

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
SERVICE CORPORATION INTERNATIONAL,)	
a corporation)	Docket No. C-4284
and)	File No. 1010013
KEYSTONE NORTH AMERICA, INC.,)	
a corporation.)	

**PETITION FOR APPROVAL OF PROPOSED DIVESTITURES
TO FOUNDATION PARTNERS GROUP, LLC**

Pursuant to Section 2.41 of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2006), and Paragraph II.A of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to Foundation Partners Group, LLC, a Delaware limited liability company (“Foundation”) of the Divestiture Businesses that include the following facilities:

- Sunset Vista Cemetery, Sunset Vista Funeral Home and Crematory, 11357 East 40th Street, Yuma, AZ 85367
- Glen Haven Memorial Gardens, 7070 Houston Road, Macon, GA 31216
- Kersey Funeral Home, 108 East Lake Stella Drive, Auburndale, FL 33823
- Stewart Funeral Home, 1722 Mount Vernon Road, Vidalia, GA 30474

- Jones-Stewart Funeral Home, 211 West Liberty Avenue, Lyons, GA 30436
- Ronnie L. Stewart Funeral Home, 200 South Second Street, Glenwood, GA 30428
- Boone Funeral Home, 2156 Airline Drive, Bossier City, LA 71111
- Tiffany Funeral Home, 3232 West Saginaw Street, Lansing, MI 48917
- Lambeth Troxler Funeral and Cremation Services, 300 West Wendover Avenue, Greensboro, NC 27408
- Hankins and Whittington Funeral Service, 1111 East Boulevard, Charlotte, NC 28203
- T.J. McGowan Sons Funeral Home, 71 North Central Highway, Garnerville, NY 10923
- T.J. McGowan Sons Funeral Home, 133 Broadway, Haverstraw, NY 10927
- Claiborne Funeral Home, 1106 Highway 33 South, New Tazewell, TN 37825
- Diuguid Funeral Service and Crematory, 811 Wigginton Road, Lynchburg, VA 24502
- Diuguid Funeral Service and Crematory – Waterlick Chapel, 21914 Timberlake Road, Lynchburg, VA 24502
- Shaw and Sons Funeral Directors, 201 North Second Street, Yakima, WA 98901
- Mission Memorial Park and Seaside Funeral Home, 1915 Ord Grove Avenue, Seaside, CA 93955
- Mission Mortuary, 450 Camino El Estero, Monterey, CA 93940
- Funeraria Latina-East, 6601 East Colfax Avenue, Denver, CO 80220
- Kenneth Howe Funeral Home, 64 Maple Street, East Aurora, NY, 14052
- Froehley-Dengler Funeral Home, 64 Maple Street, East Aurora, NY, 14052
- Greenlawn Memorial Park and Funeral Home, 845 Leesburg Road, Columbia, SC 29209
- Woodridge Memorial Park and Funeral Home, 138 Corley Mill Road, Lexington, SC 29072

The Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as “Foundation Divestiture Assets”) will be sold to Foundation pursuant to the Sale Agreement dated April 21, 2010 (the “Sale Agreement”)

by and among Foundation and Keystone Group Holdings, Inc., Keystone America, Inc., Gila Mountain Development Co., Inc., Alderwoods Group (California), Inc., SCI Colorado Funeral Services, Inc., SCI Funeral Services of New York, Inc., TMJ Land, Inc., and SCI South Carolina Funeral Services, Inc ("Sellers"). The executed Sale Agreement is attached as confidential Exhibit A.

Background

On March 5, 2010, SCI and Keystone North America, Inc ("KNA") (collectively, the "Respondents"), executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement") to settle the Commission's charges that the proposed acquisition by SCI of KNA would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On March 26, 2010, the Commission accepted the Consent Agreement for public comment, and SCI consummated its acquisition of KNA. KNA is now a wholly owned subsidiary of SCI.

Because Confidential Exhibit A to this petition contains confidential and competitively sensitive business information relating to the divestiture of the Foundation Divestiture Assets – the disclosure of which may prejudice Respondents and Foundation, cause harm to the ongoing competitiveness of the Foundation Divestiture Assets, and impair the Respondents' ability to comply with their obligations under the Consent Agreement – the Respondents have redacted Confidential Exhibit A from the public version of this petition. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16. C.F.R. §§ 2.41(f)(4) and 4.9 (c), the Respondents request that the confidential version of this petition and the information contained herein be accorded confidential treatment under 5.U.S.C. § 552 and Section 4.10(a)(2)

of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2006). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, *as amended*, 15 U.S.C. § 18a(h).

SCI desires to complete the proposed divestiture of the Foundation Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval, any required state regulatory approval, and landlord consents, have already been satisfied, so that Foundation and Sellers are in a position to close the divestiture within a few days of such approval.

Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, Foundation, and the Respondents, because it will allow Foundation to move forward with its business plan for the competitive operation of the Foundation Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2006), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Foundation Divestiture Assets to Foundation pursuant to the above-referenced Sale Agreement as soon as practicable after the close of the public comment period.

I. The Sale Agreement Is Final and Consistent with the Decision and Order's Terms

Paragraph II.A of the Decision and Order requires the Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 90 days of March 26, 2010, the date on which SCI completed its acquisition of KNA. Anticipating that divestitures would be required, during the months preceding the Commission's approval of the Consent Agreement,

SCI diligently sought a buyer that would be acceptable to the Commission. During this process, SCI made information about assets to be divested available to a number of entities that were interested in acquiring some or all of the assets, and SCI engaged in discussions with several interested buyers. On April 21, 2010, Sellers and Foundation entered into the Sale Agreement (attached hereto as Confidential Exhibit A).

The Sale Agreement with Foundation complies with the requirements of Paragraph II of the Decision and Order. Paragraph II.A requires that Respondents divest the Foundation Divestiture Assets, absolutely and in good faith, at no minimum price. Foundation will acquire the Foundation Divestiture Assets pursuant to Section 1.1 of the Sale Agreement.

* * *

As demonstrated above and in the accompanying Sale Agreement, Sellers have entered into an agreement relating to the sale of the Foundation Divestiture Assets that fully complies with the Commission's Decision and Order. Respondents accordingly hereby seek Commission approval of the proposed divestitures pursuant to paragraph II.A of the Decision and Order.

II. The Proposed Acquirer Will Be a Strong and Effective Competitor

Foundation's management team has extensive experience in acquiring and operating funeral homes and cemeteries and, with the support of Sterling Partners, will possess the financial wherewithal to complete the acquisition and operate the Divestiture Businesses successfully. The acquisition will assure that the Divestiture Businesses remain strong and effective competitors in Yuma, Arizona; Monterey and Seaside, California; Denver, Colorado; Auburndale, Florida; Glenwood, Lyons, Macon and Vidalia, Georgia; Bossier City and Shreveport, Louisiana; Lansing, Michigan; East Aurora, Garnerville and Haverstraw, New York;

Charlotte and Greensboro, North Carolina; Columbia and Lexington, South Carolina; New Tazewell, Tennessee; Lynchburg, Virginia; and Yakima, Washington.

Background

Foundation is a newly formed portfolio company of Sterling Partners (“Sterling”) and was formed by Sterling and certain founders and former senior executives of KNA for the purpose of acquiring and operating the Divestiture Businesses. The Foundation management team has more than 70 years of collective experience in the funeral home industry, and previously managed many of the Divestiture Businesses owned by KNA. In fact, while employed by KNA, the members of the Foundation management team were ultimately responsible for 16 of the 22 Divestiture Businesses, and have thorough knowledge of those operations and the markets in which they operate. The Foundation management team also managed KNA’s businesses in the remaining market areas in which SCI businesses are being divested. Foundation anticipates leveraging the experience of its management team and Sterling’s financial resources and expertise to build a national funeral home and cemetery company that offers a full range of funeral and cemetery services on both an at-need (at time of death) and a pre-need (prior to death) basis. These services will include removal of human remains, planning and coordinating personalized funerals and cremations, professional embalming, use of Foundation’s funeral home facilities, merchandise sales, conducting memorial services, performing cremations, and cemetery interment services.

Sterling has a 26-year history of building, growing and managing companies. It consistently drives accelerated growth across its portfolio companies and delivers top decile returns to its investors. Sterling has approximately \$4 billion in assets under management across a portfolio of leading education, healthcare and business service companies. It has an

international presence with offices in the United States, New Delhi and Mexico City. Despite recent market turbulence, Sterling has remained an active investor, completing five transactions in 2009.

Sterling Partners and Foundation do not presently have assets that compete with the Divestiture Businesses in the markets defined by the Commission in its Complaint.

As discussed more fully below under “Operations Experience,” the Foundation management team has extensive experience in the industry and a proven track record of success. Together, Sterling and the Foundation management team expect to operate a robust business that is competitive with SCI in the markets served by the Divestiture Businesses.

Financial Capability

Sterling, through Sterling Capital Partners III, LP, a \$1 billion fund, has committed up to \$60 million to Foundation for future operations and expansion, including the acquisition of the Divestiture Businesses. The funds required to consummate the acquisition of the Divestiture Businesses are immediately available and the Sale Agreement contains no financing contingency. Sterling anticipates being in a position to fund Foundation and close the acquisition promptly upon satisfaction of all required conditions to closing.

Operations Experience

Foundation’s management team is led by a group of seasoned industry professionals with extensive experience in owning, operating and acquiring funeral homes. The executive management team is led by founders and former senior executives of KNA who previously managed many of the Divestiture Businesses. The Management Team members collectively have over 70 years experience successfully acquiring, integrating and managing funeral

businesses. In addition, they are intimately familiar with many of the Divestiture Businesses and the markets in which they operate. The senior members of Foundation's management are:

Stephen Shaffer (CEO; 22 years experience): Mr. Shaffer has served as Chief Financial Officer of KNA since its inception and was previously Corporate Controller of Prime Succession prior to its sale. Mr. Shaffer was employed as an auditor with Ernst & Young in Indianapolis from 1987 to 1994. While working as a CPA at Ernst & Young, Mr. Shaffer's audit clients included two cemetery and funeral consolidation companies, Gibraltar Mausoleum Corporation and Prime Succession. Mr. Shaffer graduated in 1987 from Indiana University School of Business, Bloomington, Indiana with a Bachelor of Science in Accounting.

James Price (COO and EVP; 45 years experience): Mr. Price is KNA's Chief Operating Officer. Mr. Price previously served (in reverse chronological order) as President and CEO of Bonny-Watson, a large Seattle based funeral home and cemetery company; Southern Regional Vice President at Prime Succession, Inc.; Regional Vice President for SCI; and Operations Vice President at Pierce Brothers Holding Company. He also worked as an area manager at IFS and a manager of a local funeral home. Mr. Price is a graduate of the California College of Mortuary Science, Mira Costa College. He is a licensed Funeral Director and Embalmer in California (he is the third generation in his family to serve as a funeral director) and holds a National Board Certificate. Mr. Price is an active member of the National Funeral Directors Association, the Cremation Association of North America, the Death Care Management Council, and the International Cemetery, Cremation, and Funeral Association.

Chris Thomley (CFO; 10 years experience): Mr. Thomley is Chief Accounting Officer of KNA, where he was previously Financial Controller. Between 1998 and 2000, he was employed at Ernst & Young, where he progressed to Senior Auditor. He graduated with honors with a

Bachelor of Science in Accounting and a Master of Accounting from the University of Florida at Gainesville. He is a member of the American Association of Certified Public Accountants and the Florida Institute of Certified Public Accountants, and scored in the top ten in the state of Florida on the May 1998 CPA exam.

These individuals constitute a strong and highly experienced senior management team that has operated together from KNA's inception in 1996 until the formation of Foundation in 2010. Prior to founding KNA in 1996, Steve Shaffer and Jim Price worked together for two years at a previous company. Together they ensure that Foundation is a qualified buyer for the Divestiture Businesses.

Foundation management has extensive experience completing and coordinating quick, effective transitions of acquired businesses. In their experience at KNA, management was involved in over 90 acquisitions of businesses of various sizes and effectively integrated those businesses into KNA. These acquisitions ranged from single funeral home and cemetery transactions to transactions involving up to 87 operating units.

Foundation believes that keeping good personnel helps ensure the continuity of the business, allowing Foundation to compete effectively in each market from the date of acquisition forward. Foundation takes pride in its ability to be financially competitive while maintaining the local staff, which contributes to the long-term success of each business. As a result, consistent with its business model, Foundation anticipates offering employment to most, if not all, of the employees currently employed at the Divestiture Businesses, on terms and at compensation roughly equivalent to their existing compensation. Additionally, the familiarity and comfort of location personnel with the management style and leadership of the Foundation management team will enhance the ability of the Divestiture Businesses to continue to compete effectively.

SCI has agreed in the Sale Agreement not to solicit the employment of any such employee hired by Foundation for a period of two years following closing, as required by Paragraph II.I of the Decision and Order.

The foregoing demonstrates that Foundation has the resources, operating expertise and commitment to its business to not only ensure the continued competitiveness of the Divestiture Businesses, but to enhance their competitiveness and grow market share over time.

III. The Proposed Divestiture Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition

The proposed divestiture of the Foundation Divestiture Assets, as embodied in the Sale Agreement, will achieve the purposes of the Decision and Order. The members of the Foundation management team are experienced operators of funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries they have acquired in the past. With funding from Sterling, Foundation enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Foundation Divestiture Assets, and enhance their competitiveness in the market for funeral and cemetery services. Combining the Foundation Divestiture Assets with the experience of the Foundation management team and the financial resources provided by the Sterling funding will ensure that the objectives of the Decision and Order will be realized.

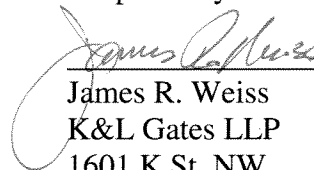
The proposed divestiture will result in no harm to competition. Foundation does not currently compete in any market, as defined in the Commission's Complaint, in which the Foundation Divestiture Assets operate. Consequently, there is no overlap between the operations of Foundation and the Foundation Divestiture Assets, and the proposed divestiture does not raise any competitive issues.

In sum, the proposed divestiture will remedy any anticompetitive effects that could result from the acquisition. The Sale Agreement will achieve the Commission's stated purposes of ensuring the continued use of the Foundation Divestiture Assets in the same business in which they were engaged at the time of the announcement of the proposed acquisition and remedying the lessening of competition alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the Foundation Divestiture Assets to Foundation, as embodied in the Sale Agreement with Foundation, as soon as practicable after the expiration of the public comment period.

Respectfully Submitted



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Counsel for
Respondents
Dated: April 29, 2010

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

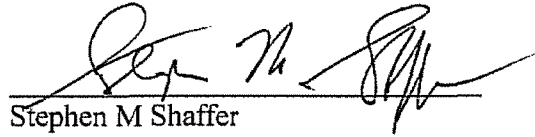


Gregory T. Sangalis
Senior Vice President, Corporate Secretary, and General Counsel
Service Corporation International

CERTIFICATION OF FOUNDATION PARTNERS GROUP, LLC

The facts and information related in the foregoing Petition, insofar as they pertain to Foundation Partners Group and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Stephen M. Shaffer", is written over a horizontal line.

Stephen M Shaffer
Chief Executive Officer
Foundation Partners Group, LLC

EXHIBIT A

[REDACTED FROM THE PUBLIC VERSION]