

Complaint

IN THE MATTER OF

**SERVICE CORPORATION INTERNATIONAL
AND
ALDERWOODS GROUP, INC.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT***Docket C-4174, File No. 0610156**Complaint, November 21, 2006 – Decision, December 29, 2006*

This consent order addresses the acquisition by Service Corporation International (SCI) of Alderwoods Group, Inc. The acquisition would lessen competition in connection with the provision of funeral services (and associated products) or cemetery services (and associated products and property) in many of the local markets in which the respondents compete. Under the terms of the order, SCI must divest 40 funeral home facilities in 29 local markets and 15 cemetery properties in 12 local markets across the United States. In each of six additional funeral service markets, SCI has the option of either divesting the Alderwoods funeral home(s) it will be acquiring or terminating its licensing agreement with the third-party funeral homes that are providing funeral services in the markets under SCI's Dignity Memorial trademark. In these markets, until the divestitures required by the order are completed, SCI must cease and desist from suggesting prices to those third-party Dignity Affiliates. The eventual acquirers of the assets required to be divested and the manner of their divestiture must receive the prior approval of the Commission. The order also requires SCI to provide the Commission with regular compliance reports.

Participants

For the *Commission*: Joseph Brownman, Jeanne H. Liu, Paul J. Nolan, M. Elizabeth O'Neill, and Nicholas A. Widnell.

For the *Respondents*: David Clanton and David Laing, Baker & McKenzie; Tom D. Smith, Jones Day; James Shelger, SCI General Counsel; and Michael Byowitz and David Schwartz, Wachtell, Lipton, Rosen & Katz.

Complaint

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Service Corporation International (“SCI”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Alderwoods Group, Inc., (Alderwoods), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. Respondent Service Corporation International

1. Respondent SCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019. SCI, among other things, is engaged in the sale and provision of (a) funeral services and associated products, and (b) cemetery services and associated products and property.

2. Respondent SCI is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. As of December 31, 2005, Respondent SCI owned and operated about 1023 funeral homes and 359 cemeteries in the United States. SCI had sales in 2005 of \$1.7 billion. In the majority of instances, SCI’s sales of funeral and cemetery services are of the traditional, full-service variety.

Complaint

II. Respondent Alderwoods Group, Inc.

4. Respondent Alderwoods is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 311 Elm Street, Suite 1000, Cincinnati, Ohio 45202. Alderwoods is engaged in the sale and provision of (a) funeral services and associated products, and (b) cemetery services and associated products and property.

5. Respondent Alderwoods is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. As of December 31, 2005, Respondent Alderwoods owned and operated about 581 funeral homes and 128 cemeteries in the United States. Alderwoods had sales in 2005 of approximately \$740 million. In the majority of instances, Alderwoods' sales of funeral and cemetery services are of the traditional, full-service variety.

III. The Proposed Acquisition

7. On or about April 2, 2006, Respondents SCI and Alderwoods entered into an agreement for SCI to acquire all of the outstanding voting securities of Alderwoods. The purchase price is approximately \$1.23 billion, including the assumption of debt.

8. The proposed acquisition would combine the two largest sellers and providers of funeral and cemetery services and associated merchandise or property in the United States. Respondents SCI and Alderwoods both own and operate funeral service facilities, cemetery service facilities, or both funeral

Complaint

service and cemetery service facilities, in about 140 of the same local geographic areas throughout the United States.

IV. SCI's Dignity Memorial Program

9. One of the service marks used by Respondent SCI in connection with its sale of funeral services and associated products is "Dignity Memorial." In some parts of the country where SCI does not operate funeral service facilities, SCI has entered into license agreements or other business relationships with third party funeral service providers to allow those third parties, for a fee, to sell funeral services and associated products under the Dignity Memorial service mark. SCI refers to these third parties as "Dignity Memorial affiliates."

10. Pursuant to its license agreements with the Dignity Memorial affiliates, Respondent SCI sells promotional materials or sales aids to these third party funeral homes and requires that a specified level of service be provided in connection with a Dignity Memorial funeral arrangement. SCI has suggested retail prices for Dignity Memorial services to some third party funeral homes. Alderwoods provides funeral services in some of the areas in which SCI has a contractual relationship with Dignity Memorial affiliates. After the acquisition, SCI, through the acquired Alderwoods facilities and businesses, will be in direct competition with the third party Dignity Memorial affiliates that by contract will continue to operate under the license agreement to sell Dignity Memorial funeral services.

V. Nature of Trade and Commerce

11. The funeral homes and cemeteries of Respondents SCI and Alderwoods compete on many fronts, including name recognition and reputation, location, price, range of available services, quality of service and associated product offerings, and the appearance of facilities.

Complaint

12. Respondents SCI and Alderwoods normally provide a broad spectrum of products and services from each of their facilities in an effort to meet the desires of a highly diverse population. Within that highly diverse population, consumers of funeral or cemetery services often observe a tradition of shared customs and rituals associated with specific cultural, ethnic, or religious needs. Notwithstanding the willingness of funeral and cemetery service providers to serve all potential customers, customers of funeral and cemetery facilities often associate specific facilities or properties with the ability to provide the specialized customs and ritual services that they require. SCI has recognized that, in some areas, people who share a common culture generally have an affinity to each other when there is a death in the family. SCI refers to consumers seeking specialized services associated with their cultural, ethnic, or religious affiliation as “customs-conscious” consumers.

VI. Relevant Product Markets

13. The relevant lines of commerce in which to analyze the proposed acquisition are the provision and sale of:

- (a) funeral services and funeral-service associated products, which includes all activities relating to the sale of funeral services and funeral goods, including but not limited to, services used to care for and prepare bodies for burial, cremation, or other final disposition; services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains; and the sale of goods in connection with funeral services; and
- (b) cemetery services and cemetery-service associated products and property, which includes all activities relating to the sale of goods and services provided for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, or disposition in a niche.

Complaint

14. In some local markets, certain funeral homes and cemeteries cater to specific populations by focusing on the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In these situations, market segmentation exists in connection with Jewish, Chinese-American, or African-American populations.

VII. Relevant Geographic Markets

15. For the purposes of this Complaint, the relevant geographic markets within which to assess the competitive effects of the proposed acquisition, as concerns funeral services and funeral-service associated products, are the following: (1) Abilene, Texas; (2) Alhambra, California; (3) Anchorage, Alaska; (4) Baton Rouge, Louisiana; (5) Broward County, Florida; (6) Brownsville, Texas; (7) Cartersville, Georgia; (8) Charlotte, North Carolina; (9) Fort Myers, Florida; (10) Gonzales, Louisiana; (11) Greensboro, North Carolina; (12) Hanford, California; (13) Hobbs, New Mexico; (14) Klamath Falls, Oregon; (15) Killeen, Texas; (16) Lansing, Michigan; (17) Lexington and West Columbia, South Carolina; (18) Lynchburg, Virginia; (19) Manassas, Virginia; (20) Mansfield, Ohio; (21) Memphis, Tennessee; (22) Merced, California; (23) Meridian, Mississippi; (24) Miami-Dade County, Florida; (25) Newton, Mississippi; (26) Odessa, Texas; (27) Pascagoula, Mississippi; (28) Port Orange, Florida; (29) Northern Rockland County, New York; (30) Seguin, Texas; (31) Tulare, California; (32) Southern Ventura County, California; (33) Williamsburg, Virginia; (34) Yakima, Washington; and (35) Yuma, Arizona.

16. For the purposes of this Complaint, the relevant geographic markets within which to assess the competitive effects of the proposed acquisition, as concerns cemetery services and cemetery-service associated products and property, are the following: (1) Abilene, Texas; (2) Baton Rouge, Louisiana; (3) Bradenton and Palmetto, Florida; (4) Broward County, Florida;

Complaint

(5) Columbia and Lexington, South Carolina; (6) Conroe, Texas; (7) Fort Myers, Florida; (8) Macon, Georgia; (9) Miami-Dade County, Florida; (10) Memphis, Tennessee; (11) Nashville, Tennessee; and (12) Ventura County, California.

VIII. Concentration

17. Each of the local areas identified in Paragraphs 15 and 16 is highly concentrated, and the proposed acquisition will substantially increase concentration, taking account of concentration measured by the Herfindahl-Hirschman Index (“HHI”), the number of competitively significant firms remaining in the market, and the market shares of SCI and Alderwoods.

(a) In the funeral service markets:

1. **Abilene, Texas:** SCI and Alderwoods have a combined market share of about 63 percent. The proposed acquisition would increase the HHI by about 1210 points, from 3130 to 4340, leave a total of only four competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

2. **Alhambra, California:** SCI and Alderwoods have a combined market share of about 100 percent of a market limited to competitors and their facilities that provide the customs and rituals that serve the Chinese-American community. The proposed acquisition would increase the HHI by about 4990 points, from 5010 to 10,000, and create a virtual monopoly of meaningful competitors.

3. **Baton Rouge, Louisiana:** SCI and Alderwoods have a combined market share of about 44 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 546 points, from 4529 to 5075, and create a virtual duopoly of meaningful competitors.

Complaint

4. **Broward County, Florida:** SCI and Alderwoods have a combined market share of about 100 percent of a market limited to competitors and their facilities that provide the customs and rituals that serve the Jewish community. The proposed acquisition would increase the HHI by about 3977 points, from 6023 to 10,000, and create a virtual monopoly of meaningful competitors.

5. **Brownsville, Texas:** SCI and Alderwoods have a combined market share of about 47 percent. The proposed acquisition would increase the HHI by about 1103 points, from 2127 to 3230, and leave a total of only four competitors.

6. **Cartersville, Georgia:** SCI and Alderwoods have a combined market share of about 100 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 4983 points, from 5017 to 10,000, and create a virtual monopoly of meaningful competitors.

7. **Charlotte, North Carolina:** SCI and Alderwoods have a combined market share of about 62 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1411 points, from 2726 to 4137, leave a total of only four meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

8. **Fort Myers, Florida:** SCI and Alderwoods have a combined market share of about 47 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1098 points, from 1990

Complaint

to 3088, and leave a total of only three meaningful competitors.

9. Gonzales, Louisiana: SCI and Alderwoods have a combined market share of about 81 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 2188 points, from 4689 to 6877, and create a virtual duopoly of meaningful competitors.

10. Greensboro, North Carolina: SCI and Alderwoods have a combined market share of about 58 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1156 points, from 3525 to 4681, leave a total of only three meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

11. Hanford, California: SCI and Alderwoods have a combined market share of about 100 percent. The proposed acquisition would increase the HHI by about 4558 points, from 5442 to 10,000, and create a virtual monopoly.

12. Killeen, Texas: SCI and Alderwoods have a combined market share of about 57 percent. The proposed acquisition would increase the HHI by about 1140 points, from 2942 to 4082, and leave a total of only four competitors.

13. Lansing, Michigan: SCI and Alderwoods have a combined market share of about 65 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1701 points, from 2858

Complaint

to 4559, and leave a total of only four meaningful competitors.

14. Lexington and West Columbia, South Carolina: SCI and Alderwoods have a combined market share of about 47 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 599 points, from 2982 to 3581, and leave a total of only four meaningful competitors.

15. Lynchburg, Virginia: SCI and Alderwoods have a combined market share of 55 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1188 points, from 2717 to 3905, and leave a total of only four meaningful competitors.

16. Manassas, Virginia: SCI and Alderwoods have a combined market share of about 42 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 795 points, from 4341 to 5136, and create a virtual duopoly of meaningful competitors.

17. Memphis, Tennessee: SCI and Alderwoods have a combined market share of about 63 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1869 points, from 2409 to 4278, leave a total of only five meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

18. Merced, California: SCI and Alderwoods have a combined market share of about 59 percent. The proposed acquisition would increase the HHI by about

Complaint

1722 points, from 2329 to 4051, leave a total of only four competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

19. Meridian, Mississippi: SCI and Alderwoods have a combined market share of about 100 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 3870 points, from 6130 to 10,000, and create a virtual monopoly of meaningful competitors.

20. Miami-Dade County, Florida: SCI and Alderwoods have a combined market share of about 100 percent of a market limited to competitors and their facilities that provide the customs and rituals that serve the Jewish community. The proposed acquisition would increase the HHI by about 4666 points, from 5334 to 10,000, and create a virtual monopoly of meaningful competitors.

21. Newton, Mississippi: SCI and Alderwoods have a combined market share of about 100 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 3856 points, from 6144 to 10,000, and create a virtual monopoly of meaningful competitors.

22. Odessa, Texas: SCI and Alderwoods have a combined market share of about 75 percent. The proposed acquisition would increase the HHI by about 1605 points, from 4433 to 6038, leave a total of only three competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

Complaint

23. Port Orange, Florida: SCI and Alderwoods have a combined market share of about 36 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 631 points, from 2068 to 2699, leave a total of only five meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

24. Northern Rockland County, New York: SCI and Alderwoods have a combined market share of about 70 percent. The proposed acquisition would increase the HHI by about 2120 points, from 3103 to 5223, leave a total of only four competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

25. Seguin, Texas: SCI and Alderwoods have a combined market share of about 81 percent. The proposed acquisition would increase the HHI by about 1970 points, from 4724 to 6694, and leave a total of only three competitors.

26. Tulare, California: SCI and Alderwoods have a combined market share of about 38 percent. The proposed acquisition would increase the HHI by about 716 points, from 4575 to 5291, and create a virtual duopoly.

27. Southern Ventura County, California: SCI and Alderwoods have a combined market share of about 65 percent. The proposed acquisition would increase the HHI by about 908 points, from 3591 to 4499, leave a total of only four competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

Complaint

28. **Yakima, Washington:** SCI and Alderwoods have a combined market share of about 83 percent. The proposed acquisition would increase the HHI by about 2582 points, from 4599 to 7181, and create a virtual duopoly.

29. **Yuma, Arizona:** SCI and Alderwoods have a combined market share of about 83 percent. The proposed acquisition would increase the HHI by about 2809 points, from 4418 to 7227, and leave a total of only three competitors.

(b) In the cemetery service markets:

1. **Abilene, Texas:** SCI and Alderwoods have a combined market share of about 88 percent. The proposed acquisition would increase the HHI by about 2341 points, from 5523 to 7864, leave a total of only three competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

2. **Baton Rouge, Louisiana:** SCI and Alderwoods have a combined market share of about 81 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 2989 points, from 3928 to 6917, and create a virtual duopoly of meaningful competitors.

3. **Bradenton and Palmetto, Florida:** SCI and Alderwoods have a combined market share of about 98 percent. The proposed acquisition would increase the HHI by about 3579 points, from 6108 to 9687, and create a virtual monopoly.

4. **Broward County, Florida:** SCI and Alderwoods have a combined market share of about 95 percent of a market limited to competitors and their facilities that

Complaint

provide the customs and rituals that serve the Jewish community. The proposed acquisition would increase the HHI by about 2604 points, from 6451 to 9055, and create a virtual duopoly of meaningful competitors.

5. **Columbia and Lexington, South Carolina:** SCI and Alderwoods have a combined market share of about 81 percent. The proposed acquisition would increase the HHI by about 3202 points, from 3518 to 6720, and leave a total of only three competitors.

6. **Conroe, Texas:** SCI and Alderwoods have a combined market share of about 82 percent. The proposed acquisition would increase the HHI by about 3097 points, from 3757 to 6854, leave a total of only three meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

7. **Fort Myers, Florida:** SCI and Alderwoods have a combined market share of about 92 percent. The proposed acquisition would increase the HHI by about 4189 points, from 4288 to 8477, and create a virtual duopoly.

8. **Macon, Georgia:** SCI and Alderwoods have a combined market share of about 48 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 914 points, from 2169 to 3083, leave a total of only four meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

9. **Miami-Dade County, Florida:** SCI and Alderwoods have a combined market share of about 46 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed

Complaint

acquisition would increase the HHI by about 779 points, from 2766 to 3545, leave a total of only four meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

10. Memphis, Tennessee: SCI and Alderwoods have a combined market share of about 63 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1941 points, from 2534 to 4475, and leave a total of only four meaningful competitors.

11. Nashville, Tennessee: SCI and Alderwoods have a combined market share of about 68 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 1910 points, from 3173 to 5083, and leave a total of only three meaningful competitors.

12. Ventura County, California: SCI and Alderwoods have a combined market share of about 42 percent of a market limited to facilities that serve certain demographic segments of the population. The proposed acquisition would increase the HHI by about 858 points, from 2379 to 3237, leave a total of only four meaningful competitors, and eliminate one of two competitors that are the first and second choices for a substantial number of consumers.

18. SCI has a contract with a Dignity Memorial affiliate and Alderwoods also has funeral service facilities in each of the following highly concentrated local areas:

Complaint

1. **Anchorage, Alaska:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 81 percent. The market has only two other competitors.

2. **Hobbs, New Mexico:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 68 percent. The market has only two other competitors.

3. **Klamath Falls, Oregon:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 65 percent. The market has only two other competitors.

4. **Mansfield, Ohio:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 70 percent. The market has only three other competitors.

5. **Pascagoula, Mississippi:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 70 percent of a market limited to facilities that serve certain demographic segments of the population. The market has only one other meaningful competitor.

6. **Williamsburg, Virginia:** The SCI Dignity Memorial affiliate and Alderwoods have a combined market share of about 100 percent of a market limited to facilities that serve certain demographic segments of the population. There are no other meaningful competitors.

IX. Entry Conditions

19. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects.

Complaint

X. Effects of the Acquisition

20. The acquisition may substantially lessen competition in the 29 funeral service relevant markets identified in Paragraph 17(a) and the 12 cemetery service relevant markets identified in Paragraph 17(b) in which SCI and Alderwoods both own and operate funeral homes or cemeteries in the following ways, among others:

(a) by eliminating direct competition between Respondents SCI and Alderwoods;

(b) by increasing the likelihood that Respondent SCI will unilaterally exercise market power; or

(c) by increasing the likelihood of, or facilitating, coordinated interaction among remaining competitively significant firms;

each of which increases the likelihood of an increase in the prices of funeral services and their associated products, or cemetery services and their associated products and property; or that the services, or the quality of services, provided to funeral and cemetery service customers will decrease.

21. In 19 funeral service markets and nine cemetery service markets identified in Paragraph 17, the acquisition will increase the likelihood that Respondent SCI will unilaterally exercise market power in one of two ways:

(a) by increasing prices or reducing services generally in markets in which it will have a monopoly or near-monopoly market share post-acquisition; or

(b) by increasing prices or reducing services where it has a significant, but not a monopoly or near-monopoly market share post-acquisition, and owns funeral homes or cemeteries that are the first and second choices for a substantial number

Complaint

of consumers (due to: their appeal to specific religious or ethnic groups; the physical proximity of their facilities; or their provision of traditional, high-end funeral services) so that it will benefit from: (i) the increase in price (or decrease in services) at the facilities of first choice for consumers and (ii) the business moving from the facilities of first choice for consumers to their second choices.

22. In 15 funeral service markets and four cemetery service markets identified in Paragraph 17, the acquisition will increase the likelihood of coordinated interaction. In these highly concentrated markets, the merger will facilitate coordination by the small number of remaining competitively significant firms by facilitating: (a) agreement upon terms of coordination; (b) opportunities to monitor compliance with those terms of agreement; and (c) the ability of the firms in the market to punish firms that deviate from the terms of agreement.

23. The acquisition also may substantially lessen competition in the six funeral service relevant markets identified in Paragraph 18 in which SCI has a license agreement or other contractual relationship with a Dignity Memorial affiliate and in which Alderwoods owns and operates a funeral home. Because of the danger that SCI and the Dignity Memorial affiliate will coordinate on pricing or the quality or level of services offered, the lessening of competition may occur in the following ways, among others:

(a) by eliminating direct competition between the Dignity Memorial affiliate and Alderwoods; or

(b) by increasing the likelihood of, or facilitating, coordinated interaction among all competitively significant firms;

each of which increases the likelihood of an increase in the prices of funeral services and their associated products, or that the

Order to Maintain Assets

services, or the quality of services, provided to funeral service customers will decrease.

XI. Violations Charged

24. The agreement described in Paragraph 7 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this twenty-first day of November, 2006, issues its Complaint against said Respondents.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Service Corporation International ("SCI") of the outstanding voting securities of Respondent Alderwoods Group, Inc. ("Alderwoods"), hereinafter referred to collectively as "Respondents," and Respondents having been furnished thereafter with a copy of the 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 Respondents 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

Order to Maintain Assets

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent SCI is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.

2. Respondent Alderwoods is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 311 Elm Street, Suite 1000, Cincinnati, Ohio 45202.

Order to Maintain Assets

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

- A. “Additional Held Separate Businesses” means all activities conducted by Alderwoods, prior to the Acquisition, at the locations identified in Appendix C of this Hold Separate, relating to the provision of Funeral Services or Cemetery Services.
- B. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- C. “Divestiture Date” means, with regard to any Divestiture Business, the date on which Respondents (or a Divestiture Trustee) close on the divestiture of that Divestiture Business completely and as required by Paragraph II (or Paragraph VI) of the Decision and Order to an Acquirer approved by the Commission.
- D. “Held Separate Business” means the Alderwoods Divestiture Assets, Alderwoods Divestiture Businesses, all

Order to Maintain Assets

full-time, part-time, or contract employees of the Alderwoods Divestiture Businesses (“Held Separate Business employees”), and the Additional Held Separate Businesses.

- E. “Hold Separate” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VI hereof.
- G. “Interim Monitor” means the Person appointed pursuant to Paragraph II.D. of this Hold Separate.
- H. “Orders” means the Decision and Order and this Hold Separate.

II.**IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondents shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Interim Monitor, except to the extent that Respondents must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws.

Order to Maintain Assets

B. During the Hold Separate Period, Respondents shall:

1. Take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Businesses and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Businesses, except for ordinary wear and tear; and
2. Not sell, transfer, encumber or otherwise impair the full economic viability, marketability or competitiveness of the Divestiture Businesses.

C. From the date Respondents execute the Consent Agreement until the Hold Separate Period begins, Respondent Alderwoods shall take such actions as are necessary to maintain and assure the continued maintenance of the full economic viability, marketability and competitiveness of the Held Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

D. Respondents shall hold the Held Separate Business separate, apart, and independent of SCI and Alderwoods on the following terms and conditions:

1. William E. Rowe shall serve as Interim Monitor, pursuant to the agreement executed by the Interim Monitor and Respondents and attached as Confidential Appendix A ("Monitor Agreement").
 - (a) Respondents shall, no later than one (1) day after the Acquisition Date, pursuant to the Monitor Agreement, transfer to and confer upon the Interim Monitor all rights, powers, and authority necessary to permit the Interim Monitor to perform his duties and responsibilities pursuant to this Hold Separate,

Order to Maintain Assets

in a manner consistent with the purposes of the Decision and Order and in consultation with Commission staff, and shall include in the Monitor Agreement all provisions necessary to effectuate this requirement.

- (b) The Monitor Agreement shall require that the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- (c) The Interim Monitor shall have the responsibility for monitoring the organization of the Held Separate Business; supervising the management of the Held Separate Business by the Manager; maintaining the independence of the Held Separate Business; and monitoring Respondents' compliance with their obligations pursuant to the Orders, including maintaining the viability, marketability and competitiveness of the Divestiture Businesses pending divestiture.
- (d) Subject to all applicable laws and regulations, the Interim Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Divestiture Businesses and Additional Held Separate Businesses, and to any other relevant information as the Interim Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Divestiture Businesses and Additional Held Separate Businesses. Respondents shall develop such financial or other information as the Interim Monitor may reasonably request and shall cooperate with the Interim Monitor. Respondents shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents'

Order to Maintain Assets

compliance with this Hold Separate, the Consent Agreement or the Decision and Order or otherwise to perform his duties and responsibilities consistent with the terms of this Hold Separate.

- (e) The Interim Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- (f) The Commission may 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 relating to materials and information received from the Commission in connection with performance of the Interim Monitor's duties.
- (g) Respondents may 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; *provided, however*, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- (h) Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the Interim Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Interim Monitor's assessment of the extent to which the businesses comprising the Divestiture Businesses and Additional Held Separate Businesses are meeting (or exceeding) their

Order to Maintain Assets

projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

- (i) If the Interim Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Interim Monitor consistent with the terms of this Hold Separate, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any substitute Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Interim Monitor. Respondents and the substitute Interim Monitor shall execute a Monitor Agreement, subject to the approval of the Commission, consistent with this paragraph.
 - (j) The Interim Monitor shall serve until the day after the Divestiture Date pertaining to the last divestiture of a business or asset within the Divestiture Businesses; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
2. No later than one (1) day after the Acquisition Date, Respondents shall enter into a management agreement with, and shall transfer all rights, powers, and authority necessary to manage and maintain the Held Separate Business, to Ron Collins (“Manager”).

Order to Maintain Assets

- (a) In the event that the aforementioned individual declines an offer to act as a Manager, or accepts the position of Manager and subsequently ceases to act as a Manager, then Respondents shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate.
- (b) The Manager shall report directly and exclusively to the Interim Monitor and shall manage the Held Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate.
- (c) The management agreement between Respondents and the Manager shall provide that:
 - (1) Respondents shall provide the individual who agrees to serve as Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Held Separate Business's viability, marketability and competitiveness until the applicable Divestiture Date(s) have occurred, and as may otherwise be necessary to achieve the purposes of this Hold Separate; and

Order to Maintain Assets

- (2) Respondents shall, at the option of the Manager, offer to continue the Manager's employment for a period of no less than one (1) year following the Manager's acceptable completion of service as a Manager at terms no less favorable than those pursuant to which the Manager was employed prior to the Acquisition; *provided, however,* this requirement shall not apply if the Manager was removed from service for cause.
- (d) The Manager shall make no material changes in the ongoing operations of the Held Separate Business except with the approval of the Interim Monitor, in consultation with the Commission staff.
- (e) The Manager shall have the authority, with the approval of the Interim Monitor, to remove Held Separate Business employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Interim Monitor, may request Respondents to, and Respondents shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
- (f) In addition to Held Separate Business employees, the Manager may, with the approval of the Interim Monitor, employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Business.
- (g) The Interim Monitor shall be permitted, in consultation with the Commission staff, to remove

Order to Maintain Assets

the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in this paragraph.

3. The Interim Monitor and the Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
4. Respondents shall indemnify the Interim Monitor and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's or the Manager'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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor or the Manager.
5. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that such employees leave or have left the Held Separate Business prior to the Divestiture Date, the Manager, with the approval of the Interim Monitor, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
6. In connection with support services or products not included within the Held Separate Business,

Order to Maintain Assets

Respondents shall continue to provide, or offer to provide, the same support services to the Held Separate Business as customarily have been or are being provided to such businesses by Respondent Alderwoods as of the date the Consent Agreement is signed by Respondent Alderwoods. For any services or products that Respondents may provide to the Held Separate Business, Respondents may charge no more than the same price they charge others for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Confidential Business Information of or pertaining to the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.

- (a) Respondents shall offer to the Held Separate Business any services and products that Respondents provide, in the ordinary course of their businesses, to their other businesses directly or through third party contracts, or that they have provided in the ordinary course of their businesses directly or through third party contracts to the businesses constituting the Held Separate Business at any time since March 31, 2006. The Held Separate Business may, at the option of the Manager with the approval of the Interim Monitor, obtain such services and products from Respondents. Subject to the foregoing, the

Order to Maintain Assets

services and products that Respondents shall offer the Held Separate Business shall include, but shall not be limited to, the following:

- (1) human resources and administrative services, including but not limited to payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits;
- (2) federal and state regulatory compliance and policy development services;
- (3) environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
- (4) financial accounting services;
- (5) preparation of tax returns;
- (6) audit services;
- (7) information technology support services;
- (8) processing of accounts payable and accounts receivable;
- (9) technical support;
- (10) procurement of supplies;
- (11) maintenance and repair of facilities;
- (12) procurement of goods and services utilized in the ordinary course of business by the Held Separate Business; and

Order to Maintain Assets

(13) legal services.

(b) The Held Separate Business shall have, at the option of the Manager with the approval of the Interim Monitor, the ability to acquire services and products from third parties unaffiliated with Respondents.

7. Respondents shall provide the Held Separate Business with sufficient financial and other resources:

(a) as are appropriate in the judgment of the Interim Monitor to operate the Held Separate Business as it is currently operated;

(b) to perform all maintenance to, and replacements of, the assets of the Held Separate Business;

(c) to carry on existing and planned capital projects and business plans; and

(d) to maintain the viability, competitiveness, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order and in consultation with the Interim Monitor, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

Order to Maintain Assets

8. Respondents shall cause the Interim Monitor, the Manager, and each of Respondent SCI's employees having access to Confidential Business Information of or pertaining to the Held Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondents' businesses or activities other than the Held Separate Business.
9. Except for the Manager, Held Separate Business employees, and support services employees involved in providing services to the Held Separate Business pursuant to this Hold Separate, and except to the extent provided in this Hold Separate, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
10. Respondents' employees (excluding the Held Separate Business employees and employees involved in providing support services to the Held Separate Business pursuant to Paragraph II.D.6.) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Held Separate Business not in the public domain except:
 - (a) as required by law; and

Order to Maintain Assets

(b) to the extent that necessary information is exchanged:

- (1) in the course of consummating the Acquisition;
- (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
- (3) in complying with this Held Separate or the Consent Agreement;
- (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
- (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
- (6) in obtaining legal advice.

Nor shall the Manager or any Held Separate Business employees receive or have access to, or use or continue to use, any Confidential Business Information not in the public domain about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondents may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the

Order to Maintain Assets

United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

11. Respondents and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Interim Monitor, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business, including, but not limited to, the opportunity by the Interim Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate.
 12. No later than five (5) days after the Acquisition Date, Respondents shall establish written procedures, subject to the approval of the Interim Monitor, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate.
 13. No later than five (5) days after the date this Hold Separate becomes final, Respondents shall circulate to employees of the Held Separate Business, and to persons who are employed in Respondents' businesses that compete with the Held Separate Business, a notice of this Hold Separate and the Consent Agreement, in the form attached hereto as Appendix B.
- E. Among other things as may be necessary to preserve the marketability, economic viability, and competitiveness of

Order to Maintain Assets

the SCI Divestiture Assets and SCI Divestiture Businesses, Respondents shall:

1. Maintain the operations of the SCI Divestiture Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the SCI Divestiture Assets);
2. Provide sufficient working capital to operate the SCI Divestiture Businesses at least at current rates of operation, to meet all capital calls with respect to the SCI Divestiture Businesses and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the SCI Divestiture Businesses;
3. Make available for use by the SCI Divestiture Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the SCI Divestiture Assets;
4. Continue, at least at their scheduled pace, any additional expenditures for the SCI Divestiture Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all marketing expenditures;
5. Use best efforts to maintain and increase sales of the SCI Divestiture Businesses, and to maintain at budgeted levels for the year 2006 or the current year, whichever are higher, all administrative, technical, and marketing support for the SCI Divestiture Businesses;
6. Provide such support services to the SCI Divestiture Businesses as were being provided to these businesses

Order to Maintain Assets

as of the date the Consent Agreement was signed by Respondents;

7. Maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the SCI Divestiture Businesses prior to the Acquisition;
 8. Assure that Respondents' employees with primary responsibility for managing and operating the SCI Divestiture Businesses are not transferred or reassigned to other areas within Respondents' organizations except for transfer bids initiated by employees pursuant to Respondents' regular, established job posting policy; and
 9. Use best efforts to preserve and maintain the existing relationships with customers, suppliers, vendors, private and governmental entities, and others having business relations with the SCI Divestiture Businesses.
- F. Until the respective Divestiture Date for each business within the Divestiture Businesses has occurred, Respondents shall provide the relevant Divestiture Business Employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the relevant Divestiture Businesses pending divestiture. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of each business within the Divestiture Businesses until the applicable Divestiture Date(s) occur(s), and as may otherwise be necessary to achieve the purposes of this Hold Separate.

Order to Maintain Assets

- G. From the date Respondents execute the Consent Agreement until this Hold Separate terminates, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Divestiture Business Employee(s) for a position of employment with Respondents. The Acquirer shall have the option of offering employment to any Divestiture Business Employee(s). Respondents shall not interfere with the employment by the Acquirer of such employees; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.
- H. Respondents 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) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.

Order to Maintain Assets

- I. The purpose of this Hold Separate is to: (1) preserve the assets and businesses within the Held Separate Business as viable, competitive, and ongoing businesses independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Held Separate Business, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) maintain the full economic viability, marketability and competitiveness of all of the business(es) associated with the Divestiture Businesses, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Businesses except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that until such time as Respondents have either terminated the Dignity Memorial Affiliate Agreement with each Dignity Affiliate in accordance with the requirements of Paragraph III.A.1. of the Decision and Order or divested the correlating Alternative Divestiture Assets pursuant to Paragraph III.A.2. of the Decision and Order, Respondents shall not, directly or indirectly, or through any corporate or other device, enter into or enforce any agreement, or exchange or facilitate in any manner, the exchange or transfer of information from Respondents to any current or former Dignity Affiliate, regarding actual, suggested, or future prices, or other terms or conditions of sale, of Funeral Services; *provided, however,* that nothing herein shall prohibit Respondents from enforcing their Intellectual Property rights as to “Dignity” (including “Dignidad,” “Dignite” and other translations of Dignity into languages other than English) and “Dignity Memorial.”

Order to Maintain Assets

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in Respondents that may affect compliance obligations arising out of this Hold Separate, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, relating to compliance with this Hold Separate, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents 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 Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present.

VI.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

Order to Maintain Assets

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the Divestiture Date pertaining to the last divestiture of a business or asset within the Divestiture Businesses required to be divested pursuant to the Decision and Order; *provided, however*, that (1) each of the Alderwoods Divestiture Businesses identified in Appendix B of the Decision and Order shall be included in the Held Separate Business only until such business is divested pursuant to Paragraph II.A. of the Decision and Order, (2) each of the Alderwoods Divestiture Businesses identified in Appendix D of the Decision and Order shall be included in the Held Separate Business only until (i) such business is divested pursuant to Paragraph III.A. of the Decision and Order, or (ii) Respondents have terminated the Dignity Memorial Affiliate Agreement with the corresponding Dignity Affiliate in each relevant market pursuant to Paragraph III.A. of the Decision and Order, and (3) each business identified in Appendix C of this Hold Separate shall be included in the Held Separate Business only until Respondents have divested the corresponding SCI Divestiture Businesses in each relevant market pursuant to Paragraph II.A. of the Decision and Order.

By the Commission.

Order to Maintain Assets

CONFIDENTIAL APPENDIX A

**[Redacted from the Public Record
But Incorporated by Reference]**

APPENDIX B

**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

Service Corporation International (“SCI”) and Alderwoods Group, Inc. (“Alderwoods”), referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“Commission”) providing for divestiture of certain businesses and assets and other relief, in connection with the acquisition of Alderwoods by SCI.

Under the terms of the Consent Agreement, SCI must divest the SCI businesses and assets at the locations identified in Appendix ____ (attached), and the Alderwoods businesses and assets at the locations identified in the Appendix ____ (attached), to persons approved by the Commission and in a manner acceptable to the Commission, within 180 days of the consummation of SCI’s acquisition of Alderwoods.

As used in the Consent Agreement, the term “Held Separate Business” means the Alderwoods businesses and assets identified in Appendix ____, and all full-time, part-time or contract employees of those businesses. During the Hold Separate Period, which begins on the date SCI acquires Alderwoods and ends after SCI has completed the required divestitures, SCI must hold the

Order to Maintain Assets

Held Separate Business separate, apart, and independent from SCI's other businesses. The businesses within the Held Separate Business must be maintained as ongoing, competitive businesses, independent of all other businesses of SCI, until SCI has completed the required divestitures. All competitive information relating to the businesses within the Held Separate Business must be retained and maintained on a confidential basis by the persons who have been and continue to be involved in the operations or sale of any of the businesses within the Held Separate Business. Except as provided in the Decision and Order or the Hold Separate, all such persons are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person employed by SCI or whose employment relates to any of SCI's businesses other than the Held Separate Business, and may be required to sign a statement agreeing to keep such information confidential. Similarly, persons involved in similar activities with respect to SCI's businesses are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any similar SCI information to or with any other person whose employment involves the Held Separate Business, except as otherwise provided in the Consent Agreement.

In addition, until divestiture occurs, Respondents must take such actions as are necessary to maintain the economic viability, marketability, and competitiveness of each of the SCI businesses and assets identified in Appendix ___, and each of the Alderwoods businesses and assets identified in Appendix ___, and must prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of these businesses and assets except for ordinary wear and tear. The Commission has appointed [Name] to serve as Interim Monitor until the divestitures are completed to oversee compliance with the hold separate and asset maintenance requirements of the Consent Agreement. [Name] can be contacted at: [toll free number; e-mail address].

Order to Maintain Assets

Because any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law, it is important that the letter and spirit of the Consent Agreement be honored.

APPENDIX C

Additional Held Separate Businesses

Relevant Market	FH/CE	Name	Property Address
Abilene, TX	FH	Elliott-Hamil Funeral Home	5701 U.S. Highway 277S Abilene, TX
Abilene, TX	FH	Elliott-Hamil Funeral Home	542 Hickory St. Abilene, TX
Abilene, TX	FH	Community Memorial Funeral Home	1443 N. 2 nd St. Abilene, TX
Abilene, TX	CE	Elliott-Hamil Garden of Memory	5701 U.S. Highway 277S Abilene, TX
Alhambra, CA	FH	Rose Hills Mortuary	205 S. Chapel Ave. Alhambra, CA
Cartersville, GA	FH	Owen Funeral Home	12 Collins Drive Cartersville, GA
Fort Myers, FL	FH	Lee Memorial Park Funeral Home	12777 State Road 82 Fort Myers, FL

Order to Maintain Assets

Relevant Market	FH/CE	Name	Property Address
Fort Myers, FL	FH	Phil Kiser Funeral Home	9231 Cypress Lake Dr. Fort Myers, FL
Fort Myers, FL	CE	Coral Ridge Cemetery	1630 SW Pine Island Rd. Cape Coral, FL
Fort Myers, FL	CE	Lee Memorial Park	12777 State Road 82 Fort Myers, FL
Gonzales, LA	FH	Ourso Funeral Home	13533 Airline Highway Gonzalez, LA
Greensboro, NC	FH	Hanes-Lineberry Funeral Service	515 N. Elm St. Greensboro, NC
Greensboro, NC	FH	Hanes-Lineberry Funeral Service	1900 Vanstory St. Greensboro, NC
Greensboro, NC	FH	Hanes-Lineberry Funeral Service	6000 High Point Rd. Greensboro, NC
Greensboro, NC	FH	Sensible Alternatives	3601 Whitehurst Rd. Greensboro, NC
Lansing, MI	FH	Gorsline Runciman Funeral Homes	111 S. Franklin St. Dewitt, MI
Lansing, MI	FH	Gorsline Runciman Funeral Homes	1730 E. Grand River Ave. E. Lansing, MI
Lansing, MI	FH	Gorsline Runciman Funeral Homes	900 E. Michigan Ave. Lansing, MI
Lansing, MI	FH	Gorsline Runciman Funeral Homes	621 S. Jefferson St. Mason, MI

Order to Maintain Assets

Relevant Market	FH/CE	Name	Property Address
Lansing, MI	FH	Gorsline Runciman Funeral Homes	205 E. Middle St. Williamston, MI
Macon, GA	CE	Macon Memorial Park	3969 Mercer University Dr. Macon, GA
Merced, CA	FH	Stratford Evans Merced Funeral Home	1490 B Street Merced, CA
Meridian, MS	FH	Barham Funeral Home	7774 Highway 39 #A Meridian, MS
Meridian, MS	FH	Stephens Funeral Home	2800 Old North Hills St. Meridian, MS
Newton, MS	FH	Barham Funeral Home	Highway 15 N Newton, MS
Odessa, TX	FH	Frank W. Wilson Funeral Directors	4635 Oakwood Dr. Odessa, TX
Odessa, TX	FH	Hubbard-Kelly Funeral Home	601 N. Alleghany Ave. Odessa, TX
Odessa, TX	FH	Odessa Funeral Home Angeles Memorial Chapel	1700 N. Jackson Ave. Odessa, TX

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Service Corporation International (“SCI”) of the outstanding voting securities of Respondent Alderwoods Group, Inc. (“Alderwoods”), hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of the 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 Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and 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”):

Decision and Order

1. Respondent SCI is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.

2. Respondent Alderwoods is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 311 Elm Street, Suite 1000, Cincinnati, Ohio 45202.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, 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, after the Acquisition Date, Alderwoods) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Alderwoods” means Alderwoods Group, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Alderwoods, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Decision and Order

- C. "Commission" means the Federal Trade Commission.
- D. "Acquisition" means the proposed acquisition described in the Agreement and Plan of Merger, dated as of April 2, 2006, between Alderwoods Group, Inc. and Service Corporation International.
- E. "Acquisition Date" means the date the Acquisition is consummated.
- F. "Acquirer(s)" means any Person(s) that receives the prior approval of the Commission to acquire all or any of the Divestiture Businesses pursuant to Paragraphs II, III, or VI of this Order.
- G. "Alderwoods Divestiture Assets" means all of Respondents' right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the Alderwoods Divestiture Businesses, including but not limited to:
 - 1. All real property interests (including fee simple interests and real property lease-hold 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, including any Tangible Personal Property removed from any location of an Alderwoods Divestiture Business (and not replaced), except in the ordinary course of business (and only if the cost of the Tangible Personal Property is less than \$5,000), at any time after April 2, 2006 and which is necessary to operate the relevant Alderwoods Divestiture Business as a going concern;

Decision and Order

3. All inventories;
4. All accounts receivable;
5. All agreements, contracts, and leases and all rights thereunder and related thereto;
6. 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 therefor or renewals thereof, to the extent assignable;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to legal requirements, and copies of all personnel Records;
9. All insurance benefits, including rights and proceeds (including insurance benefits relating to or arising from any Pre-need Contracts); and
10. All rights relating to deposits and prepaid expenses (including bank, trust, or other accounts relating to or arising from any Pre-need Contracts and endowment

Decision and Order

or perpetual care funds), claims for refunds and rights to offset in respect thereof.

Provided, however, that the Alderwoods Divestiture Assets need not include:

(i) assets located at facilities or offices not included in the Alderwoods Divestiture Businesses and whose use is not exclusively or primarily related to the operation of the Alderwoods Divestiture Businesses;

(ii) vehicles used by the relevant Alderwoods 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) Respondents' right, title, and interest in any Alderwoods display, national license, national supply or service agreement, or any national proprietary or licensed advertising program;

(v) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Alderwoods Group, Inc.," "Alderwoods," or "Caughman-Harman;"

(vi) assets relating to the Alderwoods Divestiture Business(es) at the locations identified in Appendix D of this Order (hereinafter "Alternative Divestiture Assets"), to the extent that Respondents do not divest such assets pursuant to the terms of Paragraph III.A. of this Order; or

Decision and Order

(vii) any asset or agreement not covered by the previous exclusions if not needed by the Acquirer and the Commission approves the divestiture without it.

Provided further, however, that the Alderwoods Divestiture Assets shall include Respondents' right, title, and interest in the (x) facility located at 1000 S. Yates Road, Memphis, Tennessee, in connection with the divestiture of Memorial Park, Inc. cemetery, located at 5668 Poplar Avenue, Memphis, Tennessee, and (y) facility located across the street from Conroe Memorial Park cemetery, in connection with the divestiture of Conroe Memorial Park, located at 1600 Porter Road, Conroe, Texas.

- H. "Alderwoods Divestiture Businesses" means all activities conducted by Alderwoods, prior to the Acquisition, at the locations identified in Appendix B and Appendix D of this Order, relating to the provision of Funeral Services or Cemetery Services.
- I. "Alderwoods License" means:
 - 1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property owned by or licensed to Respondent Alderwoods relating to operation of the Alderwoods Divestiture Businesses (other than Intellectual Property already included in the Alderwoods Divestiture Assets); and
 - 2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable each Acquirer to use the rights.

Decision and Order

Provided, however, that the Alderwoods License need not include rights to (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Alderwoods Group, Inc.,” “Alderwoods,” or “Caughman-Harman,” (ii) national proprietary or licensed advertising programs, (iii) national proprietary software used to service a national network of funeral homes and cemeteries or generally available software, (iv) Intellectual Property not covered by the previous exclusions if not needed by the Acquirer and the Commission approves the divestiture without it, or (iv) casket cuts relating to any Alderwoods display room for a period of more than six (6) months; *provided further, however* that Respondents may limit rights to any Alderwoods display room to the geographic area in which each Alderwoods Divestiture Business is located.

- J. “Alternative Divestiture Assets” means the assets defined in proviso (vi) of Paragraph I.G. of this Order.
- K. “Cemetery Services” means all activities relating to the sale of property, goods and services provided for the final disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, or disposition in a niche.
- L. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind that is not in the public domain owned by or pertaining to the Divestiture Businesses or Respondents, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that Respondents demonstrate (i) was

Decision and Order

or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

- M. “Dignity Affiliate(s)” means the third-party owned funeral homes identified in Appendix C of this Order.
- N. “Dignity Memorial Affiliate Agreement” means any agreement or other arrangement between any Person engaged in the provision of Funeral Services and Respondents pursuant to which the Person is or becomes a member of Respondent SCI’s Dignity Memorial affiliate network with respect to Dignity Memorial funeral plans.
- O. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant service.
- P. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph VI of this Order) and an Acquirer to purchase all or any of the Divestiture Businesses, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- Q. “Divestiture Businesses” means the SCI Divestiture Assets, SCI Divestiture Businesses, Alderwoods Divestiture Assets, and Alderwoods Divestiture Businesses.
- R. “Divestiture Businesses Employee(s)” means (i) any and all full-time, part-time, or contract employees of the

Decision and Order

Divestiture Businesses as of the Acquisition Date, including, but not limited to, all Key Employees, and (ii) any of Respondents' other employees whose work primarily relates to the Divestiture Businesses and who are employed on a regional or national level.

- S. "Funeral Services" means all activities relating to the sale of funeral services and funeral goods, including, but not limited to, services used to care for and prepare bodies for burial, cremation, or other final disposition; services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains; and the sale of any goods in connection with funeral services.
- T. "Intellectual Property" means all intellectual property owned or licensed (as licensor or licensee) by Respondents, in which Respondents have 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; (v) and all rights in internet web sites and internet domain names presently used by Respondents.
- U. "Key Employees" means (i) funeral home Divestiture Businesses Employees whose job title is funeral director, location manager, or other job title with responsibilities similar to those of funeral director or location manager, and (ii) cemetery Divestiture Businesses Employees whose responsibilities include management of a cemetery.

Decision and Order

- V. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- W. “Pre-need Contract” means any type of contract or other agreement entered into by a customer with any of the Divestiture Businesses to provide Funeral Services or Cemetery Services at a future time, regardless of whether such agreement is revocable or how payment for such services is arranged.
- X. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- Y. “Respondents” means SCI and Alderwoods, individually and collectively.
- Z. “SCI Divestiture Assets” means all of Respondents’ right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the SCI Divestiture Businesses, including but not limited to:
1. All real property interests (including fee simple interests and real property lease-hold 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, including any Tangible Personal Property removed from any location of an SCI Divestiture Business (and not replaced), except in the ordinary course of business (and only if the cost of the Tangible Personal Property is less than

Decision and Order

\$1,000), at any time after April 2, 2006, and which is necessary to operate the relevant SCI Divestiture Business as a going concern;

3. All inventories;
4. All accounts receivable;
5. All agreements, contracts, and leases and all rights thereunder and related thereto;
6. 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 therefor or renewals thereof, to the extent assignable;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to legal requirements, and copies of all personnel Records;
9. All insurance benefits, including rights and proceeds (including insurance benefits relating to or arising from any Pre-need Contracts); and

Decision and Order

10. All rights relating to deposits and prepaid expenses (including bank, trust, or other accounts relating to or arising from any Pre-need Contracts and endowment or perpetual care funds), claims for refunds and rights to offset in respect thereof.

Provided, however, that the SCI Divestiture Assets need not include:

(i) assets located at facilities or offices not included in the SCI Divestiture Businesses and whose use is not exclusively or primarily related to the operation of the SCI Divestiture Businesses;

(ii) vehicles used by the relevant SCI 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 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) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Service Corporation International," "SCI," "Welsh," "Chung Wah," "Dignity" (including "Dignidad," "Dignite," and other translations of Dignity into languages other than English), or "Dignity Memorial;" or

Decision and Order

(vi) any asset or agreement not covered by the previous exclusions if not needed by the Acquirer and the Commission approves the divestiture without it.

AA. “SCI Divestiture Businesses” means all activities conducted by SCI at the locations identified in Appendix A of this Order, relating to the provision of Funeral Services or Cemetery Services.

BB. “SCI License” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property owned by or licensed to Respondent SCI relating to operation of the SCI Divestiture Businesses (other than Intellectual Property already included in the SCI Divestiture Assets), and
2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable each Acquirer to use the rights.

Provided, however, that the SCI License need not include rights to (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Service Corporation International,” “SCI,” “Welsh,” “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 Respondents’ Dignity Memorial program, (iv) national proprietary software used to service a national network of funeral homes and cemeteries or generally available software, or (v) Intellectual Property not covered by the previous exclusions if not needed by

Decision and Order

the Acquirer and the Commission approves the divestiture without it.

CC. “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 Respondents, 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.

DD. “Transitional Services” means assistance with respect to providing Funeral Services or Cemetery Services, including assistance relating to administrative and support services except for accounting/billing, purchasing, and information systems.

II.**IT IS FURTHER ORDERED** that:

A. Respondents shall divest the SCI Divestiture Assets and Alderwoods Divestiture Assets (except that the Alternative Divestiture Assets shall be divested pursuant to Paragraph III.A. of this Order) at no minimum price, absolutely and in good faith, as on-going businesses, no later than 180 days from the Acquisition Date, to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner (including execution of a Divestiture Agreement with each Acquirer) that receives the prior approval of the Commission. Respondents shall comply with all provisions of any Divestiture Agreement approved by the Commission, and failure by Respondents to comply with any provision of a Divestiture Agreement shall constitute a failure to comply with this Order.

Decision and Order

- B. Respondents shall divest each of the following groups of funeral homes and cemeteries to no more than one Acquirer per group:
1. **Abilene, Texas:** (i) Elmwood Funeral Home, 5750 US Highway 277S, Abilene, Texas, and (ii) Elmwood Memorial Park cemetery, 5750 US Highway 277S, Abilene, Texas.
 2. **Baton Rouge/Gonzales, Louisiana:** (i) Welsh Funeral Home, 426 W. New River St., Gonzales, Louisiana, (ii) Resthaven Gardens of Memory funeral home, 11817 Jefferson Highway, Baton Rouge, Louisiana, and (iii) Resthaven Gardens of Memory cemetery, 11817 Jefferson Highway, Baton Rouge, Louisiana.
 3. **Broward County and Miami-Dade County, Florida:** (i) Levitt-Weinstein Memorial Chapel, 3201 NW 72nd Avenue, Hollywood, Florida, (ii) Levitt-Weinstein Memorial Chapel, 8135 W. McNab Road, Tamarac, Florida, (iii) Levitt-Weinstein Memorial Chapel, 1921 Pembroke Road, Hollywood, Florida, (iv) Levitt-Weinstein, 7500 North State Road 7, Coconut Creek, Florida, (v) Beth David Memorial Gardens & Chapel cemetery, 3201 NW 72nd Avenue, Hollywood, Florida, (vi) Blasberg-Rubin-Zilbert Funeral Chapel, 720 71st Street, Miami Beach, Florida, (vii) Eternal Light Funeral Directors, Inc., 17250 West Dixie Highway, North Miami Beach, Florida, and (viii) Levitt-Weinstein Memorial Chapels, 18840 West Dixie Highway, North Miami Beach, Florida.
 4. **Brownsville, Texas:** (i) Trevino Funeral Home, 1355 Old Port Isabel Road, Brownsville, Texas, and (ii) Darling-Mouser Funeral Home, 945 Palm Blvd., Brownsville, Texas.

Decision and Order

5. **Fort Myers, Florida:** (i) Fort Myers Memorial Gardens Funeral Home, 1589 Colonial Blvd., Fort Myers, Florida, and (ii) Fort Myers Memorial Gardens cemetery, 1589 Colonial Blvd., Fort Myers, Florida.
6. **Lansing, Michigan:** (i) Estes-Leadley Holt/Delhi Chapel, 2121 Cedar Street, Holt, Michigan, and (ii) Estes-Leadley Greater Lansing Chapel, 325 W. Washtenaw Street, Lansing, Michigan.
7. **Lexington/West Columbia/Columbia, South Carolina:** (i) Caughman-Harman Funeral Home, 5400 Bush River Road, Columbia, South Carolina, (ii) Caughman-Harman Funeral Home, 820 West Dunbar Road, West Columbia, South Carolina, (iii) Bush River Memorial Gardens cemetery, 5400 Bush River Road, Columbia, South Carolina, (iv) Elmwood Cemetery, 501 Elmwood Avenue, Columbia, South Carolina, and (v) Southland Memorial Gardens, 700 West Dunbar Road, West Columbia, South Carolina.
8. **Lynchburg, Virginia:** (i) Diuguid Funeral Service, 811 Wiggington Road, Lynchburg, Virginia, and (ii) Diuguid Waterlick Chapel, 21914 Timberlake Road, Lynchburg, Virginia.
9. **Memphis, Tennessee:** (i) Memorial Park Funeral Home, 5668 Poplar Avenue, Memphis, Tennessee, and (ii) Memorial Park, Inc. cemetery, 5668 Poplar Avenue, Memphis, Tennessee.
10. **Merced, California:** (i) Ivers & Alcorn Funeral Home, 901 W. Main St., Merced, California, and (ii) Ivers & Alcorn Funeral Home, 3050 Winton Way, Atwater, California.

Decision and Order

11. **Meridian/Newton, Mississippi:** (i) James F. Webb Funeral Home, 2514 7th Street, Meridian, Mississippi, and (ii) James F. Webb Funeral Home, 100 Old Highway 15 Loop, Newton, Mississippi.
12. **Miami-Dade County, Florida:** (i) Graceland Memorial Park North cemetery, 4420 SW 8th Street, Miami, Florida, and (ii) Graceland South Memorial Park, 13900 SW 117th Avenue, Miami, Florida.
13. **Northern Rockland County, New York:** (i) T.J. McGowan Sons Funeral Home, 71 North Central Highway, Garnerville, New York, and (ii) T.J. McGowan Sons Funeral Home, 133 Broadway, Haverstraw, New York.

C. Notwithstanding any other provision of this Order, Respondents:

1. For a period not to exceed twelve (12) months after the date of their divestiture, shall allow the Acquirer of (i) Caughman-Harman Funeral Home, 820 West Dunbar Road, West Columbia, South Carolina, and Caughman-Harman Funeral Home, 5400 Bush River Road, Columbia, South Carolina, to use the commercial, trade, or business name of "Caughman-Harman," and (ii) Welsh Funeral Home, 426 W. New River St., Gonzales, Louisiana, to use the commercial, trade, or business name of "Welsh." The new trade names, commercial names, or other names ("Names") under which the Acquirer seeks to conduct business for each of these funeral homes shall not include any of the Names, words, or other names or designations that are assets of the businesses being retained by Respondents.
2. For a period not to exceed twelve (12) months from the Acquisition Date, may continue to use the

Decision and Order

following commercial, trade, or business names for the following funeral homes to be retained by Respondents (“Retained Funeral Homes”): (i) “Hankins & Whittington” for the funeral home located at 5301 Albemarle Road, Charlotte, North Carolina, (ii) “Levitt-Weinstein Memorial Chapel” for the funeral homes located at 5900 SW 77th St., Miami, Florida, 5411 Okeechobee Blvd., West Palm Beach, Florida, and 701 North Congress Ave., Boynton Beach, Florida, and (iii) “T.J. McGowan” for the funeral home located at 113 Lake Rd. East, Congers, New York. The Names under which Respondents seek to conduct business for each of the Retained Funeral Homes shall not include any of the Names, words, or other names or designations that are assets of the relevant businesses within the Divestiture Businesses.

- D. No later than the date of each divestiture of a business within the Divestiture Businesses, Respondents shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to an Acquirer.
- E. No later than the date of each divestiture of a business within the Divestiture Businesses, Respondents shall grant:
 - 1. An SCI License to each Acquirer of a funeral home or cemetery that is part of the SCI Divestiture Businesses for any use in any business providing Funeral Services or Cemetery Services, and shall take all actions necessary to facilitate the unrestricted use of the license; and
 - 2. An Alderwoods License to each Acquirer of a funeral home or cemetery that is part of the Alderwoods Divestiture Businesses for any use in any business

Decision and Order

providing Funeral Services or Cemetery Services, and shall take all actions necessary to facilitate the unrestricted use of the license.

- F. At the request of any Acquirer of a Divestiture Business, within thirty (30) days of consummating that acquisition, for a period not to exceed six (6) months from the date Respondents divest that Divestiture Business, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
1. Respondents shall provide Transitional Services to such Acquirer sufficient to enable the Acquirer to operate the divested business in substantially the same manner that Respondents conducted the divested business prior to the divestiture; and
 2. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with its operation of the divested business prior to the divestiture.

Provided, however, that Respondents 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.

- G. At the request of any Acquirer, Respondents shall use their 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 Respondents prior to the date of divestiture of the applicable funeral home or cemetery; *provided, however,* that this Paragraph requires

Decision and Order

Respondents to assist only with such goods and services that such Acquirer cannot reasonably provide on its own.

- H. Respondents shall allow every Acquirer an opportunity to recruit and employ any Divestiture Business Employee(s) under the following terms and conditions:
1. No later than one week after execution of a Divestiture Agreement, Respondents shall (i) identify each Divestiture Business Employee, (ii) allow the Acquirer an opportunity to interview any such employee, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws.
 2. Respondents shall (i) not offer any incentive to any Divestiture Business Employee to decline employment with the Acquirer, (ii) remove any contractual impediments with Respondents that may deter any Divestiture Business Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any Divestiture Business Employee by the Acquirer.
 3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Divestiture Business Employee who accepts an offer of employment from the Acquirer no later than thirty (30) days from the date Respondents divest the relevant assets and, if necessary, (ii) provide any Key Employee to whom the Acquirer has made an offer of

Decision and Order

employment with reasonable financial incentives to accept a position with the Acquirer at the time of divestiture of the corresponding businesses and assets.

4. For a period of two (2) years commencing at the date of divestiture applicable to the relevant business within the Divestiture Businesses, Respondents shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee(s) who has accepted offers of employment with the Acquirer, or who is 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 individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- I. Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce a consumer who has a Pre-need Contract to terminate such contract and enter into a Pre-need Contract with Respondents; *provided, however*, a violation of this provision will not occur if: (1) a consumer initiates communications with Respondents regarding a Pre-need Contract; or (2) Respondents' advertise in newspapers, trade publications, or other media in a manner not targeted specifically at customers of any Acquirer.
- J. The purpose of the divestiture of the Divestiture Businesses is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition

Decision and Order

resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. No later than 180 days from the Acquisition Date, for each of the areas of Anchorage, Alaska; Hobbs, New Mexico; Klamath Falls, Oregon; Mansfield, Ohio; Pascagoula, Mississippi; and Williamsburg, Virginia (hereinafter "Dignity Area(s)"); Respondents shall either:
1. Terminate the Dignity Memorial Affiliate Agreement with each Dignity Affiliate in that Dignity Area; *provided, however*, that Respondents shall use their best efforts to assist any Dignity Affiliate in the fulfillment of any Pre-need Contract relating to the sale of a Dignity Memorial funeral plan entered into prior to the date each agreement is terminated; *provided further, however*, that Respondents shall assist only with such goods and services that each Dignity Affiliate cannot reasonably provide on its own; or
 2. Divest the Alternative Divestiture Assets in that Dignity Area at no minimum price, absolutely and in good faith, as an on-going business, to an Acquirer that receives the prior approval of the Commission and in a manner (including execution of a Divestiture Agreement with each Acquirer) that receives the prior approval of the Commission and that satisfies the requirements of Paragraph II of this Order.
- B. Respondents shall:

Decision and Order

1. Except in the course of performing any obligations under this Order, or in enforcing its Intellectual Property rights relating to “Dignity” (including “Dignidad,” “Dignite” and other translations of Dignity into languages other than English) and “Dignity Memorial,” (i) not provide, disclose or otherwise make available Dignity Affiliate Confidential Business Information to any Person, and (ii) not use Dignity Affiliate Confidential Business Information for any reason or purpose.
 2. Disclose Dignity Affiliate Confidential Business Information (i) only to those Persons who require such information for the purposes permitted under Paragraph III.B.1., (ii) only to the extent such Dignity Affiliate Confidential Business Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
 3. Enforce the terms of this Paragraph III.B. as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III.B., including training of Respondents’ employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- C. Until such time as Respondents have either terminated the Dignity Memorial Affiliate Agreement with each Dignity Affiliate in accordance with the requirements of Paragraph III.A.1. or divested the correlating Alternative Divestiture Assets pursuant to Paragraph III.A.2., Respondents shall not, directly or indirectly, or through any corporate or other device, enter into or enforce any agreement (except that Respondents may enforce their Intellectual Property rights relating to “Dignity” (including “Dignidad,” “Dignite” and other translations of Dignity into languages

Decision and Order

other than English) and “Dignity Memorial”), or exchange or facilitate in any manner, the exchange or transfer of information from Respondents to any current or former Dignity Affiliate, regarding actual, suggested, or future prices, or other terms or conditions of sale, of Funeral Services.

IV.

IT IS FURTHER ORDERED that:

- A. Except in the course of performing obligations under any Divestiture Agreement, this Order, or as permitted by the Order to Hold Separate and Maintain Assets, Respondents shall not (i) provide, disclose or otherwise make available Divestiture Businesses Confidential Business Information to any Person and (ii) use Divestiture Businesses Confidential Business Information for any reason or purpose.
- B. Respondents shall disclose Divestiture Businesses Confidential Business Information (i) only to those Persons who require such information for the purposes permitted under Paragraph IV.A., (ii) only to the extent such Divestiture Businesses Confidential Business Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV as to any Person other than the Acquirers of the Divestiture Businesses and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph IV, including training of Respondents’ employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

Decision and Order

V.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, with respect to any of the areas listed in Appendix E of this Order: (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 Funeral Services or Cemetery Services or (ii) enter into a Dignity Memorial Affiliate Agreement with any Person engaged in the provision of Funeral Services; *provided, however*, that with respect to any Dignity Area(s) for which Respondents do not terminate the applicable Dignity Memorial Affiliate Agreement pursuant to Paragraph III.A. of this Order, the prior notice requirement of this Paragraph V.A. shall not apply if Respondents renew the Dignity Memorial Affiliate Agreement with the Dignity Affiliate.
- B. The prior notification required by this Paragraph V 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 Respondents and not of any other party to the transaction. Respondents 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

Decision and Order

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 acquiring party 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.

VI.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested all of the Divestiture Businesses as required by Paragraphs II.A. and III.A. of this Order, the Commission may appoint one or more Persons as Divestiture Trustee to divest the SCI Divestiture Assets and Alderwoods Divestiture Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.
- B. In the event that the Commission or the Attorney General 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee

Decision and Order

under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, 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 the Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents 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 relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents 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 relevant assets that are required by this Order to be assigned, granted,

Decision and Order

licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months from 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.
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. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI 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 best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents'

Decision and Order

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*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 and, in the case of a court-appointed Divestiture Trustee, by the court, 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 the Respondents, 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 that are required to be divested by this Order.

Decision and Order

6. Respondents 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 or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents 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*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. 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 VI.

Decision and Order

- G. 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.

VII.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, and annually thereafter on the anniversary of the date this Order becomes final, until Respondents have fully complied with this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II through V of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II through V of the Order, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval. The final compliance report required by this Paragraph VII 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.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or

Decision and Order

consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

X.

IT IS FURTHER ORDERED that this Order shall terminate on December 29, 2016.

By the Commission.

Decision and Order

APPENDIX A

SCI Businesses As To Which Assets Are To Be Divested

Relevant Market	FH/CE	Name	Property Address
Abilene, TX	FH	Elmwood Funeral Home	5750 U.S. Highway 277S Abilene, TX
Abilene, TX	CE	Elmwood Memorial Park	5750 U.S. Highway 277S Abilene, TX
Alhambra, CA	FH	Universal Chung Wah Funeral Directors	225 North Garfield Avenue Alhambra, CA
Cartersville, GA	FH	Parnick Jennings Funeral Home & Cremation Services	430 Cassville Road Cartersville, GA
Fort Myers, FL	FH	Fort Myers Memorial Gardens Funeral Home	1589 Colonial Blvd. Fort Myers, FL
Fort Myers, FL	CE	Fort Myers Memorial Gardens	1589 Colonial Blvd. Fort Myers, FL
Gonzales, LA	FH	Welsh Funeral Home	426 W. New River St. Gonzalez, LA
Greensboro, NC	FH	Lambeth Troxler Funeral Home	300 W Wendover Avenue Greensboro, NC

Decision and Order

Relevant Market	FH/ CE	Name	Property Address
Lansing, MI	FH	Estes-Leadley Holt/Delhi Chapel	2121 Cedar Street Holt, MI
Lansing, MI	FH	Estes-Leadley Greater Lansing Chapel	325 W Washtenaw Street Lansing, MI
Macon, GA	CE	Glen Haven Memorial Gardens	7070 Houston Road Macon, GA
Merced, CA	FH	Ivers & Alcorn Funeral Home	901 W. Main St. Merced, CA
Merced, CA	FH	Ivers & Alcorn Funeral Home	3050 Winton Way Atwater, CA
Meridian, MS	FH	James F. Webb Funeral Home	2514 7 th Street Meridian, MS
Newton, MS	FH	James F. Webb Funeral Home	100 Old Highway 15 Loop Newton, MS
Odessa, TX	FH	Sunset Memorial Funeral Home	6801 E. Highway 80 Odessa, TX

Decision and Order

APPENDIX B

Alderwoods Businesses As To Which Assets Are To Be Divested

Relevant Market	FH/CE	Name	Property Address
Baton Rouge, LA	FH	Resthaven Gardens of Memory	11817 Jefferson Hwy Baton Rouge, LA
Baton Rouge, LA	CE	Resthaven Gardens of Memory	11817 Jefferson Hwy Baton Rouge, LA
Bradenton and Palmetto, FL	CE	Skyway Memorial Gardens	5200 US Highway 19 Palmetto, FL
Broward County, FL	FH	Levitt-Weinstein Memorial Chapel	3201 NW 72 nd Avenue Hollywood, FL
Broward County, FL	FH	Levitt-Weinstein Memorial Chapel	8135 W McNab Road Tamarac, FL
Broward County, FL	FH	Levitt-Weinstein Memorial Chapel	1921 Pembroke Road Hollywood, FL
Broward County, FL	FH	Levitt-Weinstein Memorial Chapel	7500 North State Road 7 Coconut Creek, FL
Broward County, FL	CE	Beth David Memorial Gardens & Chapel	3201 NW 72 nd Avenue Hollywood, FL
Brownsville, TX	FH	Trevino Funeral Home	1355 Old Port Isabel Road Brownsville, TX
Brownsville, TX	FH	Darling-Mouser Funeral Home	945 Palm Blvd. Brownsville, TX
Charlotte, NC	FH	Hankins & Whittington - Dilworth Chapel	1111 East Blvd. Charlotte, NC
Hanford, CA	FH	Whitehurst-	100 W. Bush St.

Decision and Order

Relevant Market	FH/CE	Name	Property Address
		McNamara Funeral Service	Hanford, CA
Columbia and Lexington, SC	CE	Bush River Memorial Gardens	5400 Bush River Road Columbia, SC
Columbia and Lexington, SC	CE	Elmwood Cemetery	501 Elmwood Avenue Columbia, SC
Columbia and Lexington, SC	CE	Southland Memorial Gardens	700 W Dunbar Road West Columbia, SC
Conroe, TX	CE	Conroe Memorial Park	1600 Porter Road Conroe, TX
Killeen, TX	FH	Harper-Talasek Funeral Home	506 N. 38 th Street Killeen, TX
Lexington/We st Columbia, SC	FH	Caughman-Harman Funeral Home	5400 Bush River Road Columbia, SC
Lexington/We st Columbia, SC	FH	Caughman-Harman Funeral Home	820 West Dunbar Road West Columbia, SC
Lynchburg, VA	FH	Diuguid Funeral Service	811 Wiggington Road Lynchburg, VA
Lynchburg, VA	FH	Diuguid Waterlick Chapel	21914 Timberlake Road Lynchburg, VA
Manassas, VA	FH	Lee Funeral Home	8521 Sudley Road Manassas, VA
Memphis, TN	FH	Memorial Park Funeral Home	5668 Poplar Avenue Memphis, TN
Memphis, TN	CE	Memorial Park, Inc.	5668 Poplar Avenue Memphis, TN
Miami-Dade	FH	Blasberg-Rubin-	720 71 st Street

Decision and Order

Relevant Market	FH/CE	Name	Property Address
County, FL		Zilbert Funeral Chapel	Miami Beach, FL
Miami-Dade County, FL	FH	Eternal Light Funeral Directors, Inc.	17250 West Dixie Hwy North Miami Beach, FL
Miami-Dade County, FL	FH	Levitt-Weinstein Memorial Chapels	18840 West Dixie Hwy North Miami Beach, FL
Miami-Dade County, FL	CE	Graceland Memorial Park North	4420 SW 8 th Street Miami, FL
Miami-Dade County, FL	CE	Graceland South Memorial Park	13900 SW 117 th Ave. Miami, FL
Nashville, TN	CE	Spring Hill Funeral Home & Cemetery	5110 Gallatin Pike Nashville, TN
Port Orange, FL	FH	Cardwell & Maloney Funeral Home	3571 S. Ridgewood Ave. Port Orange, FL
Northern Rockland County, NY	FH	T.J. McGowan Sons Funeral Home	71 North Central Highway Garnerville, NY
Northern Rockland County, NY	FH	T.J. McGowan Sons Funeral Home	133 Broadway Haverstraw, NY
Seguin, TX	FH	Palmer Mortuary, Inc.	1116 N. Austin St. Seguin, TX
Tulare, CA	FH	Miller's Tulare Funeral Home	151 North H Street Tulare, CA
Southern Ventura County, CA	FH	Conejo Mountain Funeral Home & Memorial Park	2052 Howard Road Camarillo, CA

Decision and Order

Relevant Market	FH/CE	Name	Property Address
Ventura County, CA	CE	Conejo Mountain Funeral Home & Memorial Park	2052 Howard Road Camarillo, CA
Yakima, WA	FH	Shaw & Sons Funeral Directors, Inc.	201 N. 2 nd Street Yakima, WA
Yuma, AZ	FH	Yuma Mortuary & Crematory	551 West 16 th Street Yuma, AZ

APPENDIX C

Dignity Affiliates

Relevant Market	Funeral Home	Property Address
Anchorage, AK	Kehl's Forest Lawn Mortuary	11621 Old Seward Highway Anchorage, AK
Anchorage, AK	Witzleben Family Funeral Home	1707 S. Bragaw St. Anchorage, AK
Hobbs, NM	Chapel of Hope	3321 N. Dal Paso Street Hobbs, NM
Klamath Falls, OR	Eternal Hills Funeral Home	4711 Highway 39 Klamath Falls, OR
Mansfield, OH	Wappner Funeral Home	98 South Diamond St.

Decision and Order

		Mansfield, OH
Mansfield, OH	Wappner Funeral Home	100 S. Lexington Springmill Rd. Mansfield, OH
Pascagoula, MS	O'Bryant-O'Keefe Funeral Home	4811 Telephone Road Pascagoula, MS
Pascagoula, MS	O'Bryant-O'Keefe Gautier Funeral Home	3290 Ladnier Road Gautier, MS
Williamsburg, VA	Nelsen Funeral Home	3785 Strawberry Plains Road Williamsburg, VA

APPENDIX D

Alderwoods Businesses As To Which Assets
May Be Divested Pursuant to Paragraph III.A.

Relevant Market	Funeral Home	Property Address
Anchorage, AK	Evergreen Memorial Chapel	737 E Street Anchorage, AK
Anchorage, AK	Alaska Cremation Center	3804 Spenard Road Anchorage, AK
Anchorage, AK	Evergreen's Eagle River Funeral Home	11046 Chugiak Dr. Eagle River, AK
Hobbs, NM	Griffin Funeral Home	401 North Dalmont Hobbs, NM
Klamath Falls, OR	O'Hair & Riggs Funeral Chapel	515 Pine Street Klamath Falls, OR
Mansfield, OH	Finefrock-Williams Funeral	350 Marion Ave.

Decision and Order

Relevant Market	Funeral Home	Property Address
	Home	Mansfield, OH
Pascagoula, MS	Holder Wells Funeral Home	4007 Main St. Moss Point, MS
Williamsburg, VA	Bucktrout of Williamsburg	4124 Ironbound Rd. Williamsburg, VA

APPENDIX E

Prior Notice - Funeral Homes

Area	Area Definition
Abilene, TX	Within a 10 mile radius of Elmwood Funeral Home, 5701 US Highway 277S, Abilene, TX
Alhambra, CA	Within an 8 mile radius of Rose Hills Mortuary, 205 S. Chapel Ave., Alhambra, CA, except that the prior notice requirement shall include only those facilities that provide the customs and rituals that primarily serve the Chinese community
Anchorage, AK	Within a 15 mile radius of Evergreen Memorial Chapel, 737 E Street, Anchorage, AK
Baton Rouge, LA	Within any zip code that begins with "708" in East Baton Rouge Parish plus zip code 70767
Broward County, FL	Within Broward County plus any part of Palm Beach County south of Latitude 26° 28' 23.8944" N (26.473304N), but including Lorne Funeral Home, 745 N.E. Sixth Street, Delray Beach, Florida, except that the prior notice requirement shall include only those facilities that provide the customs and rituals

Decision and Order

Area	Area Definition
	that primarily serve the Jewish community
Brownsville, TX	Within a 10 mile radius of Buena Vista Funeral Home, 5 McDavitt Blvd., Brownsville, TX
Cartersville, GA	Within an 18 mile radius of Owen Funeral Home, 12 Collins Drive, Cartersville, GA, except that the prior notice Area Definition shall not include Cherokee County
Charlotte, NC	Within Mecklenberg County plus the zip codes 28079 and 28104
Fort Myers, FL	Within a 15 mile radius of Lee Memorial Park Funeral Home, 12777 State Road 82, Fort Myers, FL, except that the prior notice Area Definition shall not extend north of the Caloosahatchee River
Gonzales, LA	Within an 10 mile radius of Ourso Funeral Home, 13533 Airline Hwy, Gonzales, LA
Greensboro, NC	Within Guilford County
Hanford, CA	Within a 10 mile radius of People's Funeral Chapel, 501 N. Douty Street, Hanford, CA
Hobbs, NM	Within a 10 mile radius of Griffin Funeral Home, 401 North Dalmont, Hobbs, NM
Killeen, TX	Within a 10 mile radius of Crawford-Bowers Funeral Home, 1615 S. Fort Hood Drive, Killeen, TX
Klamath Falls, OR	Within a 10 mile radius of O'Hair & Riggs Funeral Chapel, 515 Pine Street, Klamath Falls, OR
Lansing, MI	Within a 17 mile radius of Gorsline Runciman Funeral Home, 900 E. Michigan Ave., Lansing, MI
Lexington/West Columbia, SC	Within a 10 mile radius of Woodridge Funeral Home, 138 Corley Mill Rd., Lexington, SC
Lynchburg, VA	Within a 15 mile radius of Whitten Funeral Home,

Decision and Order

Area	Area Definition
	1336 Park Ave., Lynchburg, VA
Manassas, VA	Within a 10 mile radius of Lee Funeral Home, 8521 Sudley Road, Manassas, VA
Mansfield, OH	Within a 10 mile radius of Finefrock-Williams Funeral Home, 350 Marion Ave, Mansfield, OH
Memphis, TN	Within a 15 mile radius of Family Funeral Care, 4925 Summer Ave., Memphis, TN
Merced, CA	Within a 10 mile radius of Stratford Evans Merced Funeral Home, 1490 B Street, Merced, CA
Meridian, MS	Within a 10 mile radius of Stephens Funeral Home, 2800 Old North Hills St., Meridian, MS
Miami-Dade County, FL	Within Miami-Dade County, except that the prior notice requirement shall include only those facilities that provide the customs and rituals that primarily serve the Jewish community
Newton, MS	Within a 10 mile radius of James F. Webb Funeral Home, 100 Old Highway 15 Loop, Newton, MS
Odessa, TX	Within a 10 mile radius of Odessa Funeral Home Angeles Memorial Chapel, 1700 N. Jackson Avenue, Odessa, TX
Pascagoula, MS	Within a 10 mile radius of Holder Wells Funeral Home, 4007 Main Street, Moss Point, MS
Port Orange, FL	Within a 10 mile radius of Volusia Memorial Funeral Home, 4815 S. Clyde Morris Blvd., Port Orange, FL
Northern Rockland County, NY	Within a 10 mile radius of Michael J. Higgins Funeral Service, 73 North Liberty Drive, Stony Point, NY, except that the prior notice Area Definition shall not extend outside Rockland County
Seguin, TX	Within a 14 mile radius of Goetz Funeral Home, 713 N. Austin Street, Seguin, TX

Decision and Order

Area	Area Definition
Tulare, CA	Within a 10 mile radius of Goble-Miller Funeral Chapel, 144 S. L Street, Tulare, CA
Southern Ventura County, CA	Within a 20 mile radius of 1075 Daily Drive, Camarillo, CA
Williamsburg, VA	Within an 10 mile radius of Bucktrout of Williamsburg, 4124 Ironbound Road, Williamsburg, VA
Yakima, WA	Within a 10 mile radius of Langevin-Musser Funeral Home, 1010 W. Yakima Ave., Yakima, WA
Yuma, AZ	Within a 15 mile radius of Johnson Mortuary Desert Lawn, 1415 S. 1 st Ave., Yuma, AZ

Prior Notice - Cemeteries

Area	Area Definition
Abilene, TX	Within a 10 mile radius of Elliott-Hamil Garden of Memory, 5701 US Highway 277S, Abilene, TX
Baton Rouge, LA	Within a 10 mile radius of Greenoaks Memorial Park, 9595 Florida Blvd., Baton Rouge, LA
Bradenton and Palmetto, FL	Within a 10 mile radius of Mansion Memorial Park, 1400 36 th Ave E, Ellenton, FL
Broward County, FL	Within Broward County plus any part of Palm Beach County south of Latitude 26° 28' 23.8944" N (26.473304N), but in any event including Lorne Funeral Home, 745 N.E. Sixth Street, Delray Beach, FL, except that the prior notice requirement shall include only those facilities that provide the customs and rituals that primarily serve the Jewish community
Columbia/Lexington, SC	Within a 20 mile radius of Elmwood Cemetery, 501 Elmwood Ave., Columbia, SC

Decision and Order

Area	Area Definition
Conroe, TX	Within a 25 mile radius of Garden Park, 801 Teas Rd., Conroe, TX
Fort Myers, FL	Within Lee County
Macon, GA	Within a 20 mile radius of 826 Eisenhower Parkway, Macon, GA
Memphis, TN	Within a 20 mile radius of Memphis Memory Gardens, 6444 Raleigh Lagrange Rd., Memphis, TN, except that the prior notice Area Definition shall not extend outside of Shelby County, but shall include the zip codes 38637, 38654, 38671, 38672, 38680
Miami-Dade County, FL	Miami-Dade County plus any part of Broward County south of Latitude 26° 1' 21.9612" N (26.022767N), but including Beth David Memorial Gardens, 3201 NW 72 nd Ave., Hollywood, FL
Nashville, TN	Within a 20 mile radius of City Cemetery, 1001 4 th Ave S, Nashville, TN, except that the prior notice Area Definition shall exclude Williamson County
Ventura County, CA	Within a 25 mile radius of Conejo Mountain Funeral Home & Memorial Park, 2052 Howard Rd., Camarillo, CA

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Service Corporation International (“SCI”) and Alderwoods Group, Inc. (“Alderwoods”), formerly known as The Loewen Group, Inc. (“Loewen”).¹ The purpose of the Consent Agreement is to remedy the anticompetitive effects that would be likely to result from SCI’s purchase of Alderwoods, as alleged in the Complaint the Commission issued with the Consent Agreement. The Consent Agreement has been placed on the public record for thirty (30) days for the receipt of comments from the public. Comments received during this period will become part of the public record. After the thirty (30) day comment period, the Commission will consider the Consent Agreement and the comments received, and will decide whether to withdraw from the Consent Agreement or make it final.

The Consent Agreement provides for relief in 47 local markets in which the Commission in its Complaint alleged the proposed acquisition is anticompetitive. Under the terms of the Consent Agreement, SCI must divest 40 funeral home facilities in 29 local markets and 15 cemetery properties in 12 local markets across the United States. In each of six additional funeral service markets, the Consent Agreement gives SCI the option of either divesting the Alderwoods funeral home(s) it will be acquiring or terminating its licensing agreement with the third-party funeral homes that are providing funeral services in the markets under SCI’s Dignity Memorial trademark. In these Dignity Affiliate markets, until the divestitures required by the Consent Agreement,

¹ In mid 1999, Loewen, a Canadian corporation, filed for Chapter 11 bankruptcy protection. It emerged in early 2001 as a Delaware corporation under the Alderwoods name.

Analysis to Aid Public Comment

SCI must cease and desist from suggesting prices to those third-party Dignity Affiliates.

The Commission, SCI, and Alderwoods have also agreed to an Order to Hold Separate and Maintain Assets. This order requires SCI and Alderwoods to hold separate and maintain all of the Alderwoods assets in the markets where divestitures are required, pending the required divestitures. To ensure that the Alderwoods assets are properly held separate and maintained, the Commission has appointed William E. Rowe to act as monitor trustee. The eventual acquirers of the assets required to be divested and the manner of their divestiture must receive the prior approval of the Commission. The order also requires SCI to provide the Commission with regular compliance reports demonstrating how it is complying with the terms of the Consent Agreement, until it is in full compliance with that Agreement.

On April 2, 2006, SCI and Alderwoods agreed to SCI's proposed acquisition of Alderwoods for \$1.23 billion (a figure that includes the assumption of debt by SCI). The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate 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, by lessening competition in connection with the provision of funeral services (and associated products) or cemetery services (and associated products and property) in many of the local markets in which SCI and Alderwoods compete.²

² The Complaint identifies the market share of the parties, concentration levels in each market, and whether the principal anticompetitive concern is the increased likelihood of coordinated interaction among remaining competitors in the market or the exercise by SCI of unilateral market power, or both. The Complaint also alleges that new entry is not likely, or is likely to be insufficient in magnitude to constrain anticompetitive behavior in each of the markets of concern.

Analysis to Aid Public Comment

The purpose of this analysis is to invite public comment on the Consent Agreement, including the proposed required divestitures, to aid the Commission in its determination whether to make final the Consent Agreement. This analysis is not an official interpretation of the Consent Agreement nor does it modify any of its terms.

II. The Parties and the Transaction

SCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019. SCI had sales in 2005 of \$1.7 billion. SCI is the nation's largest chain of funeral homes and cemeteries, with about 10% of all related United States revenues.

Alderwoods is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 311 Elm Street, Suite 1000, Cincinnati, Ohio 45202. Alderwoods had sales in 2005 of approximately \$740 million. Alderwoods is the nation's second largest funeral home and cemetery chain, with about 5% of all related United States revenues.

The proposed acquisition is the largest deal of its kind to date in the funeral home and cemetery industry. After the acquisition, SCI will have about 15% of all United States funeral and cemetery service revenues. The Complaint alleges that the proposed acquisition would be anticompetitive in 35 highly concentrated local funeral service markets and 12 highly concentrated cemetery service markets, but not in the nation as a whole. For this reason, the contemplated relief is limited to local markets.

Analysis to Aid Public Comment

III. The Commission's Complaint

A. The Direct Overlap Markets

According to the Commission's Complaint, SCI and Alderwoods compete in the sale of funeral services³ and cemetery services⁴ in over 100 local markets throughout the United States. In highly concentrated local funeral service or cemetery service markets⁵ where SCI and Alderwoods compete, the acquisition will eliminate significant competition between SCI and Alderwoods and, in many of them, substantially increase the likelihood that SCI would be able unilaterally to exercise market power. In many

³ Funeral services include some or all of the following: family consultation, collection of the deceased and transportation from the place of death to the funeral home, registration of death, embalming and other preparations, sale of a casket, flowers, catering, and other merchandise, use of funeral home facilities by hosting a viewing and ceremony, transportation to a place of worship, conveying the deceased to the cemetery or crematorium, and advance planning.

⁴ Cemetery services include the traditional products and services offered by perpetual care cemeteries, including burial spaces, opening and closing of graves, memorials and burial vaults, mausoleum spaces, cemetery maintenance and upkeep, and advance planning.

⁵ In calculating market shares, the Commission relied on the number of "calls" (funerals or internments) of each competitor (rather than dollar revenues) because this information was available for all firms in the markets under investigation. For purposes of determining market share as well as calculating market concentration based on the Herfindahl-Hirschman Index ("HHI"), the Commission included all market participants that competed with the funeral homes or cemeteries in the market. In addition, the Commission examined the transaction's competitive effects in each market of concern. As part of this assessment, the Commission excluded fringe competitors (participants that did not act as a competitive constraint in the market), *e.g.*, small firms with less than three percent of the market or facilities that primarily offered direct disposals or direct cremations without attendant services., as well as storefront funeral homes to the extent that they did not act as a constraint on incumbents

Analysis to Aid Public Comment

other highly concentrated local funeral service or cemetery service markets where SCI and Alderwoods compete, the acquisition will increase substantially the likelihood that remaining firms in the market will be able to exercise market power through coordinated group behavior.⁶ In some markets, the Commission was concerned with both future coordinated interaction and the future exercise of unilateral market power.

1. The Two Ways to Exercise Unilateral Market Power

The Complaint alleges that the acquisition increases the likelihood of SCI unilaterally exercising market power in 19 funeral service markets and nine cemetery service markets. In these markets, SCI is more likely to be able to increase its prices or decrease its services notwithstanding actions taken by other firms already in the market or who may be considering entry. This market power may be exercised in one of two ways. First, in about half of the markets, SCI's post-acquisition market share will approach 100%, and SCI will be in a position to exercise unilateral market power because it will face no real competition. This market power may be exercised by increasing prices or decreasing services. Second, in other markets, SCI will have a significant, but not a monopoly or near monopoly, post-acquisition market share and will also own or control facilities that are the first and second choices for a substantial number of consumers. In these markets, SCI and Alderwoods are now the first and second choices for a substantial number of consumers for several reasons, including: (i) they are the leading providers for certain religious or ethnic groups, including the Jewish or Chinese-American communities; (ii) the proximity of the SCI and Alderwoods facilities makes them the first and second choices for many consumers; or (iii) they are the first and second choice providers of high-end funeral services, which are generally not

⁶ Market power is the ability of a firm, or group of firms, profitably to reduce output and raise prices above competitive levels or otherwise achieve anticompetitive effects such as by decreasing the quality or level of services.

Analysis to Aid Public Comment

available at the facilities of nearby competitors. In these markets, SCI's ability to exercise unilateral market power post- acquisition will increase because it will be able to obtain the profit from the combined benefits of (a) the increase in price (or decrease in services) at the facilities of first choice for consumers and (b) the increase in business moving from the facilities of first choice for consumers to their second choices.

The Commission alleges that the proposed acquisition would substantially increase concentration, and give SCI a monopoly or near monopoly market share, in 10 funeral service markets (Cartersville, Georgia; Hanford, California; Meridian, Mississippi; Newton, Mississippi; Alhambra, California; Broward County, Florida; Miami-Dade County, Florida; Yuma, Arizona; Yakima, Washington; and Gonzales, Louisiana) and five cemetery service markets (Bradenton/Palmetto, Florida; Broward County, Florida; Fort Myers, Florida; Abilene, Texas; and Baton Rouge, Louisiana). The Commission also alleges that unilateral effects are likely in nine additional funeral service markets (Odessa, Texas; Northern Rockland County, New York; Greensboro, North Carolina; Charlotte, North Carolina; Merced, California; Memphis, Tennessee; Abilene, Texas; Southern Ventura County, California; and Port Orange, Florida) and four additional cemetery service markets (Conroe, Texas; Miami-Dade County, Florida; Ventura County, California; and Macon, Georgia) where, post-merger, SCI will own or operate facilities that are the first and second choices for a substantial number of consumers, and will be in a position profitably to raise price at one of these facilities.

2. The Exercise of Market Power Through Coordinated Interaction

The Complaint alleges that the acquisition increases the likelihood of SCI exercising market power through coordinated interaction in 15 highly concentrated funeral service markets (Seguin, Texas; Odessa, Texas; Tulare, California; Northern Rockland County, New York; Manassas, Virginia; Baton Rouge,

Analysis to Aid Public Comment

Louisiana; Greensboro, North Carolina; Lansing, Michigan; Abilene, Texas; Killeen, Texas; Merced, California; Lynchburg, Virginia; Lexington/West Columbia, South Carolina; Brownsville, Texas; and, Fort Myers, Florida) and four highly concentrated cemetery service markets (Columbia/Lexington, South Carolina; Nashville, Tennessee; Memphis, Tennessee; and Miami-Dade County, Florida). These increased opportunities for successful coordinated interaction will be due to: (a) an increased ease of agreement upon terms of coordination, (b) the availability of opportunities to monitor compliance with those terms of agreement, and (c) the ability of the firms in the market to control or punish firms that deviate from their terms of agreement.

B. The Dignity Affiliate Markets

The Complaint alleges that in six funeral service markets in which Alderwoods is present, but in which SCI does not own or operate a facility, SCI nevertheless has a competitive presence through a licensing arrangement with third-party funeral service providers, which it refers to as Dignity Affiliates. SCI has authorized third parties to sell SCI trademarked Dignity Memorial funeral services. The Dignity Affiliates were competitors of Alderwoods, but not SCI, prior to the proposed acquisition. After SCI acquires Alderwoods, competition between the Alderwoods facility (which would be owned by SCI post-acquisition) and the Dignity Affiliate is likely to be reduced because it is likely that these firms will cooperate on pricing. Such cooperation on pricing would increase the likelihood that firms in these six markets⁷ would exercise market power through coordinated interaction.⁸

⁷ The six markets are identified in Table B, *infra*.

⁸ The Complaint and Consent Agreement do not address SCI's licensing arrangements with third-party Dignity Affiliates except in the six highly concentrated markets.

Analysis to Aid Public Comment

C. “Customs-Conscious” Consumers Sometimes Create Narrow Antitrust Product Markets

The Complaint alleges that in some local markets, some funeral homes or cemeteries cater to specific populations by focusing upon the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In some of the local markets addressed in the proposed Consent Agreement, this market segmentation exists in connection with Jewish, Chinese-American, or African-American populations.

Because of the preferences of “customs-conscious” consumers, in some local markets, the alleged product market is limited to facilities that provide the customs and rituals for a specific population. In some other local markets, the alleged product market is limited to facilities that serve the general population but do not provide the customs and rituals that “customs-conscious” consumers require. The determination whether a product market was narrower than all facilities that provided funeral or cemetery services was made on a market-by-market basis. However, if other facilities in that market served both the “customs-conscious” population as well as abroader population, facilities that performed the customs and rituals associated exclusively with respect to a specific population were included in the overall market definition.

D. Entry Conditions

The Complaint alleges that entry would not be timely, likely or sufficient to prevent anticompetitive effects in the specific markets at issue. With regard to these cemetery service markets, entry would be difficult because of the limited availability of land, zoning regulations and other statutory restrictions, and high sunk costs, as well as the lead time necessary to develop a customer base. As concerns entry into the funeral service markets at issue, new entry, if it occurs, is unlikely to prove sufficient to prevent a significant price increase for “traditional” funeral home services

Analysis to Aid Public Comment

of the type offered by most of the parties' homes. If a new traditional funeral home were to enter, it is unlikely that it would make sufficient sales within two years to constrain anticompetitive behavior. Moreover, if "no frills" funeral homes were to enter, it is unlikely that the services that they would offer would be sufficiently close substitutes for traditional funeral home services to prevent a price increase for the latter.

IV. The Consent Agreement

The Commission believes that the Consent Agreement, if made final, would fully restore competition and maintain the competitive status quo ante in the local markets that would have been adversely impacted by the proposed acquisition.

A. The Direct Overlap Markets

In 29 local funeral service markets and 12 local cemetery service markets, the Consent Agreement provides for divestitures of specific properties. The following Table A lists each of the local markets in which the Complaint alleges that the proposed acquisition would be competitively problematic, separately for funeral services and cemetery services. Table A also lists the specific SCI or Alderwoods funeral home facilities that SCI will be required to divest under the Consent Agreement.

Table A

1. Funeral Service Markets and the Required Divestitures

Market Area	Properties Required To Be Divested
1. Abilene, Texas	Elmwood Funeral Home, 5750 US Highway 277 South, Abilene, Texas (an SCI property)
2. Alhambra, California	Universal Chung Wah Funeral Directors, 225 North Garfield Avenue, Alhambra, California (an SCI property)

Analysis to Aid Public Comment

3. Baton Rouge, Louisiana	Resthaven Gardens of Memory Funeral Home, 11817 Jefferson Highway, Baton Rouge, Louisiana (an Alderwoods property)
4. Brownsville, Texas	1. Trevino Funeral Home, 1355 Old Port Isabel Road, Brownsville, Texas (an Alderwoods property); and 2. Darling-Mouser Funeral Home, 945 Palm Boulevard, Brownsville, Texas (an Alderwoods property)
5. Broward County, Florida	1. Levitt-Weinstein Memorial Chapel, 3201 N.W. 72 nd Avenue, Hollywood, Florida (an Alderwoods property); 2. Levitt-Weinstein Memorial Chapel, 8135 West McNab Road, Tamarac, Florida (an Alderwoods property); 3. Levitt-Weinstein Memorial Chapel, 1921 Pembroke Road, Hollywood, Florida (an Alderwoods property); and 4. Levitt-Weinstein Memorial Chapel, 7500 North State Road 7, Coconut Creek, Florida (an Alderwoods property)
6. Cartersville, Georgia	Parnick Jennings Funeral Home & Cremation Services, 430 Cassville Road, Cartersville, Georgia (an SCI property)
7. Charlotte, North Carolina	Hankins & Whittington - Dilworth Chapel, 1111 East Boulevard, Charlotte, North Carolina (an Alderwoods property) ⁹
8. Fort Myers, Florida	Fort Myers Memorial Gardens Funeral Home, 1589 Colonial Boulevard, Fort Myers, Florida (an SCI property)
9. Gonzales, Louisiana	Welsh Funeral Home, 426 West New River Street, Gonzales, Louisiana (an SCI property) ¹⁰

⁹ SCI will retain funeral home assets with the “Hankins & Whittington” name in this market, but, under the terms of the Decision and Order, is permitted to use this name only for a period limited to twelve months.

¹⁰ SCI will retain funeral homes with the “Welsh” name in this geographic market, and thus the proposed Decision and Order includes a

Analysis to Aid Public Comment

10. Greensboro, North Carolina	Lambeth Troxler Funeral Home, 300 West Wendover Avenue, Greensboro, North Carolina (an SCI property)
11. Hanford, California	Whitehurst-McNamara Funeral Service, 100 West Bush Street, Hanford, California (an Alderwoods property)
12. Killeen, Texas	Harper-Talasek Funeral Home, 506 North 38 th Street, Killeen, Texas (an Alderwoods property)
13. Lansing, Michigan	1. Estes-Leadley Greater Lansing Chapel, 325 West Washtenaw Street, Lansing, Michigan (an SCI property); and 2. Estes-Leadley Holt/Delhi Chapel, 2121 Cedar Street, Holt, Michigan (an SCI property)
14. Lexington/ West Columbia, South Carolina	1. Caughman-Harman Funeral Home, 820 West Dunbar Road, West Columbia, South Carolina (an Alderwoods property); and 2. Caughman-Harman Funeral Home, 5400 Bush River Road, Columbia, South Carolina (an Alderwoods property) ¹¹
15. Lynchburg, Virginia	1. Diuguid Waterlick Chapel, 21914 Timberlake Road, Lynchburg, Virginia (an Alderwoods property); and 2. Diuguid Funeral Service, 811 Wiggington Road, Lynchburg, Virginia (an Alderwoods property)
16. Manassas, Virginia	Lee Funeral Home, 8521 Sudley Road, Manassas, Virginia (an Alderwoods property)
17. Memphis, Tennessee	Memorial Park Funeral Home, 5668 Poplar Avenue, Memphis, Tennessee (an Alderwoods property)
18. Merced, California	1. Ivers & Alcorn Funeral Home, 901 West Main Street, Merced, California (an SCI property); and

provision that limits the acquirer's use of this name for the divested business to a period of twelve months.

¹¹ SCI will retain funeral homes with the "Caughman-Harman" name in this geographic market, and thus the proposed Decision and Order includes a provision that limits the acquirer's use of this name to a period of twelve months.

Analysis to Aid Public Comment

	2. Ivers & Alcorn Funeral Home, 3050 Winton Way, Atwater, California (an SCI property)
19. Meridian, Mississippi	James F. Webb Funeral Home, 2514 7 th Street, Meridian, Mississippi (an SCI property)
20. Miami-Dade County, Florida	1. Eternal Light Funeral Directors Inc., 17250 West Dixie Highway, North Miami Beach, Florida (an Alderwoods property); 2. Blasberg-Rubin-Zilbert Funeral Chapel, 720 71st Street, Miami Beach, Florida (an Alderwoods property); and 3. Levitt-Weinstein Memorial Chapels, 18840 West Dixie Highway, North Miami Beach, Florida (an Alderwoods property) ¹²
21. Newton, Mississippi	James F. Webb Funeral Home, 100 Old Highway 15 Loop, Newton, Mississippi (an SCI property)
22. Odessa, Texas	Sunset Memorial Funeral Home, 6801 East Highway 80, Odessa, Texas (an SCI property)
23. Port Orange, Florida	Cardwell & Maloney Funeral Home, 3571 South Ridgewood Avenue, Port Orange, Florida (an Alderwoods property)
24. Northern Rockland County, New York	1. T.J. McGowan Sons Funeral Home, 71 North Central Highway, Garnerville, New York (an Alderwoods property); and 2. T.J. McGowan Sons Funeral Home, 133 Broadway, Haverstraw, New York (an Alderwoods property) ¹³
25. Seguin,	Palmer Mortuary Inc., 1116 North Austin Street,

¹² SCI will retain funeral homes assets with the “Levitt-Weinstein Memorial Chapel” name in this market, but, under the terms of the Decision and Order, is permitted to use this name only for a period limited to twelve months.

¹³ SCI will retain funeral homes assets with the “T.J. McGowan” name in this market, but, under the terms of the Decision and Order, is permitted to the ongoing use of this name only for a period limited to twelve months.

Analysis to Aid Public Comment

Texas	Seguin, Texas (an Alderwoods property)
26. Tulare, California	Miller's Tulare Funeral Home, 151 North H Street, Tulare, California (an Alderwoods property)
27. Southern Ventura County, California	Conejo Mountain Funeral Home & Memorial Park, 2052 Howard Road, Camarillo, California (an Alderwoods property)
28. Yakima, Washington	Shaw & Sons Funeral Directors, Inc., 201 North 2 nd Street, Yakima, Washington (an Alderwoods property)
29. Yuma, Arizona	Yuma Mortuary & Crematory, 551 West 16 th Street, Yuma, Arizona (an Alderwoods property)

2. Cemetery Service Markets and the Required Divestitures

Market Area	Properties Required To Be Divested
1. Abilene, Texas	Elmwood Memorial Park, 5750 US Highway 277 South, Abilene, Texas (an SCI property)
2. Baton Rouge, Louisiana	Resthaven Gardens of Memory, 11817 Jefferson Highway, Baton Rouge, Louisiana (an Alderwoods property)
3. Bradenton/Palmetto, Florida	Skyway Memorial Gardens, 5200 US Highway 19, Palmetto, Florida (an Alderwoods property)
4. Broward County, Florida	Beth David Memorial Gardens & Chapel, 3201 N.W. 72 nd Avenue, Hollywood, Florida (an Alderwoods property)
5. Columbia/Lexington, South Carolina	1. Bush River Memorial Gardens, 5400 Bush River Road, Columbia, South Carolina (an Alderwoods property); 2. Elmwood Cemetery, 501 Elmwood Avenue, Columbia, South Carolina (an Alderwoods property); and 3. Southland Memorial Gardens, 700 West Dunbar Road, West Columbia, South Carolina (an Alderwoods property)
6. Conroe, Texas	Conroe Memorial Park, 1600 Porter Road, Conroe,

Analysis to Aid Public Comment

	Texas (an Alderwoods property)
7. Fort Myers, Florida	Fort Myers Memorial Gardens, 1589 Colonial Boulevard, Fort Myers, Florida (an SCI property)
8. Macon, Georgia	Glen Haven Memorial Gardens, 7070 Houston Road, Macon, Georgia (an SCI property)
9. Memphis, Tennessee	Memorial Park Inc., 5668 Poplar Avenue, Memphis, Tennessee (an Alderwoods property)
10. Miami-Dade County, Florida	1. Graceland Memorial Park North, 4420 S.W. 8 th Street, Miami, Florida (an Alderwoods property); and 2. Graceland South Memorial Park, 13900 S.W. 117 th Avenue, Miami, Florida (an Alderwoods property)
11. Nashville, Tennessee	Spring Hill Cemetery, 5110 Gallatin Pike, Nashville, Tennessee (an Alderwoods property)
12. Ventura County, California	Conejo Mountain Funeral Home & Memorial Park, 2052 Howard Road, Camarillo, California (an Alderwoods property)

B. The Dignity Affiliate Markets

In six funeral service markets, the Consent Agreement requires that SCI, at its option, either divest the Alderwoods property being acquired or terminate the SCI licensing relationship with the third-party Dignity Affiliate. The Consent Agreement also requires that until SCI has complied with this requirement in the markets, SCI shall not enter into or enforce any agreement or exchange information with the Dignity Affiliate regarding actual, suggested, or future prices of funeral services.

Table B lists each of the highly concentrated Dignity Affiliate funeral service markets in which the proposed acquisition would create a competitive problem, together with the remedy.

Analysis to Aid Public Comment

Table B**Funeral Service Markets Where Divestiture or Contract Termination is Required**

Local Market	Relief: (a) Properties That May Be Divested or (b) Dignity Affiliate Contracts That May Be Terminated
1. Anchorage, Alaska	(a) Alderwoods properties that may be divested: Evergreen Memorial Chapel, 737 East Street, Anchorage, Alaska; Alaska Cremation Center, 3804 Spenard Road, Anchorage, Alaska; and Evergreen's Eagle River Funeral Home, 11046 Chugiak Drive, Eagle River, Alaska; or (b) Third-party contracts that may be terminated: Kehl's Forest Lawn Mortuary, 11621 Old Seward Highway, Anchorage, Alaska; and Witzleben Family Funeral Home, 1707 South Bragaw Street, Anchorage, Alaska
2. Hobbs, New Mexico	(a) Alderwoods property that may be divested: Griffin Funeral Home, 401 North Dalmont, Hobbs, New Mexico; or (b) Third-party contracts that may be terminated: Chapel of Hope, 3321 North Dal Paso Street, Hobbs, New Mexico
3. Klamath Falls, Oregon	(a) Alderwoods property that may be divested: O'Hair & Riggs Funeral Chapel, 515 Pine Street, Klamath Falls, Oregon; or (b) Third-party contracts that may be terminated: Eternal Hills Funeral Home, 4711 Highway 39, Klamath Falls, Oregon
4. Mansfield, Ohio	(a) Alderwoods property that may be divested: Finefrock-Williams Funeral Home, 350 Marion Avenue, Mansfield, Ohio; or (b) Third-party contracts that may be terminated: Wappner Funeral Home, 98 South Diamond Street, Mansfield, Ohio; and Wappner Funeral Home, 100 South Lexington Springmill Road, Mansfield, Ohio
5. Pascagoula, Mississippi	(a) Alderwoods properties that may be divested: Holder Wells Funeral Home, 4007 Main Street, Moss

Analysis to Aid Public Comment

	Point, Mississippi; or (b) Third-party contracts that may be terminated: O'Bryant-O'Keefe Funeral Home, 4811 Telephone Road, Pascagoula, Mississippi; and O'Bryant- O'Keefe Gautier Funeral Home, 3290 Ladnier Road, Gautier, Mississippi
6. Williamsburg, Virginia	(a) Alderwoods property that may be divested: Bucktrout of Williamsburg, 4124 Ironbound Road, Williamsburg, Virginia; or (b) Third-party contracts that may be terminated: Nelsen Funeral Home, 3785 Strawberry Plains Road, Williamsburg, Virginia

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF

KONINKLIJKE AHOLD N.V.

Docket No. C-4027 – Order July 21, 2006

Order granting the Petition of Ahold to reopen and modify the Order of January 16, 2002.

ORDER REOPENING AND MODIFYING ORDER

On April 10, 2006, Koninklijke Ahold N.V. (“Ahold”), one of the respondents named in the consent order issued by the Commission on January 16, 2002, in Docket No. C-4027 (“Order”), filed a Petition requesting the Commission to reopen and set aside the Order insofar as it applies to Ahold (“Petition”). Ahold has accomplished the divestitures mandated by the Order and the remaining Order provisions require notice of future acquisitions and filing of annual compliance reports. Ahold’s Petition was filed pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.51. In its Petition, Ahold asserts that changed circumstances eliminate the continuing need for the Order as it relates to Ahold.¹ Ahold also contends the requested modification is in the public interest.² On April 18, 2006, the Commission placed Ahold’s Petition on the public record and invited the public, for a period of 30 days, to submit comments on the Petition. No comments have been received. The Commission has reviewed the Petition and has determined to grant Ahold’s Petition.

¹ Petition at 1-2, 5-6

² *Id.* at 6-8