

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THE STATE OF NEVADA BY ITS ATTORNEY  
GENERAL CATHERINE CORTEZ MASTO

Plaintiff,

v.

SERVICE CORPORATION INTERNATIONAL

Defendant.

Case No.: 2:09-cv-02248

**STIPULATED JUDGMENT**

WHEREAS, Plaintiff State of Nevada, through its Attorney General, filed its Complaint on November 24, 2009; Plaintiff and Defendant Service Corporation International (“SCI”) through its attorneys, have consented to the entry of this Stipulated Judgment (“Judgment”) without trial or adjudication of any issue of fact or law and without this Judgment constituting any evidence against or admission by Defendant regarding any issue of fact or law;

AND WHEREAS, Defendant agrees that this Court has jurisdiction over it and the subject matter in this action;

AND WHEREAS, Defendant agrees to be bound by the provisions of this Judgment pending its approval by the Court and thereafter;

AND WHEREAS, the essence of this Judgment is the prompt and certain divestiture of certain rights or assets by Defendant to ensure that competition is not substantially lessened in the Cemetery Services market in the Las Vegas metropolitan area in Clark County, Nevada and other relief;

AND WHEREAS, Defendant has entered into a similar order with the Federal Trade Commission in a Related Action to address the same allegations set forth by Plaintiff in its Complaint;

AND WHEREAS, Defendant has represented to Plaintiff that the divestiture required by this Judgment and other terms and conditions identified herein can and will be made;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and upon consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

### **I. JURISDICTION**

- A. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and under NRS 598A.060(1)(f), alleged in the Complaint as a pendent state claim.
- B. Defendant SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its corporate head office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77109.

## II. DEFINITIONS

As used in this Judgment, the following definitions shall apply:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by SCI (including, Alderwoods (Nevada) Inc., and after the Acquisition Date, Palm) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Palm” means Palm Mortuary, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 1325 N. Main Street, Las Vegas, Nevada 89101, the subsidiaries, divisions, groups, and affiliates controlled by Palm Mortuary, Inc.
- C. “Defendant” means SCI.
- D. “Plaintiff” means the State of Nevada through its Attorney General.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer(s)” means any Person(s) that receives the prior approval of Plaintiff to acquire the Divestiture Business pursuant to this Judgment.
- G. “Acquirer Candidate” means any Person presented by Defendant to Plaintiff for Plaintiff’s approval to acquire the Divestiture Business pursuant to this Judgment.
- H. “Acquisition” means the proposed acquisition described in and contemplated by the Equity Purchase Agreement by and among Alderwoods (Nevada), Inc., Palm Mortuary, Inc., its Stockholders, Knauss Enterprises Limited Liability Company, Knauss Holdings, LLC, and its Members, dated as of August 5, 2009.

- I. “Acquisition Agreement” means the Equity Purchase Agreement dated as of August 5, 2009.
- J. “Acquisition Effective Date” means the earliest of the following dates:
  - 1. The date Defendant and Palm close on the Acquisition pursuant to the Acquisition Agreement; or
  - 2. The date on which Defendant, directly or indirectly, acquires a controlling interest in Palm.
- K. “Bid Process Consultant” means any Person who has demonstrated experience in locating buyers to purchase businesses engaged in Funeral Services or Cemetery Services, and who is familiar with who may be interested bidders for the Divestiture Assets in the State of Nevada.
- L. “Cemetery Services” means all activities relating to the promotion, marketing, sale and provision of property, goods and services, to provide for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, or disposition in a niche.
- M. “Confidential Business Information” means information not in the public domain related to the Divestiture Business, except for any information that was or becomes generally available to the public other than as a result of a disclosure by Defendant or was available, or becomes available, to Defendant on a non-confidential basis, but only if, to the knowledge of Defendant, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

- N. "Davis Pre-need Contracts" means any type of contract or other agreement entered into by a person with Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada 89119 or the Davis Funeral Home, 2127 W. Charleston Boulevard, Las Vegas, Nevada 89102, for the purchase of Funeral Services or Cemetery Services at a future time regardless of whether such agreement is revocable or how payment for such services is arranged.
- O. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of Defendant's employees' labor shall not exceed the average hourly wage rate for such employee.
- P. "Divestiture Agreement" means an agreement or agreements divesting the Divestiture Assets to an Acquirer, and in a manner, that has been approved by Plaintiff.
- Q. "Divestiture Assets" means all of Defendant's right, title and interest in all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, used in the operation of the Divestiture Business, including but not limited to:
1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
  2. All Tangible Personal Property used in the Divestiture Business, including without limitation, Tangible Personal Property removed (and not replaced) from

the Divestiture Business at any time after August 5, 2009, if such Property is necessary to operate the Davis Divestiture Business as a going concern, unless such Property was removed in the ordinary course of business and has a cost of less than \$1,000;

3. The trade name "Davis Funeral Home and Memorial Park" and all commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the term "Davis," "Davis Funeral Home," "Davis Memorial Park," or "Davis Funeral Home and Memorial Park."
4. All inventories;
5. All accounts receivable;
6. All agreements, contracts, and leases and all rights thereunder and related thereto, including, without limitation, all Davis Pre-Need Contracts;
7. All consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
8. All Divestiture Business Intellectual Property used exclusively in the Divestiture Business;
9. Intangible rights and property other than Intellectual Property, including going concern value, goodwill, internet, telephone, telecopy and e-mail, telephone numbers, addresses, domain names, listings and websites; provided that

Defendant is not required to divest any portion of domain names or websites content that contain registered or unregistered trademarks, service marks and applications using the words “Alderwoods,” “Service Corporation International,” “SCI,” “Dignity” or “Dignity Memorial;”

10. All Confidential Business Records used exclusively in the Divestiture Business;
11. All insurance benefits, rights and proceeds, including those arising from any Davis Pre-need Contracts; and
12. All rights relating to preneed deposits (including bank, trust, or other accounts relating to or arising from any Davis Pre-need Contracts and endowment or perpetual care funds), claims for refunds and rights to offset in respect thereof.
13. Provided, however, that the Divestiture Assets need not include:
  - a. Assets located at facilities or offices not included in the Divestiture Business and whose use is not exclusively or primarily related to the operation of the Divestiture Businesses;
  - b. Motor vehicles used by the relevant Divestiture Businesses if the Acquirer does not need them and Plaintiff approves the divestiture without such vehicles;
  - c. Rights in any lease of Tangible Personal Property that pertains to generally available property relating to office furniture, office equipment, or computers;
  - d. Rights in, and records and documents (or portions thereof) exclusively concerning any national license, national supply or service agreement,

national proprietary or licensed advertising program, or national proprietary product associated with Defendant's Dignity Memorial program;

- e. Rights to, and records and documents (or portions thereof) exclusively concerning commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Alderwoods," "Service Corporation International," "SCI," "Dignity" (including "Dignidad," "Dignite," and other translations of Dignity into languages other than English), or "Dignity Memorial;" or
- f. Any other assets, rights or agreements not needed by the Acquirer if Plaintiff approves a Divestiture Agreement that does not divest, grant, or transfer such assets, rights or agreements.

R. "Divestiture Business" means all activities of Defendant related to:

- 1. Providing Funeral Services and Cemetery Services at the Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada 89119; and
- 2. Marketing, promoting, selling and maintaining the Davis Pre-Need Contracts.

S. "Divestiture Business Employee(s)" means any and all full-time, part-time, or contract employees of Defendant whose duties, at any time during the 90 days preceding the Acquisition Effective Date, related primarily to the Divestiture Business.

T. "Divestiture Business Intellectual Property" means all Intellectual Property related to or used in the Divestiture Business.



U. “Divestiture Business License(s)” means a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sub-licensable, non-exclusive license(s) to the following:

1. Divestiture Business Intellectual Property not included in the Divestiture Assets;  
and
2. Divestiture Business Records not included in the Divestiture Assets;
3. Provided, however, that Divestiture Business Licenses need not include rights to, or documents or records (or portions thereof) exclusively containing (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Alderwoods,” “Service Corporation International,” “SCI,” “Dignity,” (including “Dignidad,” “Dignite,” and other translations of Dignity into languages other than English), or “Dignity Memorial,” (ii) national proprietary or licensed advertising programs, (iii) national proprietary products associated with Defendant’s Dignity Memorial program, (iv) national proprietary software used to service a national network of funeral homes and cemeteries or (v) generally available software;
4. Provided, further, that Divestiture Business Licenses need not include any Divestiture Business Intellectual Property or Divestiture Business Records not needed by the Acquirer if Plaintiff approves a Divestiture Agreement without it.

V. “Divestiture Business Records” means all information, documents and records, including all electronic records wherever stored, that are related to or used in the Divestiture Business, including without limitation, client and customer lists, referral sources, research and development reports, production reports, service and warranty records, equipment

logs, operating guides and manuals, financial and accounting documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salaries and benefits information, and, subject to legal requirements, copies of all personnel files.

W. “Divestiture Closing Date” means the date on which Defendant (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets to an Acquirer pursuant to this Judgment.

X. “Funeral Services” means all activities relating to the promotion, marketing, sale and provision of funeral services and funeral goods, including, but not limited to, goods and services used to care for and prepare bodies for burial, cremation, or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

Y. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Defendant, in which Defendant has a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology,

plans, drawings and blue prints; and (v) all rights in websites and internet domain names presently used by Defendant.

Z. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.

AA. “Related Action” means the enforcement action taken by the Commission which addresses the same proposed acquisition between Defendant and Palm as described in Plaintiff’s Complaint and herein.

BB. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than inventories) of every kind owned or leased by Defendant, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

CC. “Third Party” means any Person other than Defendant, Palm, or Acquirer.

DD. “Transitional Services” means assistance with respect to providing Funeral Services or Cemetery Services, including assistance relating to administrative and support services.

### **III. DIVESTITURE RELIEF**

A. Defendant shall divest the Divestiture Assets and convey the Divestiture Business License at no minimum price, absolutely and in good faith, as on-going businesses, no later than ninety (90) days from the Acquisition Date, to an Acquirer(s) that receives the prior approval of Plaintiff.

- B. Although not a public record, any Divestiture Agreement between Defendant and the Acquirer shall be deemed incorporated into this Judgment, and any failure by Defendant to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Judgment.
- C. Prior to the Divestiture Closing Date, Defendant shall secure all consents and waivers from all Third Parties that are necessary to allow Defendant to divest the Divestiture Assets, convey the Divestiture Business License, and allow the Acquirer to operate the Divestiture Business; provided, however, Defendant may satisfy this requirement as to a particular Third Party by certifying that the Acquirer has executed the necessary agreements directly with such Third Party.
- D. Prior to the Divestiture Closing Date, Defendant shall take all actions necessary to ensure that Divestiture Assets meet federal, state, local and municipal requirements necessary to allow the transfer of the Divestiture Assets to the Acquirer.
- E. Defendant shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire or use the Divestiture Assets and/or operate the Divestiture Business.
- F. Defendant shall not, after the Acquisition Effective Date, use directly or indirectly, any Confidential Business Information or disclose or convey any Confidential Business Information, directly or indirectly, to any Person except as follows:
  - 1. Defendant may disclose Confidential Business Information to the Acquirer or Acquirer Candidate (as the case may be) or other Persons specifically authorized by such Acquirer or Acquirer Candidate to receive such information

2. So long as Defendant does not disclose Confidential Business Information to any Persons who have operational responsibility for the Palm Business, Defendant may use Confidential Business Information as needed:
  - a. To comply the requirements of this Judgment or the Order to Maintain Assets;
  - b. To comply with Defendant's obligations to the Acquirer under the Divestiture Agreement(s);
  - c. To comply with applicable law; or
  - d. To enforce the terms of any Divestiture Agreement or defend against any dispute or legal proceeding,
  - e. Provided, that (1) Confidential Business Information may be disclosed to Third Parties only as necessary for the purposes authorized by this Section pursuant to an appropriate confidentiality order, agreement or arrangement with the Acquirer (but Defendant shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) Defendant shall use its best efforts to obtain a protective order to protect the confidentiality of such Confidential Business Information during any adjudication;
  - f. Provided, further, that Defendant may continue to use Confidential Business Information included in the Divestiture Business License(s) to the extent such information was previously used by Defendant in

connection with assets other than those being transferred to Acquirer pursuant to this Judgment and/or the Divestiture Agreement.

G. On or before the Acquisition Effective Date, Defendant shall provide written notification of the restrictions on the use of the Confidential Business Information contained in the Judgment to all employees who are involved in the Divestiture Business and require that such employees receive and acknowledge a confidentiality agreement as described in the Order to Maintain Assets, Paragraphs III(C)(5) and (6).

H. Within ten (10) days of a request by Plaintiff or by an Acquirer or Acquirer Candidate (if applicable), Defendant shall provide the Acquirer or Acquirer Candidate with the following information for each Divestiture Business Employee, and to the extent permitted by law:

1. Name, job title or position, date of hire and effective service date;
2. A specific description of the employee's responsibilities;
3. The base salary or current wages;
4. The most recent bonus paid, aggregate annual compensation for Defendant's last fiscal year and current target or guaranteed bonus, if any;
5. Employment status (i.e., active or on leave or disability; full-time or part-time);
6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the option of the Acquirer Candidate or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- I. Defendant shall not interfere with the employment by the Acquirer of any Divestiture Business Employee; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with Defendant; and shall eliminate any contractual impediments that may deter such employee from accepting employment with the Acquirer including, but not limited to, (1) removing any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employee to be employed by the Acquirer, and (2) paying, or transferring to the account of the employee, all current and accrued bonuses, pensions and other current and accrued benefits.
- J. For a period of two (2) years after the Divestiture Date, Defendant shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee(s) who have accepted offers of employment with the Acquirer, or who are employed by the Acquirer, to terminate their employment relationship with the Acquirer; provided, however, a violation of this provision will not occur if: (1) the person's employment has been terminated by the Acquirer, (2) Defendant advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Defendant hires employees who apply for employment with Defendant, so long as such employees were not solicited by Defendant in violation of this Paragraph.

- K. At the request of Acquirer, Defendant shall use its best efforts to assist such Acquirer in the fulfillment of any Pre-need Contract relating to the sale of a Dignity Memorial Funeral Plan entered into by Defendant prior to the date of divestiture of the applicable funeral home or cemetery; provided, however, that this Paragraph requires Defendant to assist only with such goods and services that such Acquirer cannot reasonably provide on its own.
- L. For a period ending six (6) months from the date all Divestiture Assets and Divestiture Licenses have been fully and finally transferred and conveyed to the Acquirer, Defendant shall provide Transitional Services to the Acquirer, at no more than Defendant's Direct Cost, as needed to assist the Acquirer in using the Divestiture Assets to operate the Divestiture Business as a viable and ongoing business providing Funeral Services and Cemetery Services at least equivalent to those provided by Defendant prior to the Divestiture Date. Defendant shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of an order of this Court.
- L. A purpose of this Judgment is to ensure that the Divestiture Business remains a competitive and viable provider of Funeral Services and Cemetery Services independent of Defendant and to remedy in a timely manner the lessening of competition resulting from the Acquisition as alleged in Plaintiff's Complaint.



M. Defendant shall not reacquire any part of the Divestiture Assets during the term of this Judgment without prior approval of Plaintiff.

#### **IV. INTERIM MONITOR**

- A. Plaintiff may appoint a monitor (“Interim Monitor”) to assure that Defendant expeditiously complies with all of its obligations and perform its responsibilities as required by this Judgment.
- B. Plaintiff shall select the Interim Monitor, subject to the consent of Defendant, which consent shall not be unreasonably withheld. If Defendant has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of Plaintiff to Defendant of the identity of the proposed Interim Monitor, Defendant shall be deemed to have consented to the selection of the Interim Monitor.
- C. Not later than ten (10) days after the appointment of an Interim Monitor, Defendant shall execute an agreement that, subject to the prior approval of Plaintiff, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Defendant’s compliance with the relevant requirements of this Judgment in a manner consistent with the purposes of this Judgment.
- D. Defendant shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Judgment, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights or responsibilities as set forth in this Judgment or any agreement between the Interim Monitor and Defendant.
- E. The Interim Monitor’s duties and responsibilities shall include the following:

1. The Interim Monitor shall act in a fiduciary capacity for the benefit of Plaintiff;
  2. The Interim Monitor shall have the power and authority to monitor Defendant's compliance with this Judgment, and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of this Judgment and in consultation with Plaintiff;
  3. The Interim Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under this Judgment, or under any agreement between the Interim Monitor and Defendant; and
  4. The Interim Monitor shall evaluate the reports submitted by Defendant pursuant to this Judgment, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to Plaintiff concerning performance by Defendant of its obligations under this Judgment.
- F. Plaintiff may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Plaintiff's materials and information received in connection with the performance of the Interim Monitor's duties.
- G. The Interim Monitor shall serve until six (6) months after Defendant has fully and finally transferred to the Acquirer all Divestiture Assets and all Divestiture Business Records; provided, however, that the Interim Monitor's service shall not exceed two (2) years from the date this Judgment is entered; provided, further, that Plaintiff may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Judgment.

- H. If Plaintiff determines that an Interim Monitor has ceased to act or failed to act diligently, Plaintiff may appoint a substitute Interim Monitor pursuant to the procedures contained in this Section.
- I. Plaintiff may on its own initiative, or at the request of the Interim Monitor, seek additional Court relief or directions as may be necessary or appropriate to assure compliance with the requirements of this Judgment and the Order to Maintain Assets.
- J. The Interim Monitor appointed pursuant to the Order to Maintain Assets may be the same person appointed as an Interim Monitor or Divestiture Trustee(s) pursuant to this Judgment.
- K. Plaintiff shall take all reasonable steps to ensure that there will not be two Interim Monitors appointed at the same time pursuant to this case and the Related Action.

#### **V. DIVESTITURE TRUSTEE**

- A. If Defendant has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Assets and Divestiture Licenses as required by this Judgment, Plaintiff may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Judgment. In the event that Plaintiff brings an action pursuant to this Judgment or any statute enforced by Plaintiff, Defendant shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey such assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section shall preclude Plaintiff from seeking civil penalties or any other relief available

to it, including a court appointed Divestiture Trustee, pursuant to this Judgment or any other statute enforced by Plaintiff, for any failure by Defendant to comply with this Judgment.

- B. Plaintiff shall select the Divestiture Trustee, subject to the consent of Defendant, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Defendant has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of Plaintiff to Defendant of the identity of any proposed Divestiture Trustee, Defendant shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Defendant shall execute a trust agreement that, subject to the prior approval of Plaintiff, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Judgment.
- D. If a Divestiture Trustee is appointed by Plaintiff or this Court pursuant to this Section, Defendant shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  - 1. Subject to the prior approval of Plaintiff, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Judgment to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months after the date Plaintiff approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of Plaintiff. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by Plaintiff; provided, however, that Plaintiff may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Judgment and to any other relevant information, as the Divestiture Trustee may request. Defendant shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Defendant shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Defendant shall extend the time for divestiture under this Section in an amount equal to the delay, as determined by Plaintiff or, for a court appointed Divestiture Trustee, by this Court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to Plaintiff, subject to Defendant's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the

manner and to an Acquirer as required by this Judgment; provided, however, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if Plaintiff determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Defendant from among those approved by Plaintiff; provided further, however, that Defendant shall select such Person within five (5) days after receiving notification of Plaintiff's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Defendant, on such reasonable and customary terms and conditions as Plaintiff or this Court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Defendant, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After Plaintiff's approval of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Defendant, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Judgment.

6. Defendant shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Judgment; provided, however, that the Divestiture Trustee appointed pursuant to this Section may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Judgment and the Order to Maintain Assets in this matter.
8. The Divestiture Trustee shall report in writing to Defendant and to Plaintiff every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Defendant may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to Plaintiff.

- E. If Plaintiff determines that a Divestiture Trustee has ceased to act or failed to act diligently, Plaintiff may appoint a substitute Divestiture Trustee in the same manner as provided in this Section.
- F. Plaintiff or, in the case of a court-appointed Divestiture Trustee, this Court, may on its own initiative or at the request of the Divestiture Trustee issue additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Judgment.
- G. Plaintiff shall take all reasonable steps to ensure that there will not be two persons serving at the same time as Interim Monitor and/or Divestiture Trustee pursuant to this case and the Related Action.

## **VI. OTHER RELIEF**

### **A. Notice of Future Transactions in Nevada**

- 1. For the period that this Judgment is in effect, Defendant shall not, without providing advance written notification to Plaintiff, (i) acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the provision of Cemetery Services in Clark County, Nevada. To comply with this Paragraph, Defendant shall provide to Plaintiff the same notification on the same day and in the same manner that Defendant provides such notice(s) to the Commission pursuant to Section III of its Decision and Order in the Related Action.



2. Except as provided in Paragraph VII(A)(1), for a period of three (3) years following entry of this Judgment, Defendant shall provide written notification to Plaintiff of an acquisition, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the provision of Cemetery Services or Funeral Services in any Nevada market in which Defendant has a market presence. For purposes of this Paragraph only, Nevada market means a county in Nevada, but for the Reno metropolitan area, which means Washoe County, Carson City County, and Douglas County combined. This notification shall be given at least thirty (30) days prior to closing of the transaction, shall be provided in writing, and shall include a brief description of the transaction, the parties to the transaction, the anticipated closing date, the applicable Nevada market(s), and the contact person for follow-up information requests. Notification shall be sent via overnight express delivery to the following address: State of Nevada, Office of Nevada Attorney General; Bureau of Consumer Protection; Attention: Antitrust Unit; 555 East Washington Ave., Suite 3900; Las Vegas, Nevada 89101.
3. Plaintiff may request further information from Defendant of a transaction reported under Paragraph VI(A), subject to claims of privilege, undue burden, or other rights Defendant may have in response to such requests. Such requests shall be made by Investigative Demands issued pursuant to the authority of this Judgment and NRS 598A.100. Nothing in Paragraph VI(A) shall waive, limit, or

compromise Plaintiff's authority and ability to pursue a subsequent enforcement action against Defendant for a transaction that may violate state or federal law.

**B. Divestiture Assets Bid Process:** If for whatever reason an Acquirer Candidate does not become the Acquirer, the bid process for the Divestiture Assets shall be reinstated or reopened to identify a new Acquirer Candidate(s) no more than one time after the filing for entry of this Judgment subject to the following:

1. The bid process shall be conducted in accordance with Defendant's past practices when Defendant sold assets involving Cemetery Services and Funeral Services, including any previous bid process for the Divestiture Assets. This includes retaining a Bid Process Consultant that is independently responsible for reasonably identifying and notifying interested Third Parties of the opportunity to bid on the Divestiture Assets before the bidding begins, and verifying that those Third Parties are qualified bidders before bidding begins. Furthermore, and also in accordance with past practices, Defendant shall ensure that the criteria used by the Bid Process Consultant to determine qualified bidders for the Divestiture Assets is consistently applied among interested bidders, that no unqualified bidders be permitted to submit a bid, and that the new Acquirer Candidate is not determined before bidding opens;
2. Interested Third Parties shall have five (5) days to submit proof of qualification as requested by the Bid Process Consultant; and
3. The bid process shall allow for five (5) days for the acceptance of bids, once bidding begins.

**C. Attorneys Fees and Costs**

1. Defendant shall reimburse to Plaintiff all reasonable attorneys fees at market rates and costs incurred by Plaintiff in reviewing the Acquisition, conducting its investigation through approval of an Acquirer and appropriate divestiture of the Divestiture Assets. Defendant's reimbursement of Plaintiff's attorneys fees and costs shall be made within thirty (30) days of presentation of a request for reimbursement in writing.
2. Plaintiff shall provide the following information relating to a request for reimbursement of attorney fees and costs: (a) identification of all persons employed by, or contracting with, Plaintiff by name and job title; (b) total number of hours worked per person for which Plaintiff seeks reimbursement for work in whole or in part; (c) a summary description of each person's work, and (d) the hourly rate applied to each person's work.

**VII. COMPLIANCE AND MONITORING**

- A. Within five (5) days of the Acquisition, Defendant shall submit to Plaintiff a letter certifying the date on which the Acquisition occurred.
- B. Defendant shall submit to Plaintiff a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Judgment:
  1. Within thirty (30) days after entry of this Judgment, and every thirty (30) days thereafter until Defendant has fully transferred the Divested Assets and Divestiture Licenses as required by this Judgment;

2. Every sixty (60) days thereafter until the termination of the period during which Defendant is required to provide Transitional Services under this Judgment and, if applicable, the Divestiture Agreement; and
  3. Annually on the date of entry of this Judgment for a period of three (3) years.
- C. If requested by Plaintiff, Defendant shall provide the name(s) of Defendant employee(s) who provided and/or are responsible for providing information used and reviewed in support of the statements contained in the written report of compliance.
- D. Defendant shall submit a copy of its report concerning compliance with this Judgment to the Interim Monitor or Divestiture Trustee (if one has been appointed). Defendant shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of this Judgment, including the status of the divestiture and transfer of the Divestiture Assets and Divestiture Licenses; a description of all Transitional Services provided to Acquirer; a description of all substantive contacts with Acquirer, the Interim Monitor or Divestiture Trustee (if one has been appointed) and any other Persons related to compliance with the terms of this Judgment and/or the Divestiture Agreement(s), and any correspondence with the Acquirer Candidate, Acquirer, Interim Monitor or other Third Party related to such contacts that is dated after the Divestiture Date; and any other actions taken by Defendant relating to compliance with the terms of this Judgment and/or the Divestiture Agreements. The final compliance report required by Paragraph VII(B)(2) shall include a statement that the divestiture has been accomplished in the manner approved by Plaintiff and shall include the date the divestiture was accomplished.

- E. Defendant shall notify Plaintiff at least thirty (30) days prior to (1) any proposed dissolution of the Defendant, (2) proposed acquisition, merger or consolidation of Defendant, or (3) any other change in Defendant including, without limitation, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Judgment.
- F. For purposes of determining or securing compliance with this Judgment, and subject to any legally recognized privilege, Plaintiff may issue an Investigative Demand pursuant to NRS 598A.100. Defendant shall timely and fully comply with any such Investigative Demands. Furthermore, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Defendant made to its principal United States or Nevada offices, registered office of its United States subsidiary, or its headquarters address, Defendant shall, without restraint or interference, permit any duly authorized representative of Plaintiff:
1. Access, during business office hours of Defendant and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Defendant related to compliance with this Judgment, which copying services shall be provided by Defendant at the request of the authorized representative(s) of Plaintiff and at the expense of Defendant; and
  2. To interview, either informally or under oath, officers, directors, or employees of Defendant, who may have counsel present, regarding such matters.

G. If Plaintiff, after consultation with Defendant, opens a formal investigation into an alleged violation of this Judgment, Defendant shall pay for the reasonable costs of reviews, audits or examinations conducted by Plaintiff regarding matters contained in and compliance with this Judgment. This provision includes the reasonable costs of retained accountants, actuaries, attorneys, consultants, and other experts reasonably necessary to assist in the conduct of any review, audit or examination once an investigation is opened, but shall not include costs of reviewing compliance reports and information submitted by Defendant prior to a formal investigation. Such reimbursement shall be made within thirty (30) days of presentation of a request for reimbursement in writing.

#### **VIII. CONFIDENTIALITY**

- A. No information or documents obtained by the means provided in Sections VI, VII or otherwise as required by this Judgment and which have been designated in good faith as “Confidential” by Defendant, shall be divulged by Plaintiff to any person other than the authorized representatives of Plaintiff, and their consultants, except in the course of legal proceedings as required by a court of proper jurisdiction, or for the purpose of securing compliance with this Judgment, or as otherwise required by law.
- B. If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of

Civil Procedure,” then Plaintiff shall give Defendant ten (10) calendar days’ notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

#### **IX. VIOLATIONS AND ENFORCEMENT OF JUDGMENT**

- A. It shall be a violation of this Judgment if Defendant fails to abide by the terms of this Judgment and/or the Order to Maintain Assets.
- B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a result of a violation of this Judgment by filing a “Notice of Violation of Judgment” which shall set forth the alleged violation and the relief sought by Plaintiff.
- C. For any violations of this Judgment committed by Defendant, Plaintiff may seek the following remedies:
  - 1. Payment of penalties in accordance with NRS 598A.170;
  - 2. A civil contempt of court order from the Court retaining jurisdiction over the interpretation, modification and enforcement of this Judgment, and all remedies provided by law for obtaining such order; and
  - 3. Equitable and injunctive relief authorized by federal or state law that the Court deems appropriate.
- D. All relief requested by Plaintiff for violation of the provisions of this Judgment shall be supported by evidence presented to the Court in whatever form required by the Court, applying substantive Nevada law in interpretation and enforcement.
- E. All monetary penalties paid pursuant to this Section shall be deposited in compliance with NRS 598A.260. Defendant shall also pay to Plaintiff its reasonable attorneys fees

and costs incurred if Plaintiff is the prevailing party in a contested action to interpret, modify or enforce this Judgment.

F. Plaintiff shall not take enforcement action under this Judgment until the following has occurred:

1. Plaintiff has given Defendant notice of the alleged violation(s) in writing;
2. Defendant has had a period of at least thirty (30) days to (a) respond to and cure the alleged violation(s); and/or (b) provide written notice disputing the alleged violation or presenting cure to Plaintiff; and
3. The Parties have had a period of ten (10) days after Defendant has provided notice of dispute or notice of cure to meet and confer regarding the alleged violation(s) and the Parties' responses. Such meeting and conferral may occur in person, by telephone, or in writing.

G. If Defendant fails to respond to and cure, or fail to provide written notice of dispute, Plaintiff may immediately seek relief from the Court. The Parties may extend the timelines in this Section by mutual consent in writing. Plaintiff may informally notify Defendant of receipt of information alleging a violation of this Judgment if, in Plaintiff's judgment, such notification could likely result in a prompt resolution of the alleged violation.

**X. CHANGES TO AND DIRECTIVES RESULTING FROM COMMISSION'S DECISION AND ORDER**

If the Commission makes any changes to its Decision and Order or issues further directives pursuant to its Decision and Order, and unless otherwise stipulated by the Parties to this Judgment, Plaintiff shall have sole discretion to seek relief from this Court to incorporate



into this Judgment the terms of the Commission's amended Decision and Order and/or any subsequent directives or orders issued by the Commission. Plaintiff shall notify Defendant through its counsel in writing if Plaintiff acts in accordance with this Section.

#### **XI. GENERAL PROVISIONS**

- A. The remedies in this Judgment are in addition to all remedies available to Plaintiff under federal and state law. Nothing in this Judgment shall prohibit or in any way limit Plaintiff from seeking all damages, fines, penalties and remedies for Defendant's conduct, actions, transactions, mergers or acquisitions that is/are otherwise unlawful under federal or state law, even if such conduct, actions, transactions, mergers or acquisitions may also violate this Judgment.
- B. This Judgment shall neither be construed nor interpreted as a concession that Defendant has violated any federal or state law, nor that Defendant has adopted or agreed to any allegations in Plaintiff's Complaint, except for the allegations relating to jurisdiction.
- C. This Judgment shall terminate five (5) years from the date of entry; provided, however, that this Judgment may remain in effect after completion of such five (5) year period solely for the purpose of determining or enforcing compliance during its five-year effective period.
- D. This Court retains jurisdiction to enable either Party to this Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

- E. Defendant shall have the right to petition the Court for an order modifying this Judgment for reasons of substantially changed market conditions applicable to Defendant's Cemetery Services or Funeral Services businesses in the Las Vegas metropolitan area of Clark County, Nevada (as such market is defined in Plaintiff's Complaint), such that Defendant is unable to comply with this Judgment for reasons of hardship (other than financial hardship) or because compliance would not serve the purposes of this Judgment. If Defendant intends to seek any modification of this Judgment, Defendant shall provide at least thirty (30) days notice to Plaintiff, and the Parties shall meet and confer on the basis for Defendant's request for an order modifying this Judgment and on a joint request to the Court, if any. Defendant shall not use financial hardship as a basis for seeking modification of this Judgment.
- F. If any part of this Judgment is hereafter adjudged by this Court to be unenforceable, the remaining provisions of this Judgment shall stay in full force and effect.

BASED UPON THE RECORD BEFORE THIS COURT, the Court finds that entry of this Judgment fair, equitable and in the public interest.

IT IS SO ORDERED:



\_\_\_\_\_  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

DATED: December 15, 2009