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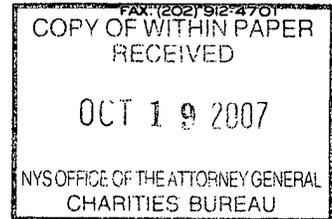
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October 18, 2007

VIA HAND DELIVERY

Robert Pigott, Jr., Esq.
Assistant Attorney General
New York State Attorney General
Division of Public Advocacy
Charities Bureau
120 Broadway
New York, N.Y. 10271

Re: Congregation Shaare Zedek--Bayside Cemetery

Dear Bob:

As per our conversation yesterday, enclosed please find a document that we just located in the files of Congregation Shaare Zedek. The last four pages of this document appear to be a summary entitled "Plots Under Perpetual Care—No Fund" and consists of 4 handwritten sheets of paper containing entries of information pertaining to the names of individuals and entities who appear to have paid specified sums of money for perpetual care between 1913 and 1960. The rest of the document is a handwritten set of notes approximately 90 pages in length that appear to be bookkeeper's or accountant's notes and ledger entries entitled "Perpetual Care Fund – financial pages 1-50—Detailed list—page 50—ledger (second section)." It purports to provide information covering a period beginning in 1941 and continuing through January 1966 detailing debits and credits from banks in which perpetual care funds were deposited plus other work papers. Although I am not an accountant, this document appears to me to be work papers generated by someone with accounting training who was seeking to provide financial information to the Congregation's Board in the mid-1960s with respect to the perpetual care account maintained for Bayside Cemetery.

We do not know who compiled this document. However, it does appear that some forty years ago, someone with access to the Congregation's and Cemetery's records was able to compile what purports to be a complete list of known perpetual care payments as of that time.

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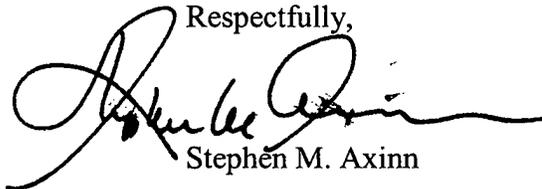
Robert Pigott, Jr., Esq.
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The total sum of the perpetual care funds that the author was able to account for, as of the end of December 1960, was \$137,960. The detailed journal entries continue through January 31, 1966, however (see pages numbered 48-49 and 53-58), and contain an additional \$41,916 in entries, including the \$26,700 worth of entries for 1964 and 1965 that were listed in the Congregation's November 1, 2004 letter to you. If we were to add to that the \$2,700 in post-1966 perpetual care contracts previously identified in the November 1 letter, the aggregate total of identified perpetual care funds of Bayside would be \$182,576.

We have not been able to unearth any specific information to date as to whether there were any contributions of perpetual care monies for the period prior to 1913, but these would have most likely been very small amounts both because there were far fewer interments prior to 1913 and because the amount of principal that would have been charged for perpetual care more than 90 years ago would have been far less.

Therefore, on behalf of Congregation Shaare Zedek, we are of the view that, subject to the qualifications set forth in the November 1, 2004 letter, it would be appropriate to set aside the sum of \$182,576 as the perpetual care principal at this point, rather than the figure of \$100,000 which was previously settled upon pursuant to the November 1, 2004 correspondence. As I previously indicated to you, the Congregation is currently holding in excess of \$345,000 designated for Bayside Cemetery.

Respectfully,



Stephen M. Axinn

Enclosure

cc: Ethan Klingsberg, Esq.

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CONFIDENTIAL TREATMENT REQUESTED

February 25, 2008

VIA HAND DELIVERY

James Robert Pigott, Jr.
Bureau Chief
Charities Bureau
Office of the Attorney General of the State of New York
120 Broadway
New York, NY 10271

Re: Congregation Shaare Zedek & Bayside Cemetery

Dear Bob:

I write as counsel to Congregation Shaare Zedek (the "Congregation") and Bayside Cemetery (the "Cemetery") in response to your letter dated February 11, 2008. As requested in your letter and as is described in more detail below, the Congregation is today producing to the Charities Bureau of the New York State Attorney General's Office (the "Bureau") copies of all known documents in its possession (except as set forth herein) that reflect the Congregation's liability for perpetual care funds within the meaning of Section 1507(c) of the Not-for-Profit Corporation Law. The responsive documents, which are being produced on the enclosed CD in TIFF format, have been marked for identification with the Bates numbers SZ000001 through SZ001002. In addition, Attachment A to this letter provides a list of previous correspondence between the Congregation, its counsel, and the Bureau regarding perpetual care. Those letters, and the documentary exhibits that accompanied them, are hereby incorporated by reference into the Congregation's response and have not been duplicated on the enclosed CD.

Please note that the Congregation is producing the enclosed documents, and making the representations contained in this letter, in the hope that they will facilitate a settlement of any potential claims that the Bureau is currently investigating. Particularly given that the Congregation is, as described below, currently involved in litigation over this and related matters, we would respectfully request that you treat this letter, and the enclosed documents, as confidential and exempt from disclosure under the Freedom of Information Law.

Description of the Congregation's Search for Documents

As you know, our firm began representing the Congregation in September 2007, in connection with a putative class action filed against the Congregation and Cemetery in the U.S. District Court for the Eastern District of New York. After reviewing the Complaint in that litigation, we promptly advised the Congregation, as well as its employees, officers, and trustees, of their obligation to preserve all documents related to the Cemetery, including issues of perpetual care. While we began our review with the approximately five boxes of material that had been gathered by Cleary Gottlieb (our predecessors as counsel to the Congregation) during their earlier dealings with the Bureau, we also recognized that we would have to undertake a new search in light of the litigation. Over the ensuing months, we took a number of steps to ensure that all relevant documents were secured and reviewed by representatives of our firm:

- Russell Steinthal, an associate at our firm and a vice president of the Congregation, interviewed each of the Congregation's three full-time employees to determine what, if any, Cemetery records they were aware of. Similar requests were sent to all of the Congregation's current officers and trustees, as well as to those former presidents and treasurers of the Congregation who are still active in its affairs. At the Bureau's request, the Congregation also made its office manager, Lolita Pogrebitskaya, available for an interview with representatives of the Bureau.
- Mr. Steinthal personally searched the various file cabinets in the synagogue office and, with the assistance of paralegals from our firm and Cleary Gottlieb, reviewed all of the records in the Congregation's balcony storage room.
- On several occasions, including once while accompanied by representatives of the Bureau, Mr. Steinthal physically toured the synagogue building looking for other potential document storage locations. Two additional boxes of documents were located during those searches, and have now been reviewed.
- During a visit to the Cemetery in October 2007, Mr. Steinthal and I interviewed Bob Materano, the chief caretaker at the Cemetery, and determined that perpetual care records are not maintained at the Cemetery. Nonetheless, for the avoidance of doubt, we secured the approximately two boxes of potentially-responsive material (including four card drawers) that were in the office, and have confirmed that with only a few exceptions, none referenced perpetual care. (We reviewed on-site, but did not remove, the records that are used for the day-to-day operation of the Cemetery, including maps and grave location cards.)
- Mr. Steinthal contacted Rob Lewin of Resnick & Newman LLP, the Congregation's accountant since 1986, to discuss the origin of the perpetual care liability shown on the Congregation's financial statements (which, as described below, have largely already been provided to the Bureau). Mr. Lewin confirmed that, when he first began work on the

Congregation's statements, he transferred an initial liability balance obtained from the Congregation's previous accountants and subsequently updated the figure each year based on totals provided to him by the Congregation. He further stated that he did not have any work papers or other records that were potentially relevant to either the Bureau's request or the ongoing litigation.

- At our request, Meir Schecter, the Congregation's Vice President for Finance, searched the Congregation's bookkeeping system for transactions related to the Cemetery. The results of that search—which included data for the period from January 1, 1997 through November 2007—are being produced with this letter. We have also confirmed that no perpetual care income has been received by the Congregation during the succeeding months.

For the avoidance of doubt, we note that our review did not include the records that the Congregation donated to the Library of the Jewish Theological Seminary in 1988 and 1998. Those documents are no longer in the possession, custody, and control of the Congregation, and we have been informed by counsel to the Seminary that its archivists do not believe that the records may safely be reviewed until certain preservation work, for which the Library currently lacks funding, is completed. Nonetheless, a description of the contents of those collections was provided to the Bureau as Exhibit G to the letter from Ethan Klingsberg to Marlene Turner dated May 11, 2004.

Documents Included in the Production

While we recognize that the Congregation's records are not as complete as might be desired, our review has identified a number of independent sources of information that are mutually reinforcing and that, we believe, are sufficient to determine, with a reasonable degree of certainty, the extent of the deposits made for the perpetual care of graves at the Cemetery. We would be happy to discuss our conclusions in that regard with the Bureau at an appropriate point in the future, but for now, suffice it to say that the documents included in this production can broadly be divided into the following categories:

Perpetual Care Contracts: The enclosed production includes more than 60 examples of perpetual care contracts executed by the Congregation. In addition, there are a variety of notes and correspondence, largely between staff at the Cemetery and the Congregation, referring both to those contracts and to other payments for which we do not have contracts.

Compilations: Over the course of our review, we have identified and are today producing three different compilations that appear to have been attempts to document all of the perpetual care contracts known at the time of their respective creations. The first of these, beginning at Bates number SZ000683, appears to have been created over the course of many years, and

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covers the period 1913-1966. The second (SZ000048) was prepared in 1968, and the third (SZ000040) was prepared in 1993.¹

Annual Perpetual Care Schedules: It appears that, on a number of occasions, either the Congregation or its accountants prepared annual schedules listing perpetual care payments for the preceding year, presumably in connection with the preparation of the Congregation's annual financial statements. We are today producing such schedules for the years 1969-1977 (SZ000051) and 1983 (SZ000058).

Financial Statements: By letters dated January 29, 2004 and May 11, 2004 from Ethan Klingsberg to Marlene Turner, the Congregation has previously provided the Bureau with annual financial statements covering the period from 1964 to 2004. We are today enclosing financial statements for the calendar years 2005, 2006, and 2007 (SZ000975-SZ001002). As with the statements that were produced earlier, these statements contain totals of the Congregation's purported liability for perpetual grave care.

Financial Ledgers: We are producing a number of general ledgers that include handwritten records of perpetual care income transactions (or the lack thereof) for their given years. We have found that the total amounts recorded on these ledgers largely track the amounts shown on the Congregation's financial statements, although we note that in some cases it appears that the ledgers identify the person making the perpetual care payment, rather than the grave for which care was being purchased.

Transaction Records: In addition, as described above, we are also producing a spreadsheet showing transactions in Cemetery-related accounts since January 1, 1997, including a number identified as being for perpetual care. That data (SZ000938-SZ000974) was extracted at our request from the Congregation's bookkeeping system.

Documents Not Included in this Production

For the avoidance of doubt, please note that we have excluded the following types of documents from this production, despite their possible connection to the issue of perpetual care:

Annual Care Records: The Congregation possesses a considerable amount of documentation regarding annual care, including several boxes of index cards recording individual payments. Although such documents could be used to support a negative inference that the graves for which annual care was paid were not, at least at those times, under perpetual

¹ Please note that SZ000683 is the same document that I enclosed with my letter to you dated October 17, 2007 and that SZ000040 is the same document that we discussed at our meeting with the Bureau on November 6, 2007. In addition to the three compilations identified above, note that SZ000791 is a notebook entitled "Care Book 2000" that lists graves under annual and perpetual care in that year, although it does not provide the amounts of such perpetual care deposits.

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care, the burden of copying and producing them greatly outweighs their marginal probative value.

Bank Records: As has previously been explained to the Bureau, the Congregation has maintained a number of bank accounts over the years, some of which were labeled "Perpetual Care Fund." Although the Congregation is preserving those records that were still in its possession as of September 2007, we have not produced documents, such as monthly account statements, whose only relationship to perpetual care is the statement of a bank balance or changes in a bank balance. Again, the burden in producing such documents outweighs what appears to be their marginal probative value.

If, after reviewing the enclosed production, the Bureau believes those additional records would be relevant to its investigation, we would, of course, be happy to provide them. We would, however, respectfully request additional time to prepare such a production.

Finally, please note that we are withholding a number of documents that are protected by the attorney-client privilege and the work product doctrine. Although given the posture of this matter we do not believe a formal privilege log is required, we can broadly describe those documents as consisting of attorney-client communications, communications between our firm and Cleary Gottlieb, and a number of analyses prepared by our firm in connection with the pending federal litigation.

If you have any questions regarding the enclosed documents or this matter, please do not hesitate to contact me.

Sincerely,

Stephen M. Axinn

Enclosure

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February 25, 2008
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Attachment A

Prior Correspondence With the Charities Bureau Relating to Perpetual Care

Date	Sender	Recipient
January 29, 2004	Ethan Klingsberg (Cleary Gottlieb)	Marlene Turner (NYAG)
May 11, 2004	Ethan Klingsberg (Cleary Gottlieb)	Marlene Turner (NYAG)
November 1, 2004	Joel Shaiman & Rabbi Mark Ankorn (Shaare Zedek)	Robert Pigott & Robert Molic (NYAG)
October 17, 2007	Stephen M. Axinn (Axinn, Veltrop & Harkrider LLP)	Robert Pigott (NYAG)