn will take all reasonable and necessary steps to ensure that lot owners of Association will have appropriate notice and opportunity to participate in annual and special lot owner meetings in more ways than they have currently and in full compliance of the law.

**(viii) A proposal for providing notice to lot owners who were lot owners of a constituent cemetery of the place, date and hour of the annual and any special lot**

**owner meetings in compliance with section six hundred five of this chapter, and that also provides for: notice to be published in a newspaper located in each county in which any constituent cemetery was located, and notice to be prominently posted on the homepage of any website maintained by the surviving or consolidated cemetery.**

Forest Lawn will provide notice to lot owners of Association in compliance with NPCL §605. Once merged, Forest Lawn will create a website for the Association and prominently post notice of meetings on its homepage, as well as publish notice for the required three consecutive weeks in a newspaper in the county where the Association's cemetery is located.

These forms of notification along with the access to remote meetings will provide the Association's lot owners with significant access and opportunity for participation.

**(b) In addition to the requirements of section nine hundred three of this chapter, lot owner approval of the plan of merger or consolidation must meet these requirements:**

**(1) Notice of the meeting to lot owners by a constituent cemetery corporation that will not be a surviving cemetery corporation may not be served by publication, unless the constituent cemetery demonstrates that notice by means other than publication would cause undue hardship;**

Lot owner notice was served by publication and written notice. A copy of the publication and written notice forms is attached as **Exhibits B and C**.

**(2) Additional notice of the meeting shall be conspicuously posted at the cemetery at least sixty days prior to the meeting and shall provide the name, telephone number and address of a person from whom a copy of the plan of merger or consolidation may be obtained; and**

A copy of the posted notice form is attached as **Exhibit D**.

**(3) Additional notice of the meeting, along with the plan of merger or consolidation or an outline of the material features of the plan, shall be conspicuously posted, by each constituent corporation, on any website it maintains or through which it conducts business.**

Association and Forest Lawn each maintains a website and the forms of notices posted on their respective websites are attached as **Exhibit E**.

**OR**

Forest Lawn maintains a website, but the Association does not maintain a website. The form of notice posted on Forest Lawn's website is attached as **Exhibit E**.

**Exhibit A**

**Letter & Receipt from Municipalities**

*See attached.*



FOREST LAWN

Where memories live  
and  
the stories are told.

1990 MAIN STREET  
BUFFALO, NEW YORK 14208  
TEL 716.885.1600  
FAX 716.881.6482  
FOREST-LAWN.COM

March 25, 2022

TRUSTEES

James M. Wadsworth, Chair  
Ruth D. Bryant  
Joseph P. Dispenza  
Charles F. Krainet, Jr.  
Mary Ann Kresse  
George C. Morris  
Kurt L. Rich  
Hugh M. Ross

Newstead Town Office  
P.O. Box 227  
5 Clarence Center Rd  
Akron, NY 14001

Dear David L. Cummings, Town Supervisor:

Re: Proposed Merger between The Buffalo City Cemetery, Inc. and The Mount Olive Cemetery Association

The Buffalo City Cemetery, Inc. d/b/a Forest Lawn Cemetery ("Forest Lawn") and The Mount Olive Cemetery Association have entered into a Plan of Merger pursuant to which **The Mount Olive Cemetery Association** would merge with and into Forest Lawn (the "**Proposed Merger**"). Forest Lawn and The Mount Olive Cemetery Association are confident that the Proposed Merger will improve the quality, efficiency, and ongoing capital and maintenance needs at each cemetery, and will be beneficial to the lot owners of each cemetery and the welfare of the community.

Pursuant to Section 1506-d of the New York State Not-for-Profit Corporation Law ("NPCL"), the municipalities which would be required by law to assume the care and control of any part of consolidated cemetery if it were to be subsequently abandoned are required to be notified of the Proposed Merger.

As such, this letter operates as formal notice under Section 1506-d of the NPCL that Forest Lawn and The Mount Olive Cemetery Association wish to enter into the Proposed Merger. Should you have any questions regarding the Proposed Merger, please contact:

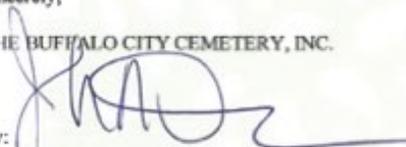
THE FOREST LAWN GROUP  
Forest Lawn  
Buffalo, NY  
Lakeside Cemetery  
Hamburg, NY  
Williamsville Cemetery  
Auburn, NY  
St. Matthew's Cemetery  
West Seneca, NY  
Forest Lawn Cremation Company  
Buffalo, NY  
Gethsemane Cemetery  
Williamsville, NY

Joseph P. Dispenza  
President,  
The Buffalo City Cemetery, Inc.

Phone: 716-885-1606 x209  
Email: [jdispenza@forest-lawn.com](mailto:jdispenza@forest-lawn.com)

Sincerely,

THE BUFFALO CITY CEMETERY, INC.

By:   
Joseph P. Dispenza  
President

OFFICERS

Joseph P. Dispenza, President  
Christopher W. Converse, Vice President  
Annette M. Wargo, VP, Finance  
Craig J. Wolcott, VP, Operations & Mergers  
Robert J. Walworth, VP, Crematory Services  
Christopher W. Converse, Assistant Secretary

Copy to: **Hodgson Russ LLP**  
Attn: **Brandon L , Esq.**  
140 Pearl Street  
Suite 100  
Buffalo, New York 14202

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>[Signature]</i> <i>Mo c-19</i> <span style="float: right;"><input type="checkbox"/> Agent</span>  <input type="checkbox"/> Addressee <span style="float: right;"><input type="checkbox"/> Addressee</span></p>																
<p>1. Article Addressed to:</p> <p style="text-align: center;"><i>CLARENCE TOWN HALL  ONE TOWN PLACE  CLARENCE, NY  14031</i></p>  <p style="text-align: center;">9590 9402 6755 1074 5244 33</p>	<p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span>  <i>C. DeLigato</i> <span style="float: right;"><i>3-30-22</i></span></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>2. Article Number (Transfer from service label)</p> <p><b>4 2870 0001 6730 9272</b></p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™ Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™ Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery		<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™ Restricted Delivery																
<input type="checkbox"/> Collect on Delivery Restricted Delivery																	
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>	<p style="text-align: right;">Domestic Return Receipt</p>																

**Exhibit B**

**Lot Owner Publication Notice: Association**

**NOTICE OF SPECIAL MEETING  
OF LOT OWNERS  
OF  
THE MOUNT OLIVE CEMETERY ASSOCIATION**

**NOTICE IS HEREBY GIVEN** that a Special Meeting of the Lot Owners of **the Mount Olive Cemetery Association** (the “Association”) has been called for the purpose of reviewing and acting upon a proposed Plan of Merger of the Association with and into The Buffalo City Cemetery, Inc. d/b/a Forest Lawn (“Forest Lawn”).

The meeting will take place in-person on Sunday, June 12, 2022 at 1:30 PM at Trinity Evangelical Lutheran Church 4809 S Newstead Road, Akron NY, or any adjournment thereof. For more information, contact David Hofmeier at 716-949-4264.

All Lot Owners who attend the meeting will need to provide verification of identity and lot ownership. Each lot is entitled to one vote at the meeting. The proposed Merger will be effective after all necessary approvals have been obtained and required filings made, whereupon the members of the Association will become members of Forest Lawn, the surviving corporation, and as such surviving corporation, Forest Lawn shall assume all assets and liabilities of the Association.

**Exhibit C**

**Lot Owner Written Notice: Association**

**NOTICE OF SPECIAL MEETING  
OF LOT OWNERS  
OF  
THE MOUNT OLIVE CEMETERY ASSOCIATION**

**NOTICE IS HEREBY GIVEN** that a Special Meeting of the Lot Owners of **the Mount Olive Cemetery Association** (the “Association”) has been called for the purpose of reviewing and acting upon a proposed Plan of Merger of the Association with and into The Buffalo City Cemetery, Inc. d/b/a Forest Lawn (“Forest Lawn”).

The meeting will take place in-person on Sunday, June 12, 2022 at 1:30 PM at Trinity Evangelical Lutheran Church 4809 S Newstead Road, Akron NY, or any adjournment thereof. For more information, contact David Hofmeier at 716-949-4264.

All Lot Owners who attend the meeting will need to provide verification of identity and lot ownership. Each lot is entitled to one vote at the meeting. The proposed Merger will be effective after all necessary approvals have been obtained and required filings made, whereupon the members of the Association will become members of Forest Lawn, the surviving corporation, and as such surviving corporation, Forest Lawn shall assume all assets and liabilities of the Association.

Exhibit D

Lot Owner Posted Notice: Association

# NOTICE:

**SPECIAL MEETING OF LOT OWNERS TO  
DISCUSS MERGER OF THE MOUNT  
CEMETERY ASSOCIATION WITH FOREST  
LAWN CEMETERY**

**DATE:** Sunday, June 12, 2022

**TIME:** 1:30pm

**LOCATION:** Trinity Evangelical Lutheran Church  
4809 S Newstead Road, Akron NY

**CONTACT: DAVID HOFMEIER AT 716-949-4264  
FOR MORE INFORMATION.**

**DATE POSTED AT CEMETERY: APRIL 1, 2022**

**Exhibit E**

**Lot Owner Web Site Notice: Forest Lawn**

**NOTICE OF SPECIAL MEETING  
OF LOT OWNERS  
OF  
THE BUFFALO CITY CEMETERY, INC. D/B/A FOREST LAWN**

**NOTICE IS HEREBY GIVEN** that a Special Meeting of the Lot Owners of the Forest Lawn Cemetery (the “Association”) has been called for the purpose of reviewing and acting upon a proposed Plan of Merger of the Association with and into:

**THE BLOOMINGDALE CEMETERY ASSOCIATION (D/B/A EVERGREEN LAWN)  
THE CLARENCE FILLMORE CEMETERY  
THE MOUNT OLIVE CEMETERY ASSOCIATION**

The meeting will be held via Zoom video conference, pursuant to Section 603 of the New York State Not-for-Profit Corporation Law, at: <https://us02web.zoom.us/j/82962997606> and dial-in at: +1 929 205 6099 Meeting ID: 829 6299 7606 on Tuesday, June 14, 2022 at 2:00 PM, or any adjournment thereof. For more information, contact Leilon Duff or Karen Rondinelli at (716) 855-1600.

All Lot Owners who attend the meeting will need to provide verification of identity and lot ownership. Each lot is entitled to one vote at the meeting. The proposed Merger will be effective after all necessary approvals have been obtained and required filings made, whereupon the members of the Association will become members of Forest Lawn, the surviving corporation, and as such surviving corporation, Forest Lawn shall assume all assets and liabilities of the Association.

Attached to this Notice is a Plan of Merger summarizing the terms of the proposed Merger.