

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

In the Matter of)	
)	
SERVICE CORPORATION INTERNATIONAL)	Docket No.
)	
a corporation.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Service Corporation International (“SCI”) of Palm Mortuary Inc. (“Palm”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”) containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Service Corporation International (“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.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Service Corporation International (including, 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 North Main Street, Las Vegas, Nevada 89101, and the subsidiaries, divisions, groups, and affiliates controlled by Palm Mortuary, Inc.
- C. “Respondent” means SCI.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer(s)” means any Person(s) that receives the prior approval of the Commission to acquire the Divestiture Business pursuant to this Order.
- F. “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.
- G. “Acquisition Agreement” means the Equity Purchase Agreement, dated as of August 5, 2009.
- H. “Acquisition Effective Date” means the earliest of the following dates:

1. the date the Respondent and Palm close on the Acquisition pursuant to the Acquisition Agreement; or
 2. the date on which Respondent, directly or indirectly, acquires a controlling interest in Palm.
- I. “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.
- J. “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 Respondent, or was available, or becomes available, to Respondent on a non-confidential basis, but only if, to the knowledge of Respondent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- K. “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 West 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.
- L. “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 Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee.
- M. “Divestiture Agreement” means an agreement or agreements divesting the Divestiture Assets to an Acquirer, and in a manner, that has been approved by the Commission.
- N. “Divestiture Assets” means all of Respondent’s rights, 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, e-mail, telephone numbers, addresses, domain names, listings, and websites,

provided that Respondent 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 pre-need 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.

provided, however, that the Divestiture Assets need not include:

- i) 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;
- ii) motor vehicles used by the relevant Divestiture Businesses if the Acquirer does not need them and the Commission approves the divestiture without such vehicles;
- iii) rights in any lease of Tangible Personal Property that pertains to generally available property relating to office furniture, office equipment, or computers;
- iv) 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 SCI's Dignity Memorial program;
- v) rights to 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
- vi) any other assets, rights, or agreements not needed by the Acquirer if the Commission approves a Divestiture Agreement that does not divest, grant or transfer such assets, rights, or agreements.

- O. “Divestiture Business” means all activities of Respondent 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 Davis Pre-Need Contracts.
- P. “Divestiture Business Employee(s)” means any and all full-time, part-time, or contract employees of SCI whose duties, at any time during the ninety (90) days preceding the Acquisition Effective Date, related primarily to the Divestiture Business.
- Q. “Divestiture Business Intellectual Property” means all Intellectual Property related to or used in the Divestiture Business.
- R. “Divestiture Business License(s)” means a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license(s) to the following:
1. Divestiture Business Intellectual Property not included in the Divestiture Assets;
 2. Divestiture Business Records not included in the Divestiture Assets,

provided, however, that the Divestiture Business License(s) 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 Respondent’s Dignity Memorial program, (iv) national proprietary software used to service a national network of funeral homes and cemeteries or (v) generally available software;

provided, further, that Divestiture Business License(s) need not include any Divestiture Business Intellectual Property or Divestiture Business Records not needed by the Acquirer if the Commission approves a Divestiture Agreement without it.

- S. “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.

- T. “Divestiture Closing Date” means the date on which Respondent (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 Order.
- U. “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.
- V. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondent, in which Respondent 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, 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 Respondent.
- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- X. “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 Respondent, 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.
- Y. “Third Party” means any Person other than Respondent, Palm, or Acquirer.
- Z. “Transitional Services” means assistance with respect to providing Funeral Services or Cemetery Services, including assistance relating to administrative and support services.

II.

IT IS FURTHER ORDERED that:

- A. Respondent 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 and in a manner that receives the prior approval of the Commission.
- B. Any Divestiture Agreement between Respondent and the Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Prior to the Divestiture Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary to allow Respondent to divest the Divestiture Assets, convey the Divestiture Business License, and allow the Acquirer to operate the Divestiture Business;

provided, however, Respondent 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, Respondent 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. Respondent 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. Respondent 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. Respondent may disclose Confidential Business Information to the Acquirer or proposed Acquirer (as the case may be) or other Persons specifically authorized by such Acquirer or proposed Acquirer to receive such information; and
 - 2. So long as Respondent does not disclose Confidential Business Information to any Persons who have operational responsibility for the Palm Business, Respondent may use Confidential Business Information as needed:

- a) to comply the requirements of this Order or the Order to Maintain Assets;
- b) to comply with Respondent'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,

provided, that Confidential Business Information may be disclosed to Third Parties only as necessary for the purposes authorized by this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement with the Acquirer (but Respondent shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and Respondent shall use its best efforts to obtain a protective order to protect the confidentiality of such Confidential Business Information during any adjudication;

provided, further, that Respondent may continue to use Confidential Business Information included in the Divestiture Business License(s) to the extent such information was previously used by Respondent in connection with assets other than those being transferred to Acquirer pursuant to this Order and/or the Divestiture Agreement.

- G. On or before the Divestiture Closing Date, Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information contained in the Order to all employees who were involved in the Divestiture Business.
- H. Within ten (10) days of a request by the Commission or by an Acquirer or proposed Acquirer (as applicable), Respondent shall provide the Acquirer or proposed Acquirer (as applicable) 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 the relevant Respondent'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 proposed Acquirer or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- I. Respondent 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 the Respondent; and shall eliminate any contractual impediments that may deter such employee from accepting employment with the Acquirer including, but not limited to, 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 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, Respondent 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) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.
 - K. At the request of the Acquirer, Respondent shall use its best efforts to assist the Acquirer in the fulfillment of any Pre-need Contract relating to the sale of a Dignity Memorial Funeral Plan entered into by Respondent prior to the date of divestiture of the applicable funeral home or cemetery; *provided, however*, that this Paragraph requires Respondent to assist only with such goods and services that the Acquirer cannot reasonably provide on its own.
 - L. For a period ending six (6) months after the date all Divestiture Assets and Divestiture Licenses have been fully and finally transferred and conveyed to the Acquirer, Respondent shall provide Transitional Services to the Acquirer, at no more than Respondent'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 Respondent prior

to the Divestiture Date. Respondent 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 a final order of a court of competent jurisdiction.

- M. The purpose of this Order is to ensure that the Divestiture Business remains a competitive and viable provider of Funeral Services and Cemetery Services independent of Respondent and to remedy in a timely manner the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondent shall not, without providing advance written notification to the Commission, (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.
- B. The prior notification required by this Paragraph III shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the Respondent shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph V may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent 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 the Commission to Respondent of the identity of the proposed Interim Monitor, Respondent 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, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent’s compliance with the relevant requirements of this Order in a manner consistent with the purposes of the Order.
- D. Respondent shall facilitate the ability of the Interim Monitor(s) to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights, or responsibilities as set forth herein or in any agreement between the Interim Monitor(s) and Respondent.
- 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 the Commission;
 - 2. the Interim Monitor shall have the power and authority to monitor Respondent’s compliance with this Order 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 Order and in consultation with the Commission;
 - 3. the Interim Monitor may, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Order, or under any agreement between the Interim Monitor and Respondent; and

4. the Interim Monitor shall evaluate the reports submitted by Respondent pursuant to this Order, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondent of its obligations under the Order.
- F. The Commission 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 Commission 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 Respondent 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 the Order becomes final;
- provided, further,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.
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- H. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor pursuant to the procedures contained in this Paragraph.
- I. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- J. The Interim Monitor appointed pursuant to this Order may be the same person appointed as an Interim Monitor under the Order to Maintain Assets or the Divestiture Trustee(s) pursuant to this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent 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 Order, the Commission 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 Order. In the event that the Commission or the Attorney General of the United States brings an action pursuant to §5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent 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 Paragraph shall preclude the Commission or the Attorney General of the United States from seeking civil penalties or any other available relief, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent 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 the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent 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, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent 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 the Commission, 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 Order to be

assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. 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 the Commission; *provided, however*, that the Commission 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 Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the 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 the Commission, subject to Respondent'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 Order; *provided, however*, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, 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 approval by the Commission 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 Respondent, 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 Order.

6. Respondent 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 Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order and the Order to Maintain Assets in this matter.
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent 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 the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional

orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondent shall submit to the Commission 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 Order:
 - 1. Within thirty (30) days after this Order becomes final, and every thirty (30) days thereafter until Respondent has fully transferred the Divested Assets and Divestiture Licenses as required by this Order and
 - 2. Every sixty (60) days thereafter until the termination of the period during which Respondent is required to provide Transitional Services under the Order and, if applicable, the Divestiture Agreement.
- C. Respondent shall submit a copy of its report concerning compliance with this Order to the Interim Monitor (if one has been appointed). Respondent shall include in its report, among other things that are required from time to time, a full description of its efforts to comply with the Order, 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 (if one has been appointed) and any other Persons related to compliance with the terms of this Order and/or the Divestiture Agreement(s), and any correspondence with proposed Acquirer, Acquirer, Interim Monitor or other Third Party related to such contacts that is dated after the Divestiture Closing Date; and any other actions taken by Respondent relating to compliance with the terms of this Order and/or the Divestiture Agreements. The final compliance report required by this Paragraph V shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.
- D. One (1) year after this Order becomes final, annually for the next nine (9) years, on the anniversary of the date the Order becomes final, and at other times as the Commission

may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent, including without limitation, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, made to its principal office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent 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 Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: