

IN THE MATTER OF
CALIFORNIA MEDICAL ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2967. Complaint, April 17, 1979 — Decision, April 17, 1979

This consent order, among other things, requires a San Francisco, Calif. medical association to cease publishing, promulgating, or participating in the development and use of relative value studies that set forth comparative numerical values and have the effect of establishing prices for medical and surgical services. The order further requires respondent to withdraw previously disseminated relative value studies; and send copies of the complaint and order to association members and others, together with a request for the return of all relative value studies they have in their possession.

Appearances

For the Commission: *Alfred Lindeman and John M. Porter.*

For the respondent: *Howard Hassard, Hassard, Bonnington, Rogers & Huber, San Francisco, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The California Medical Association has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent, California Medical Association ("CMA"), is an unincorporated association organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 731 Market St., San Francisco, California.

PAR. 2. CMA has approximately 25,000 members. Membership in CMA is open to doctors of medicine licensed to practice medicine in the State of California, persons within the State of California who have retired from the practice of medicine, persons distinguished for their services or attainments as doctors of medicine or in the field of public health, or for research or other scientific work contributing to medicine, and persons within certain other special and limited classes established by CMA.

Many members of CMA are licensed physicians engaged in the private practice of medicine and surgery and derive substantial portions of their professional income from fees for medical and surgical procedures charged directly to patients or to insurers.

PAR. 3. The acts and practices of CMA are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Since 1956, CMA has, on various occasions, prepared, published, and circulated to its members and others "relative value studies" which set forth in non-monetary units comparative numerical values for procedures performed and services rendered by physicians and other health care providers. Each value is convertible into a monetary fee by the application of a dollar conversion factor to the basic unit. Said "relative value studies" include detailed instructions for the computation and use of conversion factors to determine physicians' fees. Said "relative value studies" have been widely disseminated and used as the basis of fee schedules by physicians and other health care providers both within and outside the state of California.

PAR. 5. The preparation, publication, and circulation by CMA of relative value studies have the effect of establishing, maintaining, or otherwise influencing the fees which physicians and other health care providers charge for their professional services and are in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent

has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent California Medical Association is an unincorporated association organized, existing and doing business under and by virtue of the laws of the State of California, with its principal offices located at 731 Market St., San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

A. The term "relative value study" means any list of compilation of medical procedures and/or services which sets forth comparative numerical values for such procedures performed and/or services rendered by physicians and other health care providers, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "CMA" means the California Medical Association.

C. The term "component" means a county or district medical society chartered by CMA.

D. The term "conversion factor" means any monetary value multiplier used or intended to be used to convert non-monetary values in a relative value study to monetary fees.

E. The term "third party" means any organization which is or may be required by contract or statute to pay or reimburse the whole or any part of any financial obligation for health care incurred by any recipient of such care.

F. The term "historical data" means complete and unprocessed responses obtained from surveying fees charged for procedures performed and/or services rendered by physicians or other health care providers, accurate tabulated summaries of such responses, or accurate statistical representations of such responses such as arithmetic means, medians or percentiles.

G. The term "effective date of this order" means the date of service of this order.

II

It is ordered, That CMA, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value study;

B. Cease and desist from directly or indirectly suggesting or instructing that conversion factors may be computed and applied to the relative value units contained in any relative value study.

C. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to, the whole or any part of any proposed or existing relative value study. It shall not be considered a violation of this paragraph, however, for CMA to furnish testimony, information or advice to any government body, committee, or instrumentality, or to furnish to any third party such information as may be requested, relating to the use by such government entity or third party of the whole or part of any relative value study for purposes of establishing payment, compensation or reimbursement levels to be made to physicians or other health care providers by such government entity or third party; provided that any information furnished by CMA which may bear directly or indirectly on compensation levels for procedures performed and/or services rendered by physicians or other health care providers shall be limited to historical data, as defined herein, and shall be completely described as to methodology.

D. Permanently cancel, repeal, abrogate, and withdraw any and all relative value studies which it has heretofore developed, published, circulated, or disseminated; *provided, however*, that nothing contained in this order shall prohibit CMA from initiating, originating, developing, publishing, circulating, adopting, contributing to, recommending, suggesting, or advising in favor of or against the use of any list or compilation of standardized terminology describing procedures performed and/or services rendered by physicians and other health care providers, so long as such list or compilation does not directly or indirectly set forth absolute or comparative numerical values for any such procedures or services.

E. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in

519

Decision and Order

Appendix "A" to this order, to each of its members, to each state medical association known to CMA to have received from it the 1974 edition of the California Relative Value Studies, and to each of its components, third-party payers and others listed in Appendix "B" to this order, notifying such members, associations, components, third-party payers and others to return to CMA all copies of CMA relative value studies in their possession. Except for printing and mailing costs, CMA is not obligated to incur any expense under this paragraph.

III

It is further ordered, That CMA notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor association or corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered, That CMA shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

V

Nothing in this order shall be construed to exempt CMA from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

APPENDIX A

(CMA LETTERHEAD)

TO: Recipients of CMA Relative Value Studies

As you may be aware, the FTC has been investigating various components of health care, including relative value study activities of CMA. The Association no longer desires to continue such activities and has discontinued them. It has entered into an agreement with the Federal Trade Commission to formalize the discontinuance of its relative value studies.

This agreement resulted in the issuance by the Federal Trade Commission on _____ of a complaint and the entry of a consent order which requires, in essence, that CMA:

Decision and Order

93 F.T.C.

- (a) stop publishing and participating in the development of relative value studies;
- (b) withdraw the relative value studies it has already published;
- (c) stop suggesting and instructing that conversion factors may be computed and applied to units contained in relative value studies;
- (d) distribute a copy of the complaint and consent order to CMA relative value study recipients; and
- (e) notify recipients of CMA's relative value studies to return them to CMA.

The complaint alleges basically that CMA's relative value studies have the effect of influencing fees charged by physicians. The consent agreement with the FTC states that it is for settlement purposes only and does not constitute an admission by the CMA of the charges in the complaint or that the law has been violated.

In accordance with the provisions of the FTC's order, you are to cease using and to return all copies of any CMA relative value study in your possession.

The proper mailing address:

California Medical Association
731 Market Street
San Francisco, California 94103

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President

Enclosures

APPENDIX "B"

Commissioner
Medical Services Administration
Social and Rehabilitation Service
Department of Health, Education, and
Welfare
330 C Street, S.W.
Washington, DC 20201

Commissioner of Social Security
Department of Health, Education, and
Welfare
6401 Security Boulevard
Baltimore, MD 21235

National Association of Blue Shield
Plans
211 East Chicago Avenue
Chicago, IL 60611

Deputy Assistant Secretary for
Health Resources and Programs
Department of Defense
Washington, DC 20301

Directorate
OCHAMPUS
Department of Defense
Washington, DC 20301

OCHAMPUS
Department of Defense
Denver, CO 80240

519

Decision and Order

Health Application Systems 1633 Bayshore Highway Burlingame, CA 94010	Blue Cross of Southern California Box 27747 4777 Sunset Boulevard Los Angeles, CA 90027
Blue Cross and Blue Shield of Alabama 930 S. 20th Street Birmingham, AL 35298	Blue Cross of Northern California 1950 Franklin Street Oakland, CA 94659
Blue Cross of Arizona, Inc. 321 W. Indian School Road Box 13466 Phoenix, AZ 85002	Blue Shield of California 2 North Point San Francisco, CA 94113
Arizona Blue Shield Medical Service 321 W. Indian School Road Box 13466 Phoenix, AZ 85002	Colorado Hospital Service - BC 244 University Boulevard Denver, CO 80206
Arkansas Blue Cross and Blue Shield, Inc. 601 Gaines Street Box 2181 Little Rock, AR 72203	Colorado Medical Service, Inc. - BS 244 University Boulevard Denver, CO 80206
Connecticut Medical Service, Inc. 221 Whitney Avenue New Haven, CT 06509	Connecticut Blue Cross, Inc. Box 504 370 Bassett Road North Haven, CT 06473
Blue Cross and Blue Shield of Dela- ware, Inc. 201 W. 14th Street Box 1991 Wilmington, DE 19899	Hawaii Medical Service Association 1504 Kapiolani Boulevard Box 860 Honolulu, HI 96808 - BS
Group Hospitalization, Inc. - BC 550 12th Street, S.W. Washington, DC 20024	Blue Cross of Idaho, Inc. 1501 Federal Way Box 7408 Boise, ID 83707
Medical Service of the District of Co- lumbia - BS 550 12th Street, S.W. Washington, DC 20024	North Idaho District Medical Service Bureau, Inc. - BS 1602 21st Avenue Box 1106 Lewiston, ID 83501
Blue Cross of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Illinois Hospital and Health - BC Ser- vice, Inc. 227 N. Wyman Street Rockford, IL 61101

Decision and Order

93 F.T.C.

Blue Shield of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Hospital Service Corporation - BC 233 North Michigan Avenue Box 1364 Chicago, IL 60601
Blue Cross of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Illinois Medical Service - BS 233 North Michigan Avenue Chicago, IL 60601
Blue Cross of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Indiana 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Mutual Medical Insurance Inc. - BS 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Iowa Liberty Building Sixth Street & Grand Avenue Des. Moines, IA 50307
Blue Shield of Iowa Liberty Building Des Moines, IA 50307	Blue Cross of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Hospital Service Association, Inc. 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Shield of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Blue Shield 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Cross and Blue Shield of Minneso- ta 3535 Blue Cross Road Box 3560 St. Paul, MN 55165
Blue Cross Hospital Plan Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Minneso- ta 2344 Nicollet Avenue Minneapolis, MN 55404
Kentucky Physicians' Mutual, Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Missis- sippi, Inc. 530 E. Woodrow Wilson Drive Box 1043 Jackson, MS 39205
Blue Cross of Louisiana 10225 Florida Boulevard Box 15699 Baton Rouge, LA 70815	Blue Cross of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141

519

Decision and Order

Hospital Service Association of New Orleans - BC 2026 St. Charles Avenue New Orleans, LA 70130	Blue Cross Hospital Service, Inc. of Missouri 1430 Olive Street St. Louis, MO 63103
Maine Blue Cross and Blue Shield 110 Free Street Portland, ME 04101	Blue Shield of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Blue Cross of Maryland 700 E. Joppa Road Box 9836 Towson, MD 21204	St. Louis Blue Shield 5775 Campus Parkway Hazelwood, MO 63042
Blue Shield of Maryland, Inc. 700 E. Joppa Road Towson, MD 21204	Blue Cross of Montana 3360 10th Avenue S. Great Falls, MT 59405
Blue Cross of Massachusetts 133 Federal Street Boston, MA 02106	Montana Physicians' Service - BS 404 Fuller Avenue Box 1677 Helena, MT 59601
Blue Cross and Blue Shield of South Carolina I-20 East at Alpine Road Columbia, SC 29219	Blue Cross of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross of Western Iowa and South Dakota Third & Pierce Streets Box 1677 Sioux City, IO 51102	Blue Cross of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
South Dakota Medical Service, Inc. 711 N. Lake Avenue Sioux Falls, SD 57104	Blue Shield of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross-Blue Shield of Tennessee 801 Pine Street Chattanooga, TN 37402	Blue Shield of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
Kitsap Physicians' Service 820 Pacific Avenue Box 339 Bremerton, WA 98310	Associated Hospitals, Inc. 401 Federal Street Box 131 Bluefield, WV 24701
Blue Cross Hospital Service, Inc. Commerce Square Box 1343 Charleston, WV 25325	Parkersburg Hospital Service, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101

Decision and Order

93 F.T.C.

West Virginia Hospital Service, Inc. 20th & Chapline Streets Wheeling, WV 26003	Surgical Service, Inc. Commercial Bank Building Box 131 Bluefield, WV 24701
Blue Shield of Southern West Virginia, Inc. Commerce Square Box 1353 Charleston, WV 25325	Medical-Surgical Service, Inc. Union National Bank Building Clarksburg, WV 26301
Morgantown Medical-Surgical Service, Inc. 265 High Street Morgantown, WV 26505	Memphis Hospital Service and Surgical Association, Inc. 85 N. Danny Thomas Boulevard Box 98 Memphis, TN 38101
West Virginia Medical Service Inc. 20th & Chapline Streets Box 6246 Wheeling, WV 26003	Group Hospital Service, Inc. Main at N. Central Expressway Dallas, TX 75201
Associated Hospital Service, Inc. 4115 N. Teutonia Avenue Box 2025 Milwaukee, WI 53201	Group Life and Health Insurance Co. Main at N. Central Expressway Dallas, TX 75201
Wisconsin Physicians' Service 330 E. Lakeside Street Box 1109 Madison, WI 53701	Blue Cross of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Surgical Care, The Blue Shield Plan of the Medical Society of Milwaukee County 756 N. Milwaukee Street Milwaukee, WI 53202	Blue Shield of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Blue Cross of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001	Blue Shield of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001
Genesee Valley Medical Care, Inc. 41 Chestnut Street Rochester, NY 14647	Medical Mutual of Cleveland, Inc. 2060 E. Ninth Street Cleveland, OH 41115
Blue Shield of Central New York, Inc. 344 S. Warren Street Syracuse, NY 13202	Ohio Medical Indemnity, Inc. 6740 N. High Street Worthington, OH 43085

519

Decision and Order

- | | |
|---|--|
| Medical and Surgical Care, Inc.
5 Hopper Street
Utica, NY 13501 | Blue Cross and Blue Shield of Oklahoma
1215 S. Boulder Avenue
Box 3283
Tulsa, OK 74102 |
| Blue Cross and Blue Shield of North Carolina
P. O. Box 2291
1830 Chapel Hill-Durham Blvd.
Durham, NC 27702 | Blue Cross of Oregon
100 S.W. Market Street
Box 1271
Portland, OR 97207 |
| Blue Cross of North Dakota
301 S. Eighth Street
Fargo, ND 58102 | Oregon Physicians' Service
619 S.W. 11th Avenue
Box 1071
Portland, OR 97207 |
| Blue Shield of North Dakota
301 S. Eighth Street
Fargo, ND 58102 | Blue Cross of Lehigh Valley
1221 Hamilton Street
Allentown, PA 18102 |
| Blue Cross Hospital Plan, Inc.
201 Ninth Street, N.W.
Canton, OH 44702 | Capital Blue Cross
100 Pine Street
Harrisburg, PA 17101 |
| Blue Cross of Southwest Ohio
1351 William Howard Taft Rd.
Cincinnati, OH 45206 | Blue Cross of Greater Philadelphia
1333 Chestnut Street
Philadelphia, PA 19107 |
| Blue Cross of Northeast Ohio
2066 E. Ninth Street
Cleveland, OH 44115 | Blue Cross of Western Pennsylvania
1 Smithfield Street
Pittsburgh, PA 15222 |
| Blue Cross of Central Ohio
174 E. Long Street
Columbus, OH 43215 | Blue Cross of Northeastern Pennsylvania
15 S. Franklin Street
Wilkes-Barre, PA 18701 |
| Blue Cross of Lima, Ohio
7 Public Square
Box 1046
Lima, OH 45802 | Pennsylvania Blue Shield
Blue Shield Building
Camp Hill, PA 17011 |
| Blue Cross of Northwest Ohio, Inc.
3737 Sylvania Avenue
Box 943
Toledo, OH 43656 | Blue Cross and Blue Shield of Rhode Island
Box 1298
444 Westminster Mall
Providence, RI 02901 |
| Blue Cross of Nebraska
Box 3248
Main P.O. Station
Omaha, NB 68103 | Chautauqua Region Hospital Service Corporation
306 Spring Street
Box 1119
Jamestown, NY 14701 |

Decision and Order

93 F.T.C.

Blue Shield of Nebraska Box 3248 Main P.O. Station Omaha, NB 68103	Associated Hospital Service of New York 622 Third Avenue New York, NY 10017
Nevada Blue Shield 3660 Baker Lane Reno, NV 89502	Rochester Hospital Service Corporation 41 Chestnut Street Rochester, NY 14647
New Hampshire-Vermont Hospitalization Service - BC 2 Pillsbury Street Concord, NH 03301	Blue Cross of Central New York, Inc. 344 S. Warren Street Box 271 Syracuse, NY 13201
New Hampshire-Vermont Physicians' Service 2 Pillsbury Street Concord, NH 03301	Hospital Plan, Inc. 5 Hopper Street Utica, NY 13501
Hospital Service Plan of New Jersey - BC 33 Washington Street Box 420 Newark, NJ 07101	Hospital Service Corporation of Jefferson County 158 Stone Street Watertown, NY 13601
Medical-Surgical Plan of New Jersey - BS 33 Washington Street Newark, NJ 07102	Blue Shield of Northeastern New York, Inc. Box 8650 Albany, NY 12208
New Mexico Blue Cross and Blue Shield, Inc. 12800 Indian School Road N.E. Albuquerque, NM 87112	Blue Shield of Western New York, Inc. 298 Main Street Buffalo, NY 14202
Blue Cross of Northeastern New York, Inc. 1251 New Scotland Road Box 8650 Albany, NY 12208	Chautauqua Region Medical Service Inc. 306 Spring Street Jamestown, NY 14701
Blue Cross of Western New York, Inc. 298 Main Street Buffalo, NY 14202	United Medical Service, Inc. 2 Park Avenue New York, NY 10016
Blue Cross of Washington-Alaska, Inc. 15700 Dayton Avenue, North Seattle, WA 98133	California Physicians' Service P. O. Box 7608 San Francisco, CA 94120
The Indiana State Medical Association 3935 North Meridian Street Indianapolis, IN 46208	Colorado Medical Service, Inc. 244 University Blvd. Denver, CO 80206

519

Decision and Order

Continental Service Life & Health Insurance Company Box 3397 5353 Florida Boulevard Baton Rouge, LA 70821	Connecticut General Life Insurance Company Hartford, CT 06115
Blue Cross & Blue Shield of Greater New York 622 3rd Avenue New York, NY 10016	Medical Association of Georgia 938 Peachtree Street, N.E. Atlanta, GA 30309
Missouri Medical Service 5775 Campus Parkway Hazelwood, MO 63042	Mississippi State Medical Association 735 Riverside Drive Jackson, MS 39216
Washington Physicians' Service 220 West Harrison Street Seattle, WA 98119	Medical-Surgical Care, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101
New York Life Insurance Company 51 Madison Avenue New York, NY 10010	Metropolitan Life Insurance Company 1 Madison Avenue New York, NY 10010
Prudential Insurance Company of Amer- ica Prudential Plaza Newark, NJ 07101	The Travelers Insurance Company 1 Tower Square Hartford, CT 06115
Continental Assurance Company CNA Plaza Chicago, IL 60605	Aetna Life Insurance Company 151 Farmington Avenue Hartford, CT 06115
Bankers Life Company 711 High Street Des Moines, IA 50307	Employers Life Insurance Company of Wausau 2000 Westwood Drive Wausau, WI 54401
Nationwide Life Insurance Company 246 North High Street Columbus, OH 43216	Colonial Penn Life Insurance Company 5 Penn Center Plaza Philadelphia, PA 19103
Equitable Life Assurance Society of the U.S. 1285 Avenue of the Americas New York, NY 10019	Firemen's Fund Insurance Company 3333 California Street San Francisco, CA 94118
Reliance Insurance Group 4 Penn Center Plaza Philadelphia, PA 19103	Zurich Life Insurance Company 111 West Jackson Boulevard Chicago, IL 60604
Occidental Life Insurance Company of California Box 2101 Terminal Annex Los Angeles, CA 90054	Mutual of Omaha Insurance Company Dodge at 33rd Street Omaha, NE 68131

Decision and Order

93 F.T.C.

Blue Shield of Massachusetts, Inc.
133 Federal Street
Boston, MA 02106

Blue Cross of Eastern Ohio, Inc.
2400 Market Street
Youngstown, OH 44507

Nevada State Medical Association
3660 Baker Lane
Reno, NV 89502

Alameda-Contra Costa
Medical Association
6230 Claremont Avenue
Oakland, CA 94618

Butte-Glenn Medical Society
811 East Fifth Avenue
Chico, CA 95926

Butte-Glenn Foundation for Medical
Care
815 East Fifth Avenue
Chico, CA 95926

Forty First Medical Society
3250 Wilshire Boulevard
Suite 606
Los Angeles, CA 90010

Fresno-Madera Medical Society
P. O. Box 31
Fresno, CA 93707

Foundation for Medical Care of Fresno
County
P. O. Box 31
Fresno, CA 93707

Humboldt-Del Norte County Medical So-
ciety
P. O. Box 1395
3100 Edgewater Drive
Eureka, CA 95501

Humboldt-Del Norte Foundation for
Medical Care
P. O. Box 1395
Eureka, CA 95501

Imperial County Medical Society
200 South Imperial Avenue
Imperial, CA 92251

Inyo-Mono County Medical Society
c/o Owen R. Walker, MD, President
293 Willow Street
Bishop, CA 93514

Kern County Medical Society
1314 17th Street
Bakersfield, CA 93301

Foundation for Medical Care of Kern
County
2603 G Street
Bakersfield, CA 93301

Kings County Medical Society
P. O. Box 1003
Hanford, CA 93230

Lassen-Plumas-Modoc-Sierra County
Medical Society
c/o Herman H. Gray, MD, President
P. O. Box 519
Chester, CA 96020

Los Angeles County Medical Association
P. O. Box 3465
Terminal Annex
Los Angeles, CA 90054

Marin Medical Society
P. O. Box 4344
4460 Redwood Highway
San Rafael, CA 94903

519

Decision and Order

Marin Foundation for Medical Care,
Inc.
P. O. Box 4344
San Rafael, CA 94903

Mendocino-Lake County Medical Society
P. O. Box 722
215 West Standley Drive
Ukiah, CA 95482

Merced-Mariposa Medical Society
2835 North G Street
Merced, CA 95340

Foundation for Medical Care of Merced
County
2835 G Street
Bear Creek Plaza
Merced, CA 95340

Monterey County Medical Society
P. O. Box 308
19045 Portola Drive
Salinas, CA 93901

Monterey Bay Area Foundation for
Medical Care
P. O. Box 308
Salinas, CA 93901

Napa County Medical Society
1041 Lincoln Avenue
P. O. Box 2158
Napa, CA 94558

Orange County Medical Association
300 South Flower Street
Orange, CA 92668

Foundation for Medical Care of Orange
County
300 South Flower Street
Orange, CA 92668

Placer-Nevada County Medical Society
1212 High Street
Auburn, CA 95603

Riverside County Medical Association
6833 Indiana Avenue
Riverside, CA 92506

Foundation for Medical Care of River-
side County
6833 Indiana Avenue
Riverside, CA 92506

Sacramento County Medical Society
5380 Elvas Avenue
Sacramento, CA 95819

Medical Care Foundation
650 University Avenue
Sacramento, CA 95825

San Benito County Medical Society
c/o Fisk Brooks, MD, President
565 Monterey Street
Hollister, CA 95023

San Bernardino County Medical Society
P. O. Box 5216
San Bernardino, CA 92412

San Bernardino Foundation for Medical
Care
P. O. Box 6186
San Bernardino, CA 92412
San Diego, CA 92123

San Diego County Medical Society
P. O. Box 23015
3702 Ruffin Road

San Diego Foundation for Medical Care
3702 Ruffin Road
San Diego, CA 92123

San Francisco Medical Society
250 Masonic Avenue
San Francisco, CA 94118

Decision and Order

93 F.T.C.

San Francisco Medical Society Health Plan, Inc. 250 Masonic Avenue San Francisco, CA 94118	San Joaquin County Medical Society P. O. Box 230 445 West Acacia Street Stockton, CA 95201
San Joaquin Foundation for Medical Care P. O. Box 230 Stockton, CA 95203	San Luis Obispo County Medical Soci- ety P. O. Box 319 San Luis Obispo, CA 93406
Medical Care Foundation of /Santa Barbara County Nine East Pedrogosa Santa Barbara, CA 93101	San Mateo County Medical Society 3080 La Selva San Mateo, CA 94403
The Health Care Foundation of San Mateo County, Inc. 3080 La Selva San Mateo, CA 94403	Medical Society of Santa Barbara Coun- ty Nine East Pedrogosa Santa Barbara, CA 93101
Medical Care Foundation of Santa Barbara County Nine East Pedrogosa Santa Barbara, CA 93101	Santa Clara County Medical Society 700 Empey Way San Jose, CA 95128
Foundation for Medical Care of Santa Clara County P. O. Box 50003 San Jose, CA 95150	Santa Cruz County Medical Society P. O. Box 308 Salinas, CA 93901
Monterey Bay Area Foundation for Medical Care P. O. Box 308 Salinas, CA 93901	Shasta-Trinity County Medical Society P. O. Box 959 Redding, CA 96001
Siskiyou County Medical Society c/o Donald Meamber, MD, President 750 South Main Yreka, CA 96097	Solano County Medical Society 773 Tuolumne Street Vallejo, CA 94590
Sonoma County Medical Association 3452 Mendocino Avenue Santa Rosa, CA 95401	Foundation for Medical Care of Sonoma County 3452 Mendocino Avenue Santa Rosa, CA 95401
Stanislaus Medical Society P. O. Box 1755 Modesto, CA 95354	Stanislaus Foundation for Medical Care P. O. Box 1755 Modesto, CA 95354
Tehema County Medical Society 343 Oak Street Red Bluff, CA 96080	Tulare County Medical Society P. O. Box 16 1821 West Meadow Lane Visalia, CA 93277

519

Decision and Order

Foundation for Medical Care of Tulare

County	Ventura County Medical Society
1821 West Meadow Lane, Suite A	2977 Loma Vista Road
Visalia, CA 93277	Ventura, CA 93003

Ventura County Foundation for Medical Care

3212 Loma Vista Road	Yolo County Medical Society
Ventura, CA 93003	P. O. Box 1312
	117 West Main Street, Suite 20
	Woodland, CA 95695

Medical Care Foundation
650 University Avenue
Sacramento, CA 95825

Yuba-Sutter-Colusa County Medical Society
P. O. Box L
Marysville, CA 95901

Los Angeles County Medical Association
District 1 - Metropolitan
1925 Wilshire Boulevard
Los Angeles, CA 90057

Los Angeles County Medical Association
District 2 - Pasadena
127 North Madison Ave., Suite 110
Pasadena, CA 91101

Los Angeles County Medical Association
District 3 - Long Beach
115 East Eighth Street
Long Beach, CA 90813

Long Beach Foundation for Medical Care
P. O. Box 887
Long Beach, CA 90813

Los Angeles County Medical Association
District 4 - Glendale
545 West Glenoaks Boulevard
Glendale, CA 91202

Los Angeles County Medical Association
District 5 - Bay
2901 Wilshire Blvd., Suite 101
Santa Monica, CA 90403

Los Angeles County
Medical Association
District 6 - West San Fernando Valley
15910 Ventura Blvd., Suite 1403
Encino, CA 91436

San Fernando Valley Foundation for Medical Care
15910 Ventura Boulevard
Encino, CA 91436

Los Angeles County Medical Association
District 7 - Beverly Hills
184 North Canon Drive
Beverly Hills, CA 90210

Los Angeles County Medical Association
District 8 - South
438 South Gaffey
San Pedro, CA 90731

Los Angeles County Medical Association
District 9 - Southwest
3655 Lomita Blvd., Suite 319
Torrance, CA 90505

Los Angeles County Medical Association
District 10 - Southeast
14724 Ventura Blvd., Suite 604
Sherman Oaks, CA 91403

Los Angeles County Medical Association
District 11 - East
13766 East Philadelphia Street
Whittier, CA 90601

Los Angeles County Medical Association
District 12 - San Gabriel Valley
P. O. Box 848
San Gabriel, CA 91778

Decision and Order

93 F.T.C.

Los Angeles County Medical Association Los Angeles County Medical Association
District 13 - Foothill District 14 - Pomona
735 West Duarte Road, Suite 405 1798 North Garey Avenue
Arcadia, CA 91006 Pomona, CA 91767

Los Angeles County Medical Association Los Angeles County Medical Association
District 15 - Centinela Valley District 16 - Antelope Valley
P. O. Box 2368 P. O. Box 2469
Inglewood, CA 90305 Lancaster, CA 93534

Los Angeles County Medical Association
District 17 - East San Fernando Valley
14724 Ventura Blvd., Suite 604
Sherman Oaks, CA 91403

IN THE MATTER OF
INTERMATIC INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2961. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires a Spring Grove, Ill. manufacturer and distributor of electrical devices to cease misrepresenting energy or cost savings that may be realized through the use of its water heater timer without disclosing that use of the timer would decrease the quantity and temperature of hot water used and adversely affect dishwasher operations. The firm would be required to make relevant disclosure statements in product advertising, labeling and instructions; and recall all previously disseminated material which fails to conform with the terms of the order. Additionally, the firm would be required to continue its existing refund policy; and maintain specified records for designated time periods.

Appearances.

For the Commission: *Randall H. Brook* and *Michael E. Kipling*.

For the respondent: *Ann Ray Heitland* and *Richard J. Hoskins*,
Schiff, Hardin & Waite, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that Intermatic Incorporated, a corporation, has violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in that respect is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Intermatic Incorporated ("Intermatic") is a Delaware corporation with its principal office and place of business at Intermatic Plaza, Spring Grove, Illinois.

Allegations below stated in the present tense include the past tense.

PAR. 2. Intermatic is engaged in the manufacture, advertising, offering for sale, sale and distribution of a variety of electric appliances (primarily electric timing and switching devices) for home and business usage.

PAR. 3. In the conduct of its business, Intermatic ships electric appliances and devices to wholesale purchasers throughout the United States. Intermatic prepares advertising, promotional and labeling materials for its products in Spring Grove, Illinois and disseminates these materials throughout the country. Intermatic, therefore, maintains a substantial course of advertising and trade in

electric appliances and devices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of its business, Intermatic has advertised and sold an "electric water heater timer," and electric appliance or device designed for permanent installation in electrical circuits supplying home water heaters. The timer is identical in function to standard electric 24-hour clock timers (*i.e.*, those not designated as "water heater timers"). The timer can be set to turn on and off the power supplied to the water heater at various preset times during each 24-hour period.

PAR. 5. Intermatic's advertising for its electric water heater timer suggests using it to turn on the heater for a one-hour period in the morning and for a two-hour period in the evening during "periods of major hot water usage."

PAR. 6. Intermatic represents, directly or by implication, that:

A. Use of the timer will result in substantial savings on water heating bills without significant reduction in hot water usage or change in lifestyle. Expected annual savings range in amount from \$48 to \$120. Electric water heating costs are expected to diminish by an average of 35 percent because of the timer.

B. Cost savings are attributable to saving energy which is used by a water heater during periods when no hot water is being drawn off.

C. Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that substantial or specific cost savings will be realized by typical consumers using its timer without significant reduction in hot water usage.

PAR. 7. Contrary to these representations:

A. The use of a water heater timer will not result in substantial savings on water heating bills, nor in the specific dollar or percentage savings claimed by Intermatic, without a significant reduction in both the quantity and temperature of hot water used.

B. Any savings actually attributable to "off" periods will be negligible, since any heat lost during "off" periods must be made up by additional energy consumption during "on" periods. The only substantial savings occur from consumer acceptance of lower temperature and quantity of hot water.

C. Intermatic did not have a reasonable basis in valid scientific studies or tests from which to conclude that its representations were true.

PAR. 8. In actual use as suggested by Intermatic's instructions, hot

water temperature may drop thirty to forty degrees or more. Consumers may be unaware that water temperature is inadequate for some uses, particularly to meet recommended minimum temperatures for dishwashers.

PAR. 9. The misrepresentations by Intermatic have the tendency and capacity to induce consumers to purchase the water heater timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage.

PAR. 10. The fact that the temperature of hot water available to consumers is much lower when the water heater timer is used and the fact that consumers who use the timer may be forced to schedule certain activities (e.g., dishwashing) at specific times of the day when adequate hot water is available are facts material in light of consumers' understanding of the function and use of the timer. Failure to disclose these material facts has the tendency and capacity to mislead consumers to purchase the timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage and that substantial savings may be realized without changing one's lifestyle.

PAR. 11. Many of the purchasers of Intermatic's water heater timer may incur additional, often greater, expense in paying for installation of the device by a licensed electrician. Consumers could realize savings equal to or greater than those claimed by simply turning down water heater thermostats and/or reducing hot water usage. PAR. 12. The use of the water heater timer could be of harm to some electrical generation programs by public and private utilities. By maximizing water heater usage during peak energy consumption periods of the day, as directed by Intermatic, additional strains will be put on some power generating facilities at the hours when they are already most heavily taxed. The result of increased peak hour load usage is that utilities will have to rely on their oldest or most expensive back-up generation systems to meet the peaks. This will increase costs to the consumers and the public as a whole. On a long range basis, it may further increase public costs by contributing to the need for new generator facilities.

The promotion and sale of the water heater timer to be used as directed is contrary to public policy and therefore unfair.

PAR. 13. For the reasons stated above, and because sale of the timers may divert consumer expenditures away from valid energy saving methods, including insulating water heaters and pipes, the acts and practices of Intermatic are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair acts or

practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of respondent Intermatic Incorporated. The respondent has been furnished with a copy of a draft complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. If issued by the Commission, this complaint would charge respondent with violation of the Federal Trade Commission Act.

Respondent, its attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts in the complaint, and a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint. The agreement also includes waivers and other provisions as required by the Commission's Rules.

The Commission has considered the matter and has determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that the complaint should issue. The Commission has therefore accepted the executed consent agreement and placed the agreement on the public record for a period of sixty (60) days. Now, in conformance with Section 2.34 of its Rules, the Commission issues the complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Intermatic Incorporated is a Delaware corporation with its office and principal place of business at Intermatic Plaza, Spring Grove, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

This order applies to respondent Intermatic Incorporated ("Intermatic"), its successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Order provisions apply to any acts taken in connection with Intermatic's advertising, displaying, offering for sale, sale or distribution of electric water heater timers except that paragraphs I.C., X., XI., and XII. also apply to any other electric

appliance or device which is promoted, displayed, offered for sale or distributed directly or indirectly to consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That Intermatic cease and desist from representing, directly or by implication, that:

A. Use of Intermatic's water heater timers will result in substantial savings on hot water heating bills without significant reduction in the temperature or quantity of hot water used, except where the savings would be attributable to the consumer's use of the timer to take advantage of utilities' discount or time-of-day rates.

B. Significant cost savings from the use of the water heater timer are attributable to saving energy used by water heaters during periods when no hot water is being drawn off. This subparagraph does not prohibit respondent from making any representation that meets the requirements of subparagraph I.C., below.

C. Any energy or cost savings can be realized by any electric appliance or device unless Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that typical consumers, in the areas in which the representations are disseminated, will achieve those savings under expectable and usual consumer usage.

II. *It is further ordered*, That Intermatic make the following affirmative disclosures in any advertisement or promotional, labeling, or packaging material for its water heater timer:

A. That cost savings are accompanied by a decrease in the quantity and temperature of hot water available.

B. That dishwashers should be used during certain periods of the timer's cycle in order to operate properly.

The above affirmative disclosures shall be made clearly and conspicuously. The disclosure required in subparagraph II.A. shall be in close conjunction with and in type size at least as large as any reference to cost savings. In the case of packaging materials these disclosures need be made only once; the disclosure required in subparagraph II.A shall be on the most prominent face of each packaging material.

The above affirmative disclosure need not be made in any advertisement: (1) which is disseminated only in areas where some form of discount or time-of-day rates are offered by local utilities or where such rates are reasonably foreseeable; and (2) where no cost savings

claim is made except a claim that the water heater timer provides savings by turning the water heater off during periods of higher rates.

The affirmative disclosure contained in subparagraph II.B. need not be made in advertising prepared by customers of respondent and for which respondent pays only part of the cost; *provided*, that the advertising appears as part of a multi-product advertisement the portion of which advertisement relating to the Intermatic water heater timer is no greater than eleven (11) square inches and the purpose of which is only to make the availability of the product at the retail outlet known.

III. *It is further ordered*, That Intermatic's instructions or directions for use of its water heater timer contain the following information in clear lay language:

A. The affirmative disclosures in paragraph II above. Type size shall be the same as (or larger than) that of the rest of the instructions or directions.

B. A statement that when the timer is off, the temperature of the water in the tank will decline. An explanation that if the consumer increases the amount of water drawn from the hot water tank as the temperature drops (such as by adjusting the hot/cold mix at a faucet) or uses any hot water during the "off" periods of the timer the temperature of available hot water will be decreased.

C. A method for using a dishwasher in order to have hot water available at the maximum temperature.

D. That the local electrical utility should be contacted to determine how to use timers on water heaters to avoid or minimize peak load demand problems for the utility.

E. A statement that in the event that the electrical utility serving the consumer introduces lower rates for "off peak" electrical consumption, the consumer should contact the utility to determine the "off-peak" periods so as to take advantage of lower rates.

IV. *It is further ordered*, That Intermatic immediately recall from all persons and entities that have engaged in the advertising, promotion, sale or distribution of the Intermatic water heater timer since January 1, 1977 (or request the disposal of) all advertising mats and promotional materials which contain a representation prohibited by this order or which omit a disclosure required by this order.

V. *It is further ordered*, That Intermatic prepare and distribute to all Intermatic customers who may reasonably be expected to have

remaining stocks of the Intermatic water heater timer on hand, replacement packaging materials and instructions to conform with the terms of this order. Intermatic shall ask its customers to replace the packaging materials and instructions with the new ones provided, prior to making a further sale of the Intermatic water heater timer. In lieu of replacing the packaging materials Intermatic may provide its customers with self-adhesive labels to cover existing packaging materials.

VI. *It is further ordered*, That Intermatic distribute a copy of this order to each of its customers to which it has shipped five or more water heater timers at any time since January 1, 1977.

VII. *It is further ordered*, That Intermatic continue its present policy of refunding the purchase price and installation cost for the Intermatic water heater timer.

VIII. *It is further ordered*, That Intermatic prepare a point-of-sale display, in a form to be approved by authorized representatives of the FTC, which clearly and conspicuously (1) refers to the Intermatic "Little Gray Box" water heater timer; (2) contains the affirmative disclosures in paragraph II above; and (3) contains a statement of the refund policy required by paragraph VII above. Intermatic shall provide copies of the display, directly or through its distributors, to all retail stores which have sold the Intermatic water heater timer at any time since January 1, 1977, and request that the stores post the display for at least 30 days.

IX. *It is further ordered*, That respondent maintain complete business records relative to the manner and form of its compliance with this order. Respondent shall retain each record for at least three years, and shall retain substantiation and other documentation at least two years beyond the last dissemination of any representation contingent thereon under the provisions of this order. Upon reasonable notice, respondent shall make any and all the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

X. *It is further ordered*, That respondent forthwith deliver a copy of this order to each operating division and affiliated business, to all present and future franchisees and licensees, and to all employees or agents now or hereafter engaged in the sale or offering for sale of respondents's products or in any aspect of the preparation, creation or placing of advertising on behalf of respondent; and that respondent secure from each such person a signed statement acknowledg-

ing receipt of this order. In the case of persons or entities not involved with respondent's water heater timers, this paragraph shall be satisfied by delivery of a statement including, verbatim, the order preamble and paragraph I.C., above.

XI. *It is further ordered,* That respondent notify the Commission at least thirty days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporations which may affect compliance obligations arising out of the order.

XII. *It is further ordered,* That respondent shall, within sixty days after service upon it of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
HUK-A-POO SPORTSWEAR, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2962. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires two New York City wearing apparel manufacturers to cease establishing, maintaining or enforcing resale price agreements; suggesting retail prices or issuing price lists for a three-year period; pre-ticketing products with recommended retail prices; soliciting the identity of non-conformers and taking any adverse action against them. Additionally, respondents are required to reinstate customers who were terminated since January 1, 1974 for failing to maintain suggested prices; and keep records regarding reinstatement requests for five years.

Appearances

For the Commission: *Judith Braun and Sandra Bird.*

For the respondents: *Gilbert S. Edelson, Rosenman, Colin, Freund & Cohen, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

PAR. 2. Respondents are now, and have been engaged in the manufacture, sale and distribution of wearing apparel. In 1977 respondents had net sales in excess of \$ 70,000,000.

PAR. 3. Respondents sell and distribute their products to retail dealers located throughout the United States who in turn resell respondents' products to the general public.

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause and have caused apparel and related products to be shipped from the states in which they are manufactured or warehoused to purchasers in other states. Respondents maintain and

at all times mentioned herein have maintained a substantial course of trade in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

PAR. 5. For purposes of the complaint, the following definitions shall apply:

"Reseller" is defined as any person, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

PAR. 6. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition with persons or firms engaged in the manufacture, distribution or sale of apparel and related products.

PAR. 7. Respondents, unilaterally or in combination, agreement or understanding with some resellers or with the cooperation or acquiescence of other resellers, have engaged in the following acts or practices, among others:

(a) establishing agreements, understandings, or arrangements with resellers or prospective resellers that such resellers or prospective resellers will maintain certain resale prices or sale periods;

(b) informing resellers or prospective resellers, by direct and indirect means, that respondents expect or require such resellers or prospective resellers to maintain or adhere to certain resale prices or sale periods;

(c) suggesting resale prices to resellers or prospective resellers or otherwise informing them of the resale prices respondents deem appropriate;

(d) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will not advertise any respondent's first-line quality products at resale prices other than those established, suggested or deemed appropriate by such respondent;

(e) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective

resellers will not advertise any respondent's close-out or promotional products or second-line quality or irregular products as having been manufactured by such respondent;

(f) directing, soliciting or encouraging resellers, salespersons, employees or agents to cooperate and assist in identifying and reporting any reseller or prospective reseller who is engaged in any of the following activities:

(1) offering for sale or selling any product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(2) advertising any first-line quality product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(3) advertising any close-out or promotional product or second-line quality or irregular product as having been manufactured by any respondent.

(g) threatening to terminate, terminating, warning, intimidating and harassing resellers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (f) (1)-(3) above and using various forms of coercion and discipline, including but not limited to delaying order shipments, limiting the frequency of visits by salesmen and restricting the availability of products, against such resellers; or,

(h) refusing to deal with certain prospective resellers who may engage in any of the activities set forth in subparagraph (f) (1)-(3) above.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have the capacity, tendency or the effect of:

(a) fixing, maintaining or stabilizing the resale prices for respondents' products;

(b) suppressing or eliminating competition between or among resellers of respondents' products;

(c) depriving resellers of their freedom to function as free and independent businessmen; and

(d) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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, 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 the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 48 West 38th St., New York, New York.
2. 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

For purposes of this order, the following definitions shall apply:

"Reseller" is defined as any person, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any

reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

"Product" is defined as apparel or apparel accessories including but not limited to handbags, belts, gloves, scarves, hats, jewelry and footwear.

I

It is ordered, That each of the respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc., corporations, their successors and assigns, and each of the respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or indirectly, the price at which any product is to be resold or advertised by any reseller or prospective reseller.

2. Communicating, publishing, circulating, disseminating or providing by any means any resale price or sale period to any reseller or prospective reseller for a period of three (3) years from the date of service of this order; *provided, however*, that after said three (3) year period, a respondent shall not resume suggesting any resale price or sale period until it has mailed to all its open accounts a letter stating that no reseller is obligated to adhere to any suggested resale price or sale period and that suggested resale prices or sale periods are for informational purposes only.

Provided further, however, that after said three (3) year period, a respondent shall not suggest resale prices or sale periods unless it is clearly and conspicuously stated on those pages of any list, book, advertising or promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

Provided further, however, that after said three (3) year period, a

respondent shall not suggest resale prices on any tag, ticket or comparable marking affixed or to be affixed to any product.

3. Requiring or coercing any reseller or prospective reseller to establish, maintain, issue, adopt or adhere to any resale price or sale period.

4. Requiring or soliciting any reseller, prospective reseller, person or firm, either directly or indirectly, to report any reseller, prospective reseller, person or firm that does not adhere to any resale price or sale period.

5. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

6. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

7. Representing that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

8. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells any product at a certain resale price.

9. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold any product at a certain resale price.

10. Hindering or precluding the lawful use by any reseller of a brand name of any respondent in conjunction with the sale or advertising of any product at any price.

11. Refusing to sell to, terminating, suspending, delaying shipments to or taking or threatening any action against any reseller or prospective reseller because the reseller or prospective reseller has, or was alleged to have, sold or advertised any product at a certain resale price or because the reseller or prospective reseller may engage in any such activity in the future.

12. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from any respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

II

It is further ordered, That respondents shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. An affidavit of mailing shall be sworn to by an official of respondents verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to any reseller that purchases any product from Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to each of respondents' operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies retained by each respondent and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Within sixty (60) days from the date of service of this order, mail or deliver, and obtain a signed receipt therefor, an offer of reinstatement, to every reseller who was terminated for failing to maintain a certain resale price or sale period by any respondent during the period from January 1, 1974 to the date of service of this order, unless the reseller does not meet the credit requirements applied by respondents in the retention of accounts, and reinstate any such reseller who requests reinstatement within thirty (30) days after receiving the offer.

5. Notify the Commission at least thirty (30) days prior to any proposed change in any respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporations which may affect compliance obligations arising out of the order.

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondents' compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between any respondent and any reseller or prospective reseller relating to the price at which any reseller or

prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;

- (b) the termination or suspension of any reseller for any reason;
- (c) the refusal to deal with any prospective reseller for any reason, including the name and address of the prospective reseller; or
- (d) any request for reinstatement pursuant to Part II Paragraph (4) of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days after service of this order a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

RENAULT U.S.A., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY — FEDERAL TRADE COMMISSION IMPROVEMENT ACTS*Docket C-2960. Complaint, April 26, 1979 — Decision, April 26, 1979*

This consent order, among other things, requires an Englewood Cliffs, N.J. seller and distributor of automobiles to cease limiting the duration of implied warranties; make available to purchasers who had been issued incorrect written limited warranties all relief provided by applicable state law; and refrain from raising any defense relating to the limitation of implied warranties in law suits brought by such purchasers. Additionally, the firm is required to notify all purchasers who had received incorrect written limited warranties that they have an implied warranty on the drive train of their vehicle for as long as four years, depending on state law; and furnish them with an explanation of how implied warranties protect consumers. The firm is also required to advise their dealers of servicing obligations to purchasers who had been issued improper written limited warranties.

Appearances

For the Commission: *Michael E.K. Mpras* and *Jeffrey M. Parp*.

For the respondent: *Joseph C. Truncala*, Englewood Cliffs, N.J. and *Milton D. Andrews, Rivkin, Sherman & Levy*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (“Warranty Act”), and by virtue of the authority vested in it by these Acts, the Federal Trade Commission having reason to believe that Renault U.S.A., Inc., a corporation, (“respondent”) has violated the provisions of these Acts and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 100 Sylvan Ave., Englewood Cliffs, New Jersey.

PAR. 2. Respondent has been, and is now engaged in the distribution and sale of automobiles to the public.

PAR. 3. In the course and conduct of its business respondent is a

supplier of consumer products distributed in commerce, as "supplier," "consumer product," and "commerce" are defined by Sections 101(4), 101(1) and 101(13) and (14) of the Warranty Act respectively. In connection with the distribution in commerce of its consumer products, manufactured subsequent to July 4, 1975, respondent offers a written warranty, as "written warranty" is defined by Section 101(6) of the Warranty Act and is therefore a warrantor, as "warrantor" is defined by Section 101(5) of the Warranty Act.

PAR. 4. In the course and conduct of its business, respondent has offered and continues to offer a written limited warranty covering the internal engine, internal transmission (manual or automatic) and internal differential parts of its new cars for a period of 24 months or 24,000 miles from the date of delivery or first use, whichever comes first.

PAR. 5. In connection with the respondent's offering of written warranties, respondent has incorrectly attempted to limit all implied warranties (with the exception of the emission control systems warranty) including the implied warranty of merchantability and the implied warranty of fitness for a particular use, arising under state law and available to purchasers of respondent's cars, to a period of 12 months or 12,000 miles from the date of delivery of the car or its first use. Therefore, respondent has limited all implied warranties with respect to the internal engine, internal transmission (manual or automatic) and internal differential parts to a period of 12 months or 12,000 miles from the date of delivery of the car or its first use.

PAR. 6. Respondent's limitation of the implied warranties as described in Paragraph Five of this complaint is a violation of Section 108 of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act ("Warranty-Act"); and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Renault U.S.A., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 100 Sylvan Ave., in the City of Englewood Cliffs, State of New Jersey.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

For the purposes of this order the definitions of (1) the terms "written warranty" and "consumer product" as defined in Section 101 of the Warranty Act shall apply, and (2) "incorrect limitation" shall mean the attempted limitation of the duration of the implied warranties on the internal engine, internal transmission (manual or automatic) and internal differential parts to 12,000 miles or 12 months, whichever comes first, as set forth in Paragraph Five of the complaint.

II.

It is ordered, That respondent Renault U.S.A., Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation,

subsidiary, division or any other device in connection with the advertising, offering for sale and sale of motor vehicles shall do the following:

A. Shall not limit the duration of the implied warranties with respect to any motor vehicle or part of such vehicle for a period which is shorter than the period of the express written warranty applicable to such motor vehicle or part.

B. For the period allowed by applicable state law:

1. Shall not raise any defenses pertaining to the limitation or modification of implied warranties as they relate to the internal engine, internal transmission and internal differential parts, in any case, suit or other proceeding brought against respondent by consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation.

2. Provide, in good faith, all consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation and which motor vehicles do not comply with all of the implied warranties as they relate to the internal engine, internal transmission and internal differential parts, with all relief available to them by applicable state laws.

C. Notify all consumers who have purchased any of respondent's warranted motor vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation, by mailing to each such consumer the notice set forth in Appendix A of this complaint and order. In order to comply with this paragraph, respondent must ascertain who are registered under state law as the owners of such vehicles, and whose names and addresses are reasonably ascertainable through such state records by a commercial locator engaged by respondent.

D. Notify, by letter, all of its authorized Renault dealerships that respondent may be liable to all Renault owners who purchased Renault vehicles manufactured after July 3, 1975 and were issued a written limited warranty stating the incorrect limitation for breach of the implied warranties, including the implied warranty of merchantability and the implied warranty of fitness for a particular purpose for the period of time allowed by applicable state law. This notice shall, also, instruct the dealerships as to their servicing obligations, procedure for warranty claims by affected Renault owners and compensation of dealerships by respondent for work done pursuant to respondent's amended warranties and service manuals, and this order.

E. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change in the corporation which may affect compliance obligations arising out of the order.

F. Deliver instructions, pursuant to this order, or a copy of this order, to all present and future personnel, agents and representatives of respondent, located in national or regional distribution offices, who review and approve warranty claims, and provide technical assistance regarding warranty claims, service and performance.

G. Maintain, for a period of three (3) years from the effective date of the order, complete business records of the manner and form of respondent's continuing compliance with all the terms and provisions of this order, to be furnished, upon request to the staff of the Federal Trade Commission during normal business hours and upon reasonable advance notice.

H. Shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A

Dear Renault Owner:

Following a review of our written Limited Warranty by the Federal Trade Commission, it was pointed out to us that we had made an error in part of our written Limited Warranty. We have voluntarily agreed with the FTC to write you this letter as part of a way to correct that error. FTC Dkt. C-2960, April 26, 1979.

When you bought your Renault car you also received a copy of our Limited Warranty. That warranty was for 12 months or 12,000 miles from the date of delivery or first use, whichever comes first, with additional coverage for 24 months or 24,000 miles on the drive train (which covers internal engine, internal transmission and internal differential parts). Included in that warranty, found in your warranty and maintenance guide, is a paragraph labeled "Implied Warranties Limitation" in which we incorrectly limited your implied warranties to 12 months or 12,000 miles on the drive train.

The Federal Warranty Law, the Magnuson-Moss Warranty Act, does not allow the implied warranties to run for a period shorter than the express written limited warranty. Because of our error, you now have implied warranties on the drive train of your car for as long as four years, depending on what your state law provides. Implied warranties are rights created by state law, not by Renault or any other company. All states have them and they are in addition to the protection you get from written warranties (like our Limited Warranty). The most common implied warranty is the warranty of merchantability. This means that we promise that the car you bought is fit for the ordinary uses of the car, which include safe, efficient driving.

Another implied warranty is the warranty of fitness for a particular purpose. If you bought your car relying on our advice or statements in our advertisements that it can be used for a special purpose, then this advice may create a warranty.

The above discussion refers only to *implied warranties*. *Renault reminds you that in no event is your written warranty on the drive train extended beyond 24 months or 24,000 miles.*

If you feel that your car has a defect that is covered by either of these implied warranties, please contact your dealer, or call us at (telephone number) (this is a toll-free number for you).

If you have sold your car, please tell the new owner about this, or tell us and we will write to him/her.

Sincerely,

RENAULT U.S.A., INC.
Customer Relations Department

Complaint

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9055. Complaint, Sept. 16, 1975 — Decision, May 3, 1979

This consent order, among other things, requires a Miami, Fla. land sales firm and eight wholly-owned subsidiaries to cease misrepresenting or failing to disclose the nature and purpose of promotional activities; the legal significance of signing a contract form; the monetary risks involved in the purchase of undeveloped land; and the advisability of consulting with a real estate specialist prior to purchase. Unavailability of utilities, sewage disposal, water, or other improvements must be set forth in contracts, and respondents are required to provide purchasers with a cooling-off period in which to cancel their dealings. The order also requires that purchasers be informed that certain subdivisions are located in designated flood areas and considerable expenditure would be required to make lots usable. Any sales representation concerning the availability of electricity, phone service, recreational facilities, and/or other improvements must be contractually guaranteed, and failure to fulfill such obligations in a timely manner would entitle purchasers to a refund of their full purchase price plus 7% interest. In addition, the order limits purchasers' liability in the event of default, and requires respondents to send previous buyers prescribed "truth" letters which contain information about investments, subdivision development, assessments, contractual rights, and possible tax benefits should purchasers default.

Appearances

For the Commission: *Jeffrey Tureck, Dayle Berke, D. McCarty Thornton and Pamela B. Stewart.*

For the respondents: *Philip F. Ziedman and Daryl A. Nickel, Brownstein, Zeidman, Schomer & Chase, Washington, D.C.*

COMPLAINT*

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Cavanagh Communities Corporation (formerly Cavanagh Leasing Corporation), a corporation, and its wholly-owned subsidiary corporations, Cape Cave Corporation, Cavanagh Marketing Corporation (formerly Cavanagh Land Sales Corporation), Cavad, Inc., Universal Properties, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm

* Reported as amended by Order Granting In Part And Remanding In Part Motion To Serve Supplemental Pleading dated January 27, 1976.

Beach Investment Properties, Inc., and Perdido Bay Management Corp., and their subsidiaries, and Joseph Klein and Arthur Meltzer, individually and as past or present officers and/or directors of Cavanagh Communities Corporation and one or more of said subsidiary corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Respondent Cavanagh Communities Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

2. Respondent Cavanagh Communities Corporation, from its aforementioned principal place of business, operates through, dominates and controls the acts and practices of its aforementioned subsidiaries, and their subsidiaries, and derives pecuniary and other benefits from the acts and practices of the said wholly-owned subsidiaries.

3. Respondent Cape Cave Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

4. Respondents Cavanagh Marketing Corporation, Cavad, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm Beach Investment Properties, Inc., and Perdido Bay Management Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their principal offices and places business located at 444 Brickell Ave., Miami, Florida.

5. Respondent Universal Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

6. Respondents Joseph Klein and Arthur Meltzer are now and/or have been officers and directors of respondent Cavanagh Communities Corporation and several of the other corporate respondents. They formulate, direct and control, and for some time last past have formulated, directed and controlled, the acts and practices of such corporate respondents, including the acts and practices hereinafter set forth. Their address is 444 Brickell Ave., Miami, Florida.

7. Respondents Cavanagh Communities Corporation, Cape Cave Corporation, Cavanagh Marketing Corporation, Cavad, Inc., Universal Properties, Inc., and Wellington Orient, Inc., are now, and for

some time last past have been, engaged directly or through their wholly-owned subsidiaries in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and/or selling said lots to the public.

8. Respondents Palm Beach Investment Properties, Inc. and Perdido Bay Management Corp., are now, and for some time last past have been, engaged in the business of advertising, offering for sale, and sale to the public of lots owned by respondents or others.

9. Respondent Miami Beach Vacations, Inc. is now, and for some time last past has been, engaged in the publication, promotion, sale and distribution of room accommodation certificates ("vacation certificates") to consumers and businesses.

10. Among the subdivisions in which lots have been and/or are being offered for sale by respondents are the subdivisions known as Rotonda West, Rotonda Shores, Rotonda Heights, Rotonda Lakes, Rotonda Meadows, Rotonda Springs, Rotonda Sands, Rotonda Villas, Paradise Hills, Enterprise Heights-Timber Ridge, Palm Beach Heights, Palm Beach Country Estates, and Perdido Bay Country Club Estates, all located in the State of Florida, and Twin Lakes Country Club & Estates, located in the State of Arizona.

11. Respondents usually sell the lots in their subdivisions to purchasers who have not seen the property by means of standard form contracts, generally titled "Agreement for Deed," hereinafter referred to in this complaint as a "contract," whereby the purchaser pays monthly installments over a term of several years. According to the provisions of the contract, title to and possession of the lot remain in the respondents until all payments are made, at which time title to the lot is to pass to the purchaser. As to most of their subdivisions, respondents agree in the contract to make certain improvements of benefit to the lot, said improvements to be completed before title passes. Purchasers do not, during the term of the contract, enjoy any rights of enjoyment of the lot. The contract provides that the purchaser pays interest to the respondents during the contract term on the unpaid balance owing under the contract.

12. In the course and conduct of their aforesaid business respondents now cause, and for some time last past have caused, their promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from their places of business in Arizona, Florida and other states to their agents, representatives, employees, customers and prospective customers in various other States and Territories of the United States and the District of Columbia and foreign nations, and now maintain and operate, and for some time last past have

maintained and operated, places of business and have made substantial sales to purchasers in the various other States of the United States and the District of Columbia and in foreign nations, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of land.

14. In the course and conduct of the aforesaid business, respondents disseminate advertisements through television and radio broadcasts and in various publications of general circulation, distribute promotional materials through the mail and in person to members of the public, and make sales presentations by means of oral and written statements, slides and movies. By and through such means, respondents have made and are making various statements and representations, directly or by implication, concerning the good reputation, financial security, and integrity of Cavanagh Communities Corporation and its predecessor corporation.

15. By and through the use of such statements and representations, respondent Cavanagh Communities Corporation has permitted and participated in the use of its name and its alleged good reputation, financial security, and integrity for the purpose of selling its subsidiaries' land and deriving pecuniary benefits therefrom.

I

16. In the further course and conduct of their aforesaid business, respondents disseminate advertisements through television and radio broadcasts and in various publications of general circulation, distribute promotional materials through the mails and in person to members of the public, and make sales presentations by means of oral and written statements, movies and slides. By and through such means, respondents have made and are making various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; inflation; the stock market, banks and insurance; population growth and movement; the location of industrial, commercial and recreational facilities; the suitability of lots in respondents' properties for investments or homesites; the present and future development of respondents' subdivisions; the financial integrity and reputation of respondents as a community developer; the well-known personalities who live in or near subdivisions in

which respondents are selling land; and the various options or financial protections afforded purchasers of respondents' land, including the repurchase or resale by respondents of lots acquired by purchasers from respondents.

17. By and through the statements and representations alleged in Paragraph 16 above, respondents have represented and are representing, directly or by implication, that the lots which respondents are offering for sale are, at the price at which respondents are offering them for sale, investments which will provide significant financial return to the purchasers, and that there are few or no financial risks involved in the purchase of said lots at said price.

18. In truth and in fact, in a significant number of instances, the lots which respondents are offering for sale, at the price at which respondents are offering them for sale, are not investments which will provide significant financial return to purchasers, and involve substantial financial risk to purchasers. Therefore, the acts and practices alleged in Paragraph 17 above are deceptive.

II

19. In the further course and conduct of their aforesaid business, respondents have offered and are offering lots for sale without disclosing to prospective purchasers that the lots being offered are, at the price at which respondents are offering them, a risky investment in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under contract, at or above the purchase price, if at all. Respondents therefore have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether to purchase a lot from respondents. Such failure to disclose is a deceptive or unfair act or practice.

III

20. In the further course and conduct of the aforesaid business, respondents have made and are making various oral and written statements and representations to prospective purchasers and purchasers concerning repurchase or resale by respondents of lots acquired by purchasers from respondents.

21. By and through the statements and representations alleged in Paragraph 20 above, respondents have represented and are representing, directly or by implication, that they will either buy back from or resell for purchasers lots acquired from respondents at or above the price paid for said lots by the purchasers.

22. In truth and in fact, respondents do not buy back from or resell for purchasers lots acquired from respondents. Therefore, the act or practice alleged in Paragraph 21 above is unfair or deceptive.

IV

23. In the further course and conduct of the aforesaid business, and after a purchaser has signed a contract, respondents have made and are making various statements and representations to such purchasers through oral and written statements, concerning the current value of lots which have previously been purchased from respondents.

24. By and through the representations alleged in Paragraph 23 above, respondents have represented and are representing, directly or by implication, that such purchasers' lots are currently worth significantly more than the price paid for such lots by the purchasers.

25. In truth and in fact, after lots are purchased from respondents they generally are not worth significantly more than the price paid by the purchaser. Therefore, the acts and practices alleged in Paragraph 24 are deceptive or unfair.

V

26. In the further course and conduct of their aforesaid business, respondents have made and are making statements and representations in promotional materials and in sales presentations by means of oral and written statements, films and slides, concerning the reputation and experience of respondents as community developers.

27. By and through the statements and representations alleged in Paragraph 26 above, respondents have represented and are representing, directly or by implication, that:

- a) Respondents are experienced community developers.
- b) Respondents have developed and are developing new communities throughout the United States.

28. In truth and in fact:

- a) At the time the first such representations were made respondents were not experienced community developers.
- b) Respondents have not developed and are not developing new communities throughout the United States.

Therefore, the statements and representations alleged in Paragraph 27 above are deceptive or unfair.

VI

29. Respondents, in the further course and conduct of their aforesaid business, have offered and are offering for sale lots in subdivisions having similar names. Said subdivisions are often referred to collectively or conjunctively.

30. The practices alleged in Paragraph 29 above have the capacity and tendency to lead significant numbers of consumers into the belief that the recreational facilities, improvements, utilities, and amenities to be provided for one such subdivision are the same as those for one or more of the other subdivisions, or that the aforesaid subdivisions are a single subdivision to which all of respondents' representations concerning recreational facilities, improvements, utilities and amenities are applicable.

31. In truth and in fact, all of the aforesaid subdivisions are not going to be provided with identical recreational facilities, improvements, utilities and amenities. Therefore, the practices alleged in Paragraph 29 above are deceptive or unfair.

VII

32. In the further course and conduct of the aforesaid business, respondents have made and are making various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls, and sales presentations involving oral statements, written statements, movies and slides, concerning the past, present, and future development of the Rotonda subdivisions; including the various recreational facilities, improvements, utilities and amenities to be provided in and for Rotonda West and the other Rotonda subdivisions; the progress being made toward their completion; the various construction projects which have been planned and/or begun in the Rotonda subdivisions and the cost of acquiring a lot to which the various recreational facilities, improvements and utilities are or will be available.

33. By and through the statements and representations alleged in Paragraph 32 above concerning the Rotonda subdivisions, respondents have represented and are representing, directly or by implication, that:

a) Certain recreational facilities, improvements, utilities and amenities, including but not limited to a multi-million dollar clubhouse, totally underground utilities, concrete curbs and gutters,

sidewalks, and a park and business complex, will be provided in Rotonda West and/or the other Rotonda subdivisions.

b) Certain recreational facilities, buildings, and amenities, including but not limited to a golf course, multi-family residential buildings, and a strip shopping center, are planned for completion by dates certain.

c) Certain recreational facilities and buildings, including but not limited to a clubhouse and a multi-family residential development, are under construction.

d) Certain buildings, including but not limited to a hotel or motel and a townhouse development, are planned for the immediate future.

e) A stated number of miles of certain improvements, including but not limited to curbs and gutters and roads, have been completed.

34. In truth and in fact:

a) The recreational facilities, improvements, utilities and amenities referred to in subparagraph 33(a) above are not part of respondents' express contractual obligations to purchasers. In addition, these recreational facilities, improvements, utilities and amenities:

(i) Were not, at the time the representations referred to in subparagraph 33(a) were made, part of respondents' development plans for any of the Rotonda subdivisions and the Rotonda community, or were part of respondents' development plans for only a single segment of Rotonda West; and/or

(ii) Are not presently part of respondents' development plans for any of the Rotonda subdivisions and the Rotonda community, or are part of respondents' development plans for only a single segment of Rotonda West.

b) The recreational facilities, buildings, and amenities referred to in subparagraph 33(b) above were not completed by the dates represented and still have not been completed.

c) The recreational facilities and buildings referred to in subparagraph 33(c) above were not under construction at the time the representations were made and are still not under construction.

d) The buildings referred to in subparagraph 33(d) above were never constructed.

e) Substantially fewer miles of the improvements referred to in subparagraph 33(e) above had actually been completed at the time the representations were made.

Therefore, the acts and practices alleged in Paragraph 33 above are deceptive or unfair.

VIII

35. By and through the statements and representations alleged in Paragraph 32 above, respondents have further represented and are representing, directly or by implication, that all lots in the Rotonda subdivisions which will be served by a central sewerage system when required by population density will be able to use septic tanks prior to that time.

36. In truth and in fact, in many cases where it is respondents' contractual obligation to provide a central sewerage system to a lot when required by population density, no reasonable alternate means of sewage disposal is or will be available prior to that time.

Therefore, the acts and practices alleged in Paragraph 35 above are deceptive or unfair.

IX

37. By and through the statements and representations alleged in Paragraph 32 above, respondents have further represented and are representing, directly or by implication, that Don Pedro Island will be reserved as a private resort island for the exclusive use of purchasers of lots in the Rotonda subdivisions and their guests.

38. In truth and in fact, respondents have no express contractual obligations which require them to reserve Don Pedro Island as a private resort island for the exclusive use of Rotonda purchasers and their guests; in addition, respondents have permitted and/or plan to permit others to use Don Pedro Island. Therefore, the acts and practices alleged in Paragraph 37 above are deceptive or unfair.

X

39. In the further course and conduct of their aforesaid business, respondents have made and are making statements and representations in promotional materials and in sales presentations by means of oral and written statements, films and slides, concerning the past, present and future development of Twin Lakes Country Club and Estates and the future development of Paradise Hills, Palm Beach Heights, and Perdido Bay Country Club Estates.

40. By and through the statements and representations alleged in Paragraph 39 above, respondents have represented and/or are representing, directly or by implication, that in Twin Lakes Country Club & Estates:

a) Certain utilities, including but not limited to water and gas lines, are presently available to many lots.

b) Electricity will be made available to each lot for only a nominal hook-up charge.

c) Certain recreational facilities and amenities, including but not limited to lakes, a restaurant, and an 18 hole golf course, have been completed and are in use or will soon be made available.

d) Respondents will maintain all roads.

41. In truth and in fact, in Twin Lakes Country Club and Estates:

a) The utilities referred to in subparagraph 40(a) above were not available to many lots at the time the alleged representations were made, and are not presently available.

b) Electricity will be made available to many lots only upon the payment to the local utility company of a sizable line extension fee.

c) The recreational facilities and amenities referred to in subparagraph 40(c) above either have never been made available or were made available for only a short time and then closed down by respondents.

d) Respondents have not adequately maintained the roads.

Therefore, the acts and practices alleged in Paragraph 40 above are deceptive or unfair.

XI

42. By and through the statements and representations alleged in Paragraph 39 above, respondents have further represented and are representing, directly or by implication, that:

a) Paradise Hills would be developed at least to the extent of lots being made accessible by conventional means of transportation.

b) Palm Beach Heights would be a fully developed suburban community, with paved roads, recreational facilities, and other improvements and amenities.

c) The canals in Palm Beach Heights will be navigable when completed, and many lots therein will have access by boat to the Atlantic Ocean or other open water.

d) Many lots in Perdido Bay Country Club Estates would be completely developed within one or two years from the date of purchase.

43. In truth and in fact:

a) It is not part of respondents' express contractual obligations, nor is it part of respondents' land development program, to develop Paradise Hills in any manner whatsoever.

b) The contractual obligations and development plans for Palm Beach Heights are limited to dirt roads and drainage.

c) There are no contractual obligations or development plans to

make the canals in Palm Beach Heights navigable or to provide access by boat to the Atlantic Ocean or other open water.

d) It is not part of the land development plans for Perdido Bay Country Club Estates to develop the lots therein prior to the date for completion of improvements stated in the purchaser's contract.

Therefore, the acts and practices alleged in Paragraph 42 above are deceptive or unfair.

XII

44. In conjunction with the statements and representations alleged in Paragraphs 32 and 39 above regarding improvements and utilities, and statements and representations in sales presentations regarding the cost of a lot, respondents have failed and are failing to clearly and conspicuously disclose that, in order to purchase a lot and render it suitable for use, the purchaser must incur substantial additional expenses which are not included in the purchase price. The necessity of incurring such expenses is a material fact, knowledge of which would be likely to affect the decision of certain consumers as to whether to sign a contract for the purchase of respondents' land.

45. Therefore, the failure to clearly and conspicuously disclose the aforesaid substantial additional expenses in conjunction with the statements and representations alleged in Paragraph 44 above is a deceptive or unfair act or practice.

XIII

46. In the further course and conduct of their business, respondents have set up Conservation Associations in many of their subdivisions. These Associations, each of which is comprised of all owners of lots in one subdivision (including those undeeded purchasers still paying for lots under the terms of their contracts), have the right by a vote of the members to assess their members for the upkeep of and any capital improvements to the common properties in the subdivision. Until such time as 75% of the total number of lots in the subdivision are conveyed of record by respondents, respondents shall have all of the voting rights in that subdivision's Conservation Association.

47. Respondents fail to clearly and conspicuously disclose to potential purchasers the existence of the Conservation Associations in the subdivisions where applicable, that these Associations have the right to assess all property owners to maintain the common properties in the subdivision, and that respondents will be the sole

voting member of the association for the foreseeable future. Each of these facts is a material fact, knowledge of which would be likely to affect the decision of certain consumers as to whether to purchase a lot from respondents. Such failure to disclose is a deceptive or unfair act or practice.

XIV

48. In the further course and conduct of their business, respondents have made and are making oral statements to many purchasers of single family residential lots concerning the exchange of such lots for more expensive multiple family residential lots.

49. By and through the statements and representations alleged in Paragraph 48 above, respondents have represented and are representing, directly or by implication, that in the event the purchasers exchange their single family residential lots for more expensive multiple family residential lots, respondents will plan and construct, at the purchasers' expense, multiple family residences, and will act as the rental agent for such residences when completed.

50. In truth and in fact, respondents failed to construct such multiple family residences for purchasers who made the exchange to multiple family residential lots. Therefore, the acts and practices alleged in Paragraph 49 above are deceptive or unfair.

XV

51. In the further course and conduct of their aforesaid business, respondents have made and are making statements and representations in advertisements in publications of general circulation, promotional materials, and sales presentations by means of oral and written statements, films and slides, concerning the accessibility from the Rotonda subdivisions and certain lots therein to the Gulf of Mexico and the navigability and other uses of canals in the Rotonda subdivisions.

52. By and through the statements and representations alleged in Paragraph 51 above, respondents have represented and are representing, directly or by implication, that in the Rotonda subdivisions:

- (a) The Gulf of Mexico is accessible by boat from marinas and from lots fronting on canals;
- (b) All canals will be suitable for recreational uses including but not limited to boating and water skiing.

53. In truth and in fact:

(a) The Gulf of Mexico is not accessible by boat from marinas and lots fronting on canals in the Rotonda subdivisions;

(b) Many canals in the Rotonda subdivisions are suitable for recreational uses only to a limited extent.

Therefore, the acts and practices alleged in Paragraph 52 above are deceptive or unfair.

XVI

54. In the further course and conduct of their aforesaid business, respondents have made and are making various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls, and sales presentations involving oral and written statements, films and slides, concerning Ed McMahan, a well-known television personality, and his relationship with respondents.

55. By and through the statements and representations alleged in Paragraph 54 above, respondents have represented and are representing, directly or by implication, that:

a) Ed McMahan takes an active part in the day-to-day operation of respondent Cavanagh Communities Corporation's business.

b) Ed McMahan purchased real estate in Rotonda because he believed real estate in Rotonda was a good investment.

56. In truth and in fact:

a) Ed McMahan did not take an active part in the day-to-day operation of respondent Cavanagh Communities Corporation's business during the time he was employed by Cavanagh.

b) At the time the representation alleged in subparagraph 55(b) was first made, Ed McMahan did not own, and had not contracted to acquire, real estate in Rotonda.

Therefore, the acts and practices alleged in Paragraph 55 above are deceptive or unfair.

XVII

57. In the further course and conduct of their aforesaid business, respondents have made and are making statements in promotional materials concerning the participation of General Electric Co. in the planning and development of Rotonda West.

58. By and through the statements and representations alleged in Paragraph 57 above, respondents have represented, directly or by implication, that General Electric Co. played a major role in the planning, design and development of Rotonda West.

59. In truth and in fact, General Electric Co. did not play a major role and does not now play a major role in the planning, design and development of Rotonda West. Therefore, the acts and practices alleged in Paragraph 58 above are deceptive or unfair.

XVIII

60. In the further course and conduct of their aforesaid business, respondents have made statements and representations in promotional materials and in sales presentations by means of oral and written statements, films and slides concerning the limited size of the Rotonda community.

61. By and through the statements and representations alleged in Paragraph 60 above, respondents have represented that the Rotonda community will consist of only Rotonda West, or of only Rotonda West, Rotonda Heights, and Rotonda Lakes, and that the lots therein will therefore have great value.

62. In truth and in fact, the Rotonda community consists of Rotonda West, Rotonda Heights, Rotonda Lakes, and five other subdivisions. Therefore, the acts and practices alleged in Paragraph 61 above are deceptive or unfair.

XIX

63. In the further course and conduct of their aforesaid business, respondents have made and are making statements and representations in promotional materials and in sales presentations through oral and written statements, slides and films, concerning the population growth, present population, and population projections for various cities, counties, and states in which or in the vicinity of which their subdivisions are located.

64. By and through the statements and representations alleged in Paragraph 63 above, respondents have represented and are representing, directly or by implication, that their subdivisions are located in areas of unusually high population growth.

65. In truth and in fact, some of respondents' subdivisions are not located in areas of unusually high population growth. Therefore, the acts and practices alleged in Paragraph 64 above are deceptive and unfair.

XX

66. In the further course and conduct of their aforesaid business, respondents have offered and are offering lots for sale in certain subdivisions without clearly and conspicuously disclosing to prospec-

tive purchasers that the area comprising the subdivisions has been designated as a flood hazard area by the Federal Insurance Administration of the Department of Housing and Urban Development, and that such designation carries legal requirements and consequences which may significantly affect the use of and increase the costs of using the lots as homesites. Said designation and the legal consequences thereof are material facts, knowledge of which would be likely to affect the decision of certain consumers as to whether to purchase such lots. Therefore, the failure to disclose the aforementioned facts is a deceptive or unfair act or practice.

XXI

67. In the further course and conduct of their aforesaid business, respondents have offered certain residential lots for sale to prospective purchasers without clearly and conspicuously disclosing that such lots are located adjacent to or in the vicinity of railroad tracks which have been and are being used to carry trains. The aforementioned facts are material facts, knowledge of which would be likely to affect the decision of certain consumers as to whether to purchase such lots. Therefore, the failure to disclose the aforementioned facts is a deceptive or unfair act or practice.

XXII

68. In the further course and conduct of their aforesaid business, respondents have failed to clearly and conspicuously disclose to prospective purchasers and purchasers that certain previously disclosed plans for the development of their subdivisions and/or the recreational facilities, improvements, utilities, or amenities, therein, have been materially altered or that certain recreational facilities and amenities which were previously available for use or in operation have been subsequently closed or are no longer operational. The above facts are material facts, knowledge of which would be likely to affect the decision of certain prospective purchasers as to whether to purchase a lot from respondents, and of certain purchasers as to whether to continue to make their monthly payments, or, if applicable, whether to cancel their contracts and receive refunds in accordance with the refund privilege stated in their contracts. Therefore, such failure to disclose the aforementioned facts is a deceptive or unfair act or practice.

XXIII

69. In the further course and conduct of their aforesaid business,

respondents have failed to clearly and conspicuously disclose to consumers that as a condition to receiving free or low cost goods or services from respondents, or to use a vacation certificate issued by respondents and/or distributed to the public by respondents, the consumers will be required to attend a land sales presentation. The above-mentioned facts are material facts, knowledge of which would be likely to affect the decision of certain consumers as to whether to accept free or low cost goods and services from respondents or use vacation certificate issued or distributed to the public by respondents. Therefore, such failure to disclose is a deceptive or unfair act or practice.

XXIV

70. In the further course and conduct of their aforesaid business, respondents have made and are making various statements and representations in sales presentations concerning the import or significance of signing a contract for the purchase of respondents' land.

71. By and through the statements alleged in Paragraph 70 above, respondents have represented and are representing, directly or by implication, that by signing a contract, the purchaser is not entering into a binding obligation to purchase land.

72. In truth and in fact, a person signing a contract has thereupon entered into a binding obligation to purchase land. Therefore, the act or practice alleged in Paragraph 71 above is deceptive or unfair.

XXV

73. In the further course and conduct of the aforesaid business, respondents have made and are making various statements and representations in promotional materials and in sales presentations by means of oral and written statements, slides and movies, concerning a purchaser's right after signing a contract to rescind and obtain a full refund of all monies paid thereunder.

74. By and through the statements and representations alleged in Paragraph 73 above, respondents have represented, and are representing, directly or by implication, that in the event a purchaser completes a tour of the subdivision in which his or her lot is located within the required time period and immediately thereafter requests a refund, the purchaser will get a refund without difficulty.

75. In truth and in fact:

a) In many cases, respondents use high pressure tactics in order to induce purchasers who request refunds after the company-guided tour of the subdivision to change their minds. In other cases, respondents refuse to provide purchasers, within a reasonable period of time, with the form they are required to sign at the subdivision in order to obtain a refund.

b) In many cases, respondents do not send refunds to purchasers who are so entitled until the expiration of an unreasonable period of time.

Therefore, the acts and practices alleged in Paragraph 74 above are deceptive or unfair.

XXVI

76. In the further course and conduct of their aforesaid business, respondents have made and are making statements in promotional materials and orally in sales presentations concerning the price and location of the lots they are offering for sale and will offer for sale.

77. By and through the statements alleged in Paragraph 76 above respondents have represented and are representing, directly or by implication, that prospective purchasers must purchase a lot immediately to insure that the price will not increase and that the location they desire will be available.

78. In truth and in fact, most prospective purchasers do not have to purchase immediately to insure that prices will not increase or that desired locations will be available. Therefore, the acts and practices alleged in Paragraph 77 above are deceptive or unfair.

XXVII

79. In the further course and conduct of their aforesaid business respondents, in obtaining a purchaser's signature on a contract, have presented and are presenting purchasers with a contract, one or more property reports required to be provided to the purchaser by state and/or federal law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions likely to affect the decision of certain consumers as to whether to sign a contract for the purchase of respondents' land.

80. Respondents have made and are making available the aforesaid documents at sales presentations or other gatherings sponsored by respondents in circumstances where it is likely that many purchasers will not read such documents because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not have the opportunity to read such

documents carefully, completely or with full comprehension of their meaning and import. The soliciting or obtaining under such circumstances of a purchaser's signature on a contract to purchase respondents' land, involving a substantial financial commitment by the purchaser, is a deceptive or unfair act or practice.

XXVIII

81. In the further course and conduct of the aforesaid business, respondents have utilized and are utilizing a contract the provisions of which cannot be understood by many consumers or cannot be evaluated by many consumers to determine if they are fair or reasonable. Respondents have made and are making available the contract to purchasers, and solicit and obtain signatures to the contract from purchasers, in circumstances where the purchaser has not had the opportunity to seek assistance or counsel in understanding the provisions or making the aforesaid determination.

82. The soliciting or obtaining of a purchaser's signature on a contract to purchase respondents' land, involving a substantial financial commitment by the purchaser, where the purchaser has not had opportunity to seek assistance or counsel for the purposes referred to in Paragraph 81 above, is an unfair act or practice.

XXIX

83. Respondents, in the further course and conduct of their aforesaid business, have utilized and are utilizing standard form contracts for the sale of lots to purchasers.

84. The aforesaid contracts contain a provision under which purchasers are entitled, at their option, to a refund of all payments or an exchange of property, if respondents fail to meet their obligations under the contracts. No requirement is imposed upon respondents by the aforesaid contract to inform purchasers that respondents have so failed to meet their obligations.

85. The absence of the aforesaid requirement to inform purchasers renders the use by respondents of the aforesaid contract provision an unfair act or practice because many purchasers, in the context of an interstate land sales transaction, are likely to remain unaware indefinitely of respondents' failure to meet their contractual obligations, and will therefore fail to seek the legal redress to which they may be entitled.

XXX

86. The aforesaid contracts also contain a provision that no oral

or implied representations have been made as an inducement to enter into the contract other than those expressly contained in the contract, or that no agreements, stipulations, representations, warranties, promises or understandings not expressly set forth in the contract have been made.

87. The use by respondents of the aforesaid provisions is an unfair or deceptive act or practice because respondents make representations, through advertisements in publications of general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from the obligations of respondents or purchasers under said contracts.

XXXI

88. The aforesaid contracts also contain a declaration by the purchaser that the purchaser has had an opportunity to examine any property reports or offering statements required to be made available to prospective purchasers by state or federal law, and that the purchaser understands that he has the right to cancel the contract within a time period which is therein stated.

89. The use by respondents of the aforesaid declaration is an unfair or deceptive act or practice because respondents frequently fail to give the purchaser the property report or offering statement prior to the signing by the purchaser of the contract, or frequently make available the property report or offering statement in circumstances where it is likely that many purchasers will not read such documents because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents carefully, completely or with full comprehension of their meaning and import.

XXXII

90. The aforesaid contracts also generally provide that upon a failure of the purchaser to pay any installment due under the contract, the seller shall be entitled to retain all sums previously paid thereunder by the purchaser as liquidated damages.

91. The use by respondents of the aforesaid provision is an unfair act or practice because the sums retained by the respondents are not calculated to bear any relation to the actual damages, if any, sustained by respondents by reason of the purchaser's default.

XXXIII

92. The aforesaid contracts also contain a refund provision according to the terms of which purchasers must personally complete a company-guided tour of the subdivision in which their lots are located within a specified period of time in order to obtain a refund of all moneys paid under their contracts. Many of the lots sold by respondents are physically inaccessible within the time period in which the purchaser has to make the tour, and thus purchasers completing this tour generally will not be able to see their lots. In addition, during and/or after the tour of the subdivision the purchasers generally will be subjected to attempts to sell them additional and/or more expensive land.

93. The use by respondents of the aforesaid provision is an unfair act or practice because it requires purchasers to incur the expense of traveling to the subdivisions in which their lots are located, and because it requires purchasers to be subjected to additional sales attempts, without significantly adding to purchasers' ability to make an informed judgment as to whether to retain their land.

XXXIV

94. Many of the aforesaid contracts for the purchase of a lot in one or more of the Rotonda subdivisions also contain provisions regarding respondents' obligations in the event neither central sewerage facilities nor septic tanks are available when the purchaser is ready to build on his lot. These contracts state that if central sewerage facilities are unavailable and a septic tank permit cannot be obtained, the purchaser and respondents will try to agree upon an exchange to a lot which does have sewage facilities. Should such an agreement not be reached, some of the aforesaid contracts contain no further relief for the purchaser; others provide that respondents will give the purchaser a refund of all payments without interest.

95. By and through the use of the contract provisions described in Paragraph 90 above, respondents have sold and are selling homesite lots which may not have any reasonable means of sewage disposal while at the same time limiting the remedies purchasers may seek against respondents in the event said lots in fact have no reasonable means of sewage disposal to remedies that do not adequately protect such purchasers. Therefore, the use by respondents of the aforesaid provisions is unfair or deceptive.

XXXIV-A

95a. In the further course and conduct of their aforementioned

business, respondents have made and are making various statements and representations to purchasers by means of oral and written statements concerning the Federal Trade Commission's proceedings against Cavanagh Communities Corporation, *et al.* under Dkt. 9055, including but not limited to statements and representations characterizing the complaint allegations and describing their applicability to the Rotonda subdivisions.

95b. By and through the statements and representations alleged in Paragraph 95a above, respondents, directly or by implication, have misrepresented and are misrepresenting the contents of the aforementioned complaint, including but not limited to misrepresenting allegations regarding the use or value of lots in respondents' subdivisions as investments and homesites, the applicability of the various complaint allegations to the Rotonda subdivisions, and the nature of the allegations which do pertain to Rotonda. The making of such misrepresentations is a deceptive or unfair act or practice.

XXXIV-B

95c. In the further course and conduct of their aforementioned business, respondents have made and are making various statements and representations to purchasers by means of oral and written statements concerning the improvements made at Rotonda.

95d. By and through the statements and representations alleged in Paragraph 95c above, respondents have represented and are representing, directly or by implication, that respondents recently have made substantial improvements at Rotonda.

95e. In truth and in fact, there has been little or no recent development at Rotonda by respondents. Therefore, the acts and practices alleged in Paragraph 95d above are deceptive or unfair.

XXXV

96. In the further course and conduct of the aforesaid business, respondents as aforesaid have induced and are inducing members of the public to pay to them in advance of title or the obtaining of any rights of enjoyment or possession, substantial sums of money towards the purchase of lots in Rotonda West, Rotonda Shores, Rotonda Heights, Rotonda Lakes, Rotonda Meadows, Rotonda Springs, Rotonda Sands, Rotonda Villas, Paradise Hills, Palm Beach Heights, and Twin Lakes Country Club and Estates, which are of little value to purchasers as investments and little use as homesites. Such purchasers have paid and are paying such money towards the purchase of lots in reliance upon the aforementioned unfair and

deceptive statements, representations and practices. Respondents have received and are receiving the said sums and have failed to offer to refund or refused to refund such money to purchasers.

97. The use by respondents of the aforesaid practice and their continued retention of the sums, as aforesaid, is an unfair act or practice.

XXXVI

98. In the course and conduct of the aforesaid business, respondents as aforesaid, have engaged and are engaging in an unfair practice by utilizing in their standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondents under the contract. Respondents have received and are receiving the said payments and have failed to offer to refund or refused to refund to defaulting purchasers all payments in excess of respondents' reasonable damages caused by the purchaser's default.

99. The use by the respondents of the aforesaid contract provision and their continued retention of payments in excess of reasonable damages, as aforesaid, is an unfair act or practice.

XXXVII

100. Respondents have as aforesaid (i) induced and are inducing members of the public through unfair and deceptive acts and practices to pay to respondents substantial sums of money towards the purchase of lots in certain of respondents' subdivisions, and (ii) have continued to retain substantial sums in excess of their reasonable damages as a result, as aforesaid, of the unfair forfeiture provision in their contracts.

101. The effect of using the aforesaid acts and practices to secure and retain substantial sums of money is or may be to substantially hinder, lessen, restrain or prevent competition between respondent and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition.

XXXVIII

102. The use by respondents of the aforementioned unfair and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and into

the purchase of substantial numbers of respondents' lots because of said mistaken and erroneous belief.

103. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint based upon alleged acts and practices of the respondents named in the caption hereto and having served such complaint upon respondents and having withdrawn the proceeding from the adjudication based upon a joint motion for withdrawal from adjudication filed by complaint counsel and counsel for respondents; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said 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, 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 the respondents have violated the said Act, and the complaint should have issued stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Cavanagh Communities Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

Respondent Cape Cave Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

Respondents Cavanagh Marketing Corporation, Cavad, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm Beach Investment Properties, Inc., and Perdido Bay Management Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their principal offices and places of business located at 444 Brickell Ave., Miami, Florida.

Respondent Universal Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 444 Brickell Ave., Miami, Florida.

Respondents Joseph Klein and Arthur Meltzer are now and/or have been officers and directors of respondent Cavanagh Communities Corporation and several of the other corporate respondents. Their address is 444 Brickell Ave., Miami, Florida.

2. 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

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

"Property Report" shall include documents entitled "Public Property Report," "Public Offering Statement," "Subdivision Public Report," "Offering Statement," "Prospectives," "Prospectus," "Public Report," and any other document providing information regarding the purchase of land in general or a specific subdivision in particular which is required by federal or state law to be distributed to prospective purchasers or purchasers of land.

"Respondents' subdivision" refers to a subdivision:

(a) The land in which is being sold by one or more of the respondents; (b) for which one or more of the respondents is a mortgagee and exercises control over the advertising, offering for sale, or sale of land in the subdivision; (c) for which one or more of the respondents is the registrant with any state or federal agency which regulates land sales; (d) for which one or more of the respondents is a party to the contracts of sale for lots therein which have been or are being sold to purchasers.

"Land" or "lots" shall mean any real property located in one of respondents' subdivisions, but shall exclude (i) land or lots upon which a residential or commercial structure is located; (ii) land or lots which is or are sold together with or under a contract to construct a house or other building thereon within 24 months of the date of sale of the land or lots; and (iii) land or lots sold to a

purchaser pursuant to a single contract for a sum in excess of \$50,000.

“Commission” shall refer to the Federal Trade Commission and/or its duly authorized representatives and employees.

As used in this order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or by implication, and by any manner or means.

No provision of this order shall be construed as limiting the application of any other paragraph of this order unless such limitation is *expressly* provided for in this order.

It is ordered, That respondents Cavanagh Communities Corporation, Cape Cave Corporation, Cavanagh Marketing Corporation, Cavad, Inc., Universal Properties, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm Beach Investment Properties, Inc., and Perdido Bay Management Corp., corporations, and their officers, and their subsidiaries and the said subsidiaries' officers, and Joseph Klein and Arthur Meltzer, individually, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, or sale of real property in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Failing to disclose, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, including but not limited to dinner parties or other similar gatherings, contests, or awards of free or low cost gifts, vacations, or sightseeing tours, or any other goods or services, which is in any manner a part of a plan or procedure to sell land, the following statement:

The purpose of [the event or activity] is to sell you land in [name of State in which land is located] priced from approximately [price which is at or above the price, including assessments, of at least 5% of the lots being offered for sale].

(b) If the invitation or communication referred to in subparagraph (a) above is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously in the invitation or communication; if such invitation or communication is oral and delivered in person, such disclosure shall be both oral and in writing and shall be made clearly and conspicuously and in conjunction with the invitation or communication; if such invitation or communication is made by telephone, such disclosure shall be made orally and clearly and conspicuously in the telephone invitation or communication, and in

writing. All written disclosures shall be received by the prospective purchaser prior to the event or activity.

(c) Misrepresenting the true nature and purpose of any event or activity, including but not limited to dinner parties or other similar gatherings, contests, awards of free or reduced price gifts or vacations, and sightseeing tours.

2. Failing to set forth as the title of any contract for the purchase of land, in boldface type of a minimum size of 24 points, the following language: "CONTRACT FOR THE PURCHASE OF LAND."

3. (a) Failing to print the following in 12-point boldface type as the only writing, in addition to that required by paragraph 2 above, subparagraph 3(b) below if applicable, and, at respondents' option, the name of the seller, the subdivision in which the lot is located, the contract number, and/or the date of the contract, on the first page of all contracts for the sale of land:

This is a contract by which you agree to purchase land.

The future value of this land, as well as all undeveloped real estate, is speculative and risky.

It is unlikely that the value of the land will increase or that you will be able to resell your land without significant community development and population growth, which may not occur for for a number of years, if at all.

[Subparagraph 3(b)(i) Disclosure]

[Subparagraph 3(b)(ii)-(vi) Disclosures]

[Subparagraph 3(b)(vii) Disclosure]

You have 10 business days in which to cancel this contract and get all your money back. Carefully read the property report (sometimes called an offering statement, public report or prospectus) which must be given to you when you sign this contract. It explains many important facts about your lot. You should go over this contract and the property report with a qualified professional before your 10 days are up.

Provided, however, that in the event no property report is required for the lot or lots being offered for sale, the following paragraph shall be used in lieu of the last paragraph of the above disclosure:

You have 10 business days in which to cancel your contract and get all your money back. You should go over this contract with a qualified professional before your 10 days are up.

(b) Failing to print in the form and place set out in subparagraph (a) above, such of the following statements as are applicable:

(i) For contracts for the sale of lots whose elevations are below the 100-year flood level established by the United States Department of Housing and Urban Development, or are otherwise subject to flooding, add the following:

This land [, as most of coastal Florida,] is susceptible to flooding. Unusual or costly building requirements may be applicable.

Provided, however, that the bracketed language must be omitted when the subdivision being advertised, if other than a Rotonda subdivision, is not located within five miles of the Atlantic or Gulf Coasts of Florida; and *further provided* that, in the event respondents have a contractual obligation, in accordance with paragraph 15 below, to develop all lots being sold within the subdivision being advertised at sufficient elevations with regard to the established 100-year flood levels to enable purchasers to build on their lots with no extra expense or unusual building requirements, then the disclosure required by this subparagraph may be omitted.

(ii) For contracts for the sale of lots to which electricity and/or telephone service are not available at the time of sale and to which respondents or any other party, including any utility company franchised or regulated by a government agency, are not legally obligated to provide or assure the availability of electricity and/or telephone service, add the following, including whichever of the bracketed language is applicable:

No plans have been made to make [electricity and telephone service] available to your lot.

(iii) For contracts for the sale of lots to which electricity and/or telephone service will be provided only upon the payment of a line extension fee, add the following, including whichever of the bracketed language is applicable:

The payment which must be made to a utility company in order to get [electricity and telephone service] to your lot may be very high.

(iv) For contracts for the sale of lots to which respondents or any other party, including any utility company franchised or regulated by a government agency, are not legally obligated to provide or assure the availability of potable water and/or sewage disposal, add

the following, including whichever of the bracketed language is applicable:

[Drinkable water and sewage disposal] may not be available to your lot.

(v) For contracts for the sale of lots to which the legal obligation of respondents or any other party regarding the roads to be provided to such lots is limited to the installation of unpaved roads with no maintenance obligations, add the following, including the bracketed language if the roads to the lot being offered for sale have not been constructed at the time of sale:

[The land you are purchasing is undeveloped land.] Your lot will be accessible, if at all, only by unpaved, unmaintained roads which may become impassable.

(vi) For contracts for the sale of lots to which respondents or any other party are legally obligated to provide only drainage and/or unpaved roads with no maintenance obligations, and to which electricity and telephone service are not available at the time of sale, add the following, including the bracketed language if such roads have not been constructed at the time of sale, in lieu of the disclosures in subparagraphs (ii)-(v) above:

[The land you are purchasing is undeveloped land.] Electricity, water, sewage disposal, and telephone service are not planned and may be impossible to obtain. Your lot will be accessible, if at all, only by unpaved, unmaintained roads which may become impassable. Your lot has virtually no use at present or in the foreseeable future.

(vii) For contracts for the sale of lots to which respondents or any other party are legally obligated to provide only drainage, or no improvements at all, add the following in lieu of the disclosures in subparagraphs (ii)-(vi) above:

The land you are purchasing is completely undeveloped. No roads or other improvements are planned, and your lot is probably inaccessible by conventional means of transportation. Your lot has virtually no use at present or in the foreseeable future.

(viii) For contracts for the sale of lots which are designated or zoned for any use other than single family residential, add the following:

The designation or zoning of a lot as [indicate lot's designation or

zoning classification, *e.g.*, multiple family residential] may have no bearing on its value.

4. Failing, in connection with the sale of land, to disclose, clearly and conspicuously, in all sales presentations, promotional materials, and advertisements other than billboards primarily containing road directions to a subdivision, the following statement:

Since land values are speculative and risky, you should consult a qualified professional before buying. It is unlikely that you will be able to resell your land or resell it at a profit without significant community development and population growth, which may not occur for a number of years, if at all.

Provided, however, that in lieu of the above statement, the following statement may be used in (i) radio or television advertisements of 30 seconds or less; (ii) magazine advertisements of 1/8 page or less; and (iii) newspaper advertisements of 1/8 page or less:

Remember—buying land is risky! Consult a qualified professional before buying!

5. Failing to furnish the purchaser of land with a fully completed copy of any contract at the time of its signing by the purchaser, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation, if any, and which shows the date of the transaction and contains the name and address of the respondent corporation which is the contracting party, provided that the contract need not at this time contain the signature of respondents.

6. Failing to print all conditions and provisions of any contract for the sale of the land in a clear and conspicuous manner, and, where any conditions or provisions are set forth on the reverse side of said contract, failing to indicate in a clear and conspicuous manner at the bottom of the front side of said contract that the purchaser should carefully examine the reverse side.

7. (a) Failing to furnish each purchaser of land, at the time he or she signs the contract, with a completed form in duplicate captioned "NOTICE OF CANCELLATION" which shall contain in boldface type of a minimum size of 10 points, except for the language designated as "Note" relating to notification, which may appear in any type setting which is clear and conspicuous, the following statement in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

[enter purchaser(s) name(s)]

You may cancel this transaction, without any loss, expense, penalty or obligation, at any time prior to midnight of the 10th business day after the above date.

If you cancel, all payments made by you under the contract will be returned within 15 calendar days following receipt by the seller of your cancellation notice.

To cancel this transaction, mail or deliver a signed copy of this cancellation notice or any other written notice, or send a telegram to: (*name of applicable respondent*), at (*address of applicable respondent's place of business*) not later than midnight of (*date*).

NOTE: Notification by mail shall be considered given at the time postmarked; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to respondent's place of business.

I (We) hereby cancel this transaction. (If only one purchaser signs this notice, it means he or she has the permission of any other purchasers to act for them.)

Purchaser's Signature

Date

Purchaser's Signature

(b) Failing, before furnishing copies to the purchaser of the "Notice of Cancellation" set forth in subparagraph (a) above, to complete both copies by entering the name of the applicable respondent, the address of the applicable respondent's place of business, the date of the transaction, the purchaser's name, and the date, not earlier than the 10th business day following the date of the transaction, by which the purchaser must give notice of cancellation.

(c) Failing to inform each prospective purchaser orally, at the time the contract is signed, of the right to cancel as stated in subparagraph (a) above.

8. Requiring the purchaser of land to make a personal inspection of any property or the general vicinity thereof as a condition precedent to the cancellation of any contract or the refund of any moneys paid thereunder, unless:

(a) Respondents limit such inspection to the purchaser's lot and the subdivision in which it is located;

(b) The purchaser is actually taken to and shown his or her lot; *provided, however*, that if the purchaser's lot is not reasonably identifiable, and accessible by conventional means of transportation, during the inspection period provided by the contract, respondents shall extend the period until such time as the lot is identifiable and accessible, and shall notify the purchaser that his right to cancel his contract and receive a refund upon inspection of his lot has been so extended.

(c) In the event more than one purchaser has signed the contract, one purchaser is permitted to make the inspection as the representative of all the purchasers;

(d) Respondents provide the purchaser three business days following the date of inspection within which to cancel the contract or request the refund; and

(e) The purchaser's contract, as part of any provision requiring the purchaser to make a property inspection in order to cancel the contract and/or obtain a refund, clearly and conspicuously discloses the facts set out in subparagraphs (a)-(d) above.

9. (a) Failing to furnish each purchaser of land at the completion of the property inspection made in accordance with paragraph 8 above a completed form in duplicate captioned "NOTICE OF CANCELLATION" which shall contain in boldface type of a minimum size of 10 points, except for the language designated as "Note" relating to notification, which may appear in any type setting which is clear and conspicuous, the following statement in the same language, *e.g.*, Spanish, as that used in the purchaser's contract:

NOTICE OF CANCELLATION

[enter date of inspection]

[enter purchaser(s) name(s)]

You may cancel your contract, without any loss, expense, penalty or obligation, at any time prior to midnight of the third business day after the above date.

If you cancel, all payments made by you under the contract will be returned within 10 business days following receipt by the seller of your cancellation notice.

To cancel your contract, mail or deliver a signed copy of this cancellation notice or any other written notice, or send a telegram to: (*name of applicable respondent*), at (*address of applicable respondent's place of business*) not later than midnight of (*date*).

NOTE: Notification by mail shall be considered given at the time postmarked; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to respondent's place of business.

I (We) hereby cancel the contract. (If only one purchaser signs this notice, it means he or she has the permission of any other purchasers to act for them.)

Purchaser's Signature

Date

Purchaser's Signature

(b) Failing to complete both copies of the "Notice of Cancellation" set out in subparagraph (a) above prior to furnishing them to the purchaser by entering the name of the applicable respondent and the address of its place of business, the date of the lot inspection, the names of the purchaser(s) making the inspection and the date, not earlier than the third business day following the date of said

inspection, by which the purchaser(s) must give notice of cancellation.

10. (a) Failing in any instance where a timely notice of cancellation is received pursuant to subparagraphs 7(a) or 9(a) above, and said notice is not sufficient or proper in any manner and respondents do not intend to honor the notice, to immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his or her error, and stating clearly and conspicuously that a sufficient notice properly signed must be mailed by midnight of the third day following the purchaser's receipt of said mailing if the purchaser is to obtain a refund.

(b) Failing to make refunds in accordance with the terms of any notices of cancellation timely received by respondents pursuant to subparagraphs 7(a), 9(a), or 10(a) above.

11. In connection with the refund provision set forth in paragraph 8 above, representing to prospective purchasers and purchasers that they may cancel their contracts and get refunds unless such is the fact and unless all conditions and limitations applicable thereto, including but not limited to the facts, where applicable, that the purchaser may be subjected to additional sales presentations while seeking to obtain a refund and that the purchaser must pay his or her transportation costs to and from the lot, are clearly disclosed in immediate conjunction therewith and with the same conspicuousness.

12. Transferring, selling assigning, or otherwise conveying any note or other evidence of indebtedness of the purchaser executed subsequent to the date this Order becomes final to a finance company or other third party prior to midnight of the 20th business day following the day the contract was signed.

13. (a) Offering for sale or selling lots which are represented as suitable for homesites unless the contracts for the sale of such lots contain a legal obligation on the part of respondents in accordance with paragraph 15 below, to provide or assure the availability of roads, electricity, telephone service, potable water, sewage disposal and where necessary, drainage, to such lots, installed or constructed to no less than those minimum government standards required for obtaining a building permit for a dwelling unit on such lots.

(b) Representing, in connection with the sale of land, that respondents will provide to a subdivision or lot therein, or that a subdivision or lot therein will have available, roads, electricity, telephone service, potable water, sewage disposal, or drainage, unless the contracts for the sale of lots in that subdivision, at the

time of the representation, contain a legal obligation on the part of respondents, in accordance with paragraph 15 below, to provide or assure the availability of each such utility or improvement represented.

14. Representing, in connection with the sale of land, that respondents' subdivisions have or will have available, or that residents of respondents' subdivisions or lot purchasers therein have or will have the use of, any recreational facility, improvement, utility, amenity, or structure whether or not located in respondents' subdivisions [other than those utilities and improvements listed in subparagraph 13(b) above], including but not limited to golf courses, clubhouses, waterways, lakes, marinas, hotels, motels, shopping facilities, professional service facilities, beaches, and parks, unless

a) For representations of present availability or use:

(i) such representation is true, and (ii) the terms and conditions of availability to or use by purchasers and residents are clearly and conspicuously disclosed at the time of such representation, provided that such terms and conditions regarding retail stores and public establishments need not be disclosed if they are typical and customary for such stores and establishments, and (iii) at the time of the representation, respondents reasonably believe the recreational facility, improvement, utility, amenity, or structure will continue to be available in the foreseeable future.

b) For representations of availability or use in the future:

(i) the terms and conditions of availability to or use by purchasers and residents, including the date of completion or availability, are clearly and conspicuously disclosed at the time of such representation, provided that such terms and conditions regarding retail stores and public establishments—other than the date of completion—need not be disclosed if they are typical and customary for such stores and establishments; and

(ii) at the time of the representation, one of the following conditions is met:

(a) respondents are contractually obligated to provide such facility, improvement, utility, amenity, or structure in accordance with paragraph 15 below; or

(b) any other party is legally obligated to lot purchasers to provide such facility, improvement, utility, amenity, or structure, and respondents clearly and conspicuously disclose in immediate conjunction with such representation that respondents have no contractual obligation to make such facility, improvement, utility, amenity, or structure available or to assure its continued availability; or

(c) such facility, improvement, utility, amenity, or structure is at

least 50% completed with completion reasonably anticipated by respondents within one year, and respondents have a reasonable basis to believe it will be available for use by purchasers and residents when completed and will continue to be so available in the foreseeable future.

15. (a) With respect to any recreational facility, improvement, utility, amenity, or structure which respondents are contractually obligated to provide or make available, failing to provide (i) through (v) below in the contract:

(i) an adequate description of each recreational facility, improvement, utility, amenity, and structure to be provided or available.

(ii) the date by which each such recreational facility, improvement, utility, amenity, and structure will be provided or available. For improvements and utilities, said date shall be a date certain not later than the date the purchaser's final scheduled payment would be due under the payment schedule contained in the applicable contract in use at the time of purchase which was offered to purchasers not paying on an accelerated basis. Provided that in the case of central water or central sewage facilities, the contract may provide either A or B below:

(A) said facilities will be installed within one year after respondents' receipt of written notice from the purchaser that he or she intends to build on his or her lot, provided that if the contract provides for this alternative, such contract may also provide, where applicable, the roads to such lot do not have to be paved until the expiration of said one year period; or

(B) said facilities will be available when a stated level of population density in a specified area is achieved, provided that the contract further states, in accordance with subparagraph (b) below, that respondents assure the availability of potable water by means of a well and/or sewage disposal by means of a septic tank.

(iii) the dollar amount of all costs, fees, and/or assessments which a purchaser must pay for the construction and/or installation of each recreational facility, improvement, utility, amenity, and structure; *provided, however*, that if the costs, fees and/or assessments so represented are estimates, (1) the contract shall disclose this fact and that these costs, fees, and assessments may actually be higher. Said disclosure shall be made clearly, in immediate conjunction with the representation of the costs, fees, and/or assessments and with the same conspicuousness as such representation; and (2) such estimates must be substantiated in writing at the time they are represented by competent and reliable engineering studies which shall include a reasonable allowance for inflation. Such substantiation shall be

maintained for at least three years after all fees, costs and/or assessments which it relates to have been paid by the purchaser.

(iv) if under the terms of the contract the purchaser may be required to pay for the installation of a well and/or septic tank, a provision stated as follows, including whichever of the bracketed language is appropriate:

In the event that the purchaser determines, within five years after his payments are completed or the deed has been issued, whichever is later, that a [well or septic tank] cannot be used on his or her lot, the seller shall refund to the purchaser the cost of the test which determined that the [well or septic tank] cannot be used, provided that in the event the cost of the test is substantially higher than the prevailing rate for such test by qualified businesses in the vicinity of the applicable subdivision, the seller may limit such refund to the prevailing rate for such test.

It shall be the responsibility of the purchaser, within 90 days after determining that [either a well or septic tank] cannot be used on his or her lot to notify the seller of this fact and request a refund of the cost of the test which determined that the [well or septic tank] cannot be used.

(v) a provision stated as follows:

In the event the subdivision or the lot which is the subject of the contract has not been provided with or does not have available any contracted-for improvement or utility, or there has been a material failure to provide or make available any contracted-for recreational facility, amenity or structure, within six months of the time specified in the contract plus the actual number of days of any delay caused by any strike or work stoppage beyond respondents' control, or an act of God, the seller will, within 60 days after the expiration of the applicable time period, provide the purchaser by certified mail, return receipt requested, with notice of such failure to provide or such unavailability, and of the purchaser's right to a refund of all moneys paid (including but not limited to principal, interest, taxes, and assessments) under the contract plus interest at the rate of 7% per annum computed from the date of default; *provided, however*, that at the time the purchaser is notified of such refund, the purchaser may also be offered the option of selecting, in lieu of such refund, an exchange of the purchaser's lot, at no additional cost to the purchaser, for another lot to which all contractual obligations of respondents have been met, which was or would have been of at least

equal price on the date the purchaser's contract was signed, which is located in the same subdivision or community, is at least the same size, has the same zoning classification, has the same utilities and improvements as respondents were obligated to provide under the original contract, and is located no further from the same or substantially similar recreational and commercial facilities and amenities as the original lot.

(b) If under the terms of the contract potable water and/or sewage disposal are to be provided for any period of time by means of a well and/or septic tank, in the event a well or septic tank cannot be used on such lot within five years after the purchaser completes his or her payments or receives a deed, whichever is later, respondents, within 60 days after determining or receiving notice of that fact, shall comply with either (i) or (ii) below, at respondents' option:

(i) Contract with the purchaser to provide central sewage and/or central water to the lot not later than one year after determining or receiving notice that a well and/or septic tank cannot be used on the lot; *provided, however*, that if the deed to the lot had not been issued at the time respondents reach such a determination or receive such notice respondents may provide central sewage and/or central water to the lot at any time within one year from the date the purchaser's final scheduled payment is due under the contract.

(ii) Offer the purchaser of a refund of all moneys paid (including but not limited to principal, interest, taxes, and assessments) under the contract plus interest at the rate of 7% per annum computed from the date of default; *provided, however*, that at the time the purchaser is offered such refund, the purchaser may also be offered, in lieu of such refund, an exchange of the purchaser's lot for another lot to which all contractual obligations of respondents have been met, which was or would have been of at least equal price on the date the purchaser's contract was signed, and which is located in the same subdivision or community, is at least the same size, has the same zoning classification, has the same utilities and improvements as respondents were obligated to provide under the original contract, and is located no further from the same or substantially similar recreational and commercial facilities and amenities as the original lot.

(c) Failing to notify the purchaser of his or her right to a refund or exchange as set out in subparagraphs (a)(v) and (b) above; failing to provide central sewage and/or central water to the purchaser's lot as provided in subparagraph (b)(i) above; and failing to make the refund or exchange provided for in subparagraphs (a)(v) and (b) above within 30 days of receipt of the purchaser's request for such

refund or exchange; *provided, however*, that in the event respondents are obligated under this paragraph to make refunds exceeding \$500,000 as a result of a single default common to many lots, it shall not be a violation of this order for respondents to prorate such refunds, with interest at a rate of 7% per annum from the date of default, over a period of five years from the date of default.

16. (a) Representing that a central sewage and/or water system will be available when a stated level of population density in a specified area is achieved unless it is clearly and conspicuously disclosed in immediate conjunction therewith and with the same conspicuousness (i) that purchasers will be required to use a well and/or septic tank if they build on their lots before said level of population density is reached, and (ii) the approximate cost to the purchaser of installing a well and/or septic tank.

(b) Failing to clearly and conspicuously disclose in writing the substance of paragraph 15(a)(iv) above, at the time the deed is issued, to each purchaser of a lot to which a central sewage and/or water system will be made available when a stated level of population density in a specified area is achieved.

(c) Collecting assessments prior to the start of construction for a central sewage and/or a central water system which is required to be provided or made available when a stated level of population density is achieved unless the following conditions are complied with:

(i) collection of such assessments is begun no sooner than two years prior to the commencement of construction of such system(s);

(ii) such assessments are placed in escrow;

(iii) in the event construction does not commence within two years after the collection of assessments has begun, all such assessments shall be refunded to the purchasers from whom they were collected with interest at a rate of 7% per annum from the date each assessment payment was received until the date such refund was made; and

(iv) in the event the central sewage and/or central water system has not been provided or made available to a lot within five years after the collection of assessments has begun plus the actual number of days of any delay caused by an act of God or a strike or work stoppage beyond respondents' control, all such assessments shall be refunded to the purchasers of such lots with interest at a rate of 7% per annum from the date each assessment payment was received until the date such refund is made.

Provided, however, that in the event state or federal regulations require that assessments collected pursuant to this subparagraph of the order be placed in an escrow account subject to the control of a

state or federal agency, respondents shall use their best efforts to provide in any agreement for refund provisions in accordance with subparagraphs (c)(iii) and (c)(iv) above or otherwise to obtain a legally binding commitment from such state or federal agency to permit respondents to comply with subparagraphs (c)(iii) and (c)(iv) above.

(d) Failing to make refunds within 90 days after the expiration of the two year period described in subparagraph (c)(iii) above and after the expiration of the five year period described in subparagraph (c)(iv) above.

17. (a) Representing to a prospective purchaser or to a purchaser prior to the time a deed for his or her lot is issued, that respondents will construct or cause to be constructed a building on the prospective purchaser or purchaser's lot or will rent or sell such a building or units therein for the benefit of the purchaser, unless respondents offer to enter into a contract with the purchaser to do so or offer the purchaser the right to an option to enter into such a contract at a future date, on mutually agreeable terms, and unless that contract contains a provision which gives the prospective purchaser or purchaser, in the event respondents default in their obligation to build or have built, rent or sell such building or units therein, the right to cancel the contract for the purchase of the lot upon which said building has been or was to be constructed and receive a refund of all monies paid thereunder, including but not limited to payments of principal, interest, taxes, assessments, and recording costs, plus interest at the rate of 7% per annum from the date of default.

(b) Failing within 60 days of receipt of a prospective purchaser or purchaser's request for a refund made in accordance with subparagraph (a) above to make the refund so requested.

18. Soliciting or obtaining the purchaser's assent to or otherwise imposing any condition, waiver or limitation upon the right of a purchaser to a refund or exchange as set forth in paragraphs 15 and 17 of this order; *provided, however*, that:

(i) respondents may require purchasers to request a refund or exchange within a stated time period of not less than 90 days after the purchaser is notified by respondents of their default under the contract;

(ii) this paragraph shall not preclude respondents from offering a purchaser additional alternatives which may be selected, at the purchaser's option, in lieu of a refund or exchange; and

(iii) in the event the purchaser has received a deed or other evidence of title in the contracted-for property other than a contract,

or has recorded the contract, the purchaser must, as a condition of obtaining such refund or exchange, reconvey to the seller such interest by deed and/or other appropriate instruments provided by respondents.

19. (a) Failing to include in all contracts for the sale of land entered into on or after the date this order becomes final:

(i) a provision limiting the moneys paid by a purchaser under the contract to be forfeited in the event of the purchaser's default to an amount not greater than 40% of the "cash price;" and

(ii) a provision stating that, in the event the purchaser fails to make any payment required under the contract, the purchaser shall be deemed in default not later than six months after the payment was due, provided that the default has not been cured prior to that time; *provided, however*, that respondents shall be permitted to delay declaring a delinquent purchaser in default if so requested by the purchaser.

(b) Failing to refund to purchasers, in accordance with the contract provision set forth in subparagraph (a)(i) above, all moneys paid under the contract, including but not limited to principal, interest, taxes, and assessments which in the aggregate exceed 40% of the "cash price," within 60 days after the purchaser is deemed to have defaulted; *provided, however*, that it shall not be a violation of this order for respondents to pro-rate all such refunds with interest at the rate of 8% per annum from the date of default, over a period of three years from the date of default or, in the event of a refund of \$1500 or more to a single purchaser, over a period of five years from the date of default for that purchaser's refund; and *further provided*, that this subparagraph shall not preclude respondents from offering a defaulting purchaser additional alternatives which may be selected at the purchaser's option, in lieu of a refund.

For purposes of this paragraph of the order, "cash price" shall be the amount of money described in the purchaser's contract as the "cash price" in accordance with Section 226.2(n) of Truth in Lending Regulation Z, 12 CFR 226.

20. In connection with the sale of land:

(a) Failing to disclose, clearly and conspicuously in 10-point boldface type in printed advertisements and promotional materials, and clearly and conspicuously in sales films and other audio-visual materials used during sales presentations, for subdivisions in which at least 15% of the platted lots are, at the time of sale, at elevations below the 100-year flood level established by the United States Department of Housing and Urban Development, or are otherwise subject to flooding, the following:

This land [, as most of coastal Florida,] is susceptible to flooding. Unusual or costly building requirements may be imposed.

Provided, however, that the bracketed language must be omitted when the subdivision being advertised, if other than a Rotonda subdivision, is not located within five miles of the Atlantic or Gulf Coasts of Florida; and *further provided,* that in the event respondents have a contractual obligation, in accordance with paragraph 15 above, to develop all lots being sold within the subdivision being advertised at sufficient elevations with regard to the established 100-year flood levels to enable purchasers to build on their lots with no extra expense or unusual building requirements, then the disclosure required by this subparagraph may be omitted.

(b) In the event a lot represented as suitable for a homesite whose elevation is below the 100-year flood level established by the United States Department of Housing and Urban Development, or which is otherwise subject to flooding, cannot lawfully be used, even with pilings, fill dirt, or other usual and customary building techniques, if any, as a homesite at the time the deed should issue due to zoning regulations or other laws related to the lot's elevation or susceptibility to flooding, respondents shall offer to the purchaser of such lot one of the following, or an option of selecting from one of the following:

(i) a refund of all moneys paid (including but not limited to principal, interest, taxes, and assessments) under the contract plus interest at the rate of 7% per annum computed from the date of default; or

(ii) an exchange of the purchaser's lot for another lot to which all contractual obligations of respondents have been met, which was or would have been of at least equal price on the date the purchaser's contract was signed, and which is located in the same subdivision or community, is at least the same size, has the same zoning classification, has the same utilities and improvements as respondents were obligated to provide under the original contract, and is located no further from the same or substantially similar recreational and commercial facilities and amenities as the original lot.

Provided, however, that this subparagraph of the order should not be construed to limit any additional rights and remedies the purchaser may have under his or her contract.

(c) Failing to offer the purchaser the refund or exchange set out in subparagraph (b) above within 90 days of determining that the lot cannot lawfully be used as a homesite at the time the deed should issue, and failing to make the refund or exchange in accordance with

subparagraph (b) above within 30 days of receipt of the purchaser's request for such relief.

21. (a) Making any statement or representation in writing, or orally in sales films or other audio-visual materials used during sales presentations, concerning the purchase price of land without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such statement or representation the nature and estimated amount of any additional assessments and other improvement costs which must be paid by the purchaser to respondents or any third party; *provided, however*, that this subparagraph shall not apply to the disclosure required by subparagraph 1(a) above.

(b) Failing to clearly disclose in the contract, in immediate conjunction with the purchase price of the lot and with the same conspicuousness:

(i) the nature and estimated amount of any assessments and other improvement costs; and

(ii) a reference to the other items for which payments are required, including but not limited to utilities not included in the assessments, fill dirt, pilings, conservation associations, property taxes, and canal maintenance, which must be paid by the purchaser to respondents or any third party in order to purchase such lot and make it usable for the purposes represented.

22. (a) Requiring purchasers of lots in respondents' subdivisions to join a Conservation Association or any other association, society, league, corporation, or other entity which can require its members to pay assessments or other fees [hereinafter in paragraph 22 referred to as a Conservation Association], or including in such purchasers' contracts or in the deeds of restriction provisions whereby they become members of a Conservation Association, unless the declaration, by-laws or other regulations governing the Conservation Association: (i) give each purchaser a vote in association matters at the time he or she becomes a member; (ii) apportion all votes in a fair and equitable manner, provided that land which has not been platted into lots shall not be apportioned or otherwise used as a basis for determining a member's voting rights; and (iii) provide nonresident members a reasonable means to participate and vote in Conservation Association matters.

(b) Failing to disclose to all prospective purchasers of land in subdivisions where a Conservation Association has been or is planned to be established, clearly and conspicuously in writing:

(i) the circumstances under which they become members of the Conservation Association;

(ii) that the Conservation Association may assess such purchasers

for the maintenance of and capital improvements to the common properties in the subdivisions in which their lots are located, if such is the fact;

(iii) the specific items, and the assessment per lot for each such item, for which association members have been assessed over the past three years; and

(iv) the estimated time period during which respondents will be the sole voting member or will otherwise have voting control of the Conservation Association.

23. Representing any of the following to any prospective purchaser or purchaser of land:

(a) That the purchase of a lot in one of respondents' subdivisions is a way to insure financial security, to deal with inflation, or to become wealthy.

(b) That real estate is a good or safe investment.

(c) That land in respondents' subdivisions is being offered for sale for investment purposes or is suitable for investment purposes.

(d) That the purchase of a lot in one of respondents' subdivisions is a good or safe investment.

(e) That land is becoming scarce; *provided, however*, that this subparagraph shall not prohibit any representations permitted under paragraph 43 below.

Provided, however, that this paragraph shall not prohibit any representations permitted under paragraph 25 below.

24. Representing to any prospective purchaser or purchaser of land that the prices for land in respondents' subdivisions periodically rise, or that such prices have increased, are increasing, or may or will increase, unless the following is clearly disclosed in immediate conjunction with such representations and with the same conspicuousness:

Price increases are made at the seller's discretion and do not mean that the land has increased in value or that a purchaser can resell a lot at the higher price or at any price.

Provided, however, that in the case of oral representations, such disclosures shall be made both orally and in writing.

25. Representing to any prospective purchaser or purchaser of land that the value of or demand for any land, including lots in respondents' subdivisions, has increased, is increasing, or will or may increase, or that purchasers have made, are making, or will or may

in the future make, a profit through the purchase of a lot or lots in respondents' subdivisions.

Provided, however, that respondents may truthfully represent to a prospective purchaser at the time of sale, or to a purchaser at the time of a property inspection:

(a) The price at which vacant lots in respondents' subdivisions have been resold by the original purchaser or subsequent purchasers if the following conditions are met:

(i) Respondents and/or their agents, representatives or employees were not parties (*i.e.*, seller or purchaser) to the resale;

(ii) the resale was an arm's-length transaction for cash or its equivalent;

(iii) the resale was of a lot in the same subdivision or community as the lot which is being offered for sale to the prospective purchaser or which was sold to the purchaser. For the purposes of this subparagraph, the term "community" shall mean two or more adjacent subdivisions sold pursuant to a common promotional plan;

(iv) the resale lot has the same zoning or use classification as the lot which is being offered for sale to the prospective purchaser or which was sold to the purchaser;

(v) the site classification (*e.g.*, interior lot, greenbelt, canal, riverfront, golf course) of the resale lot is comparable or less valuable than that of the lot which is being offered for sale to the prospective purchaser or which was sold to the purchaser;

(vi) the resale lot is similar in size or smaller and has the same or lesser improvements and utilities, as the lot which is being offered for sale to the prospective purchaser or which was sold to the purchaser;

(vii) at least five resales of lots meeting the conditions set out in this subparagraph have occurred within the two years prior to the representation;

(viii) the resale price does not exceed by more than 20% the mean or median price of all resales meeting the conditions set out in this subparagraph which occurred within two years of the representation. Respondents shall not be considered to be in violation of this subparagraph if the resale price they are representing exceeds the mean or median resale price by more than 20% solely due to resales which occurred within six months of the representation; and

(ix) the following is clearly disclosed in immediate conjunction with the representation and with the same conspicuousness:

The fact that other lots in this subdivision have been resold does not mean that there is a resale market, or that you will be able

to resell your lot at any price. Check with a local real estate broker for resale information.

Provided, however, that in connection with the sale of land in the Rotonda subdivisions, respondents shall make no representations of the price of resales in the Oakland Hills segment of Rotonda West except with respect to sales of Oakland Hills lots, and shall not represent the price of resales in the other segments of Rotonda West in connection with the sale of lots in the other Rotonda subdivisions.

(b) the price at which any lot in a competing subdivision which is similar to the lot which is being offered for sale to the prospective purchaser or which was sold to the purchaser is currently being sold, or the last price at which any such lot was sold in a transaction to which respondents and/or their agents, representatives, or employees were not parties (*i.e.*, seller or purchaser), if the following is clearly disclosed in immediate conjunction with the representation and with the same conspicuousness:

The fact that lots in other subdivisions are being sold does not mean that you will be able to resell your lot at the same price or at any price. Check with a local real estate broker for resale information.

Respondents shall not be considered to be in violation of this subparagraph if the sales price represented is not current or the resale price represented is not the last such price solely due to price changes or new resales occurring within six months of the representation.

Respondents shall maintain, for a period of three years after making any representation pursuant to subparagraphs (a) or (b) above, data sufficient to substantiate each such representation, and shall make such data available during normal business hours to the Commission for inspection and copying.

26. Misrepresenting the past, present, or future sales price of lots in respondents' subdivisions.

27. Making any representation in connection with the sale of land which refers to or concerns investment in stocks, insurance, banks, or any other form of investment other than land in respondents' subdivisions and other comparable subdivisions.

28. Making representations in connection with the sale of land concerning or comprised of statistics or trends of population, employment, business, or industry, or making representations concerning or comprised of other statistics or trends, unless respondents have at the time of making such representations, and maintain for three years thereafter, a reasonable basis to believe:

(i) For representations concerning or comprised of statistics or trends regarding past or present events, that such representations are true; and

(ii) For representations concerning or comprised of statistics or trends regarding future events, that such statistics or trends will occur as represented.

A reasonable basis shall consist of current, relevant, and objective statistical or economic data or studies, where such data are collected or such studies are conducted in accordance with accepted applicable demographic, economic, and/or statistical principles.

29. Representing that respondents may or will buy back lots from or resell lots for purchasers, or may or will set up a resale division; or misrepresenting that purchasers will be able to sell their lots or their interest therein.

30. Representing that respondents have developed new towns or communities, or are well-known, experienced, or highly regarded community developers; or misrepresenting respondents' business experience, reputation, or financial conditions.

31. Representing that respondents' subdivisions or waterfront property therein provide access by boat to the Atlantic Ocean, Gulf of Mexico, or any other body of water, or that canals, lakes, or other waterways are navigable or can be used for any recreational activity, unless such is the fact and unless all material qualifications pertaining to such access, navigability or use, including but not limited to the size or type of boats which can obtain access to open water or navigate the waterways and speed limits which may be established, are clearly disclosed in immediate conjunction therewith and with the same conspicuousness as such representation.

32. Misrepresenting the mileage, percentage, or other amount or proportion of any recreational facility, improvement or utility, including but not limited to roads, curbs, gutters, utility lines, and water or sewage mains, which has been completed, is under construction, or will be constructed in respondents' subdivisions.

33. Using similar names for subdivisions in which the recreational facilities, improvements, utilities, and amenities available in each such subdivision are not substantially identical; *provided, however*, that respondents shall not be obligated to rename any currently platted subdivision.

34. (a) Making any representation concerning Palm Beach Gardens in any advertisement, promotional material, or sales presentation for any land located in Palm Beach or Martin Counties, Florida.

(b) Making any representation concerning any recreational facility, improvement, utility, or amenity available or located in a city,

community, subdivision or other geographic area during a sales presentation or in an advertisement or promotional material relating to one or more of respondents' subdivisions at which similar recreational facilities, improvements, utilities, or amenities have not been provided and there is no contractual obligation to so provide or assure the availability of, unless respondents disclose in immediate conjunction therewith and with the same conspicuousness as such representation that similar recreational facilities, improvements, utilities, or amenities will not be provided at respondents' subdivision or subdivisions to which the sales presentation, advertisement, or promotional material relates.

35. Representing:

(a) That Rotonda West, Rotonda Shores, Rotonda Lakes, Rotonda Heights, Rotonda Meadows, Rotonda Springs, Rotonda Sands, or Rotonda Villas have been or will be provided, either singly or in conjunction with one or more of the other Rotonda subdivisions, with a multimillion dollar clubhouse or clubhouses, underground electric or telephone lines, concrete curbs and gutters, sidewalks, a fully developed central core, a tennis clinic, more than two golf courses, or a private island.

(b) That Twin Lakes Country Club and Estates will be provided with gas lines.

(c) That Paradise Hills will be developed in any manner.

(d) That Palm Beach Heights has been or will be provided with any recreational facility, improvement, utility or amenity other than unpaved, unmaintained dirt roads and drainage.

(e) That any lot in Perdido Bay Country Club Estates will be developed prior to the date for completion of improvements stated in the contract.

Provided, however, that this paragraph shall not preclude respondents from making any of the representations prohibited by subparagraphs (a)-(e) above if, at the time the representation is made, respondents have a contractual obligation in accordance with paragraph 15 above to develop the subdivision as represented.

36. (a) Representing that any recreational facility, improvement, utility, amenity, or residential structure is planned for a subdivision or part thereof when such plans have been altered, abandoned, superseded, postponed, or otherwise will not be completed as represented.

(b) Representing that any recreational facility, improvement, utility, or amenity has been provided or is available at a subdivision

or part thereof when such recreational facility, improvement, utility, or amenity has been closed or is no longer available for use.

37. In the event that the development plans for any subdivision, including plans for any recreational facility, improvement, utility, amenity, or residential structure, are materially altered, abandoned, or otherwise will not be completed as represented, failing to disclose such alteration, abandonment, or other change in plans within 90 days of such event to each purchaser of a lot in the subdivision in which the development plans were to occur, and to each purchaser in any other of respondents' subdivisions which is located within 25 miles of the subdivision in which the development plans were to occur; *provided, however*, that in connection with development plans in the Rotonda subdivisions:

(i) if the subdivision in which the development plans were to occur is Rotonda West, then such disclosure shall be made to all purchasers of lots in each of the Rotonda subdivisions;

(ii) if the development plans concerned a recreational facility, improvement, utility, amenity, or residential structure which was to serve more than one of the Rotonda subdivisions, then such disclosure shall be made to all purchasers of lots in each such subdivision;

(iii) if the development plans were to occur in a subdivision other than Rotonda West, and the recreational facility, improvement, utility, amenity, or residential structure was not intended to serve more than one Rotonda subdivision, then such disclosure shall be made to all purchasers in the one subdivision affected.

Notwithstanding the above, if the change in development plans directly affects 100 or fewer lots, will have no impact on the overall development of a subdivision or community, and does not concern a recreational facility, amenity, or residential structure which was represented in any advertisement or promotional material for respondents' land, such disclosure is required to be made only to the purchasers of the lots directly affected.

38. Misrepresenting the past, present, or future development plans of state of development of any subdivision or part thereof, including but not limited to the recreational facilities, improvements, utilities, amenities, or residential structures therein; or misrepresenting the size, qualities, characteristics, location, or usefulness of any subdivision or part thereof.

39. (a) Representing that any person who acquired real property in any of respondents' subdivisions free, for a nominal cost, at a price substantially below fair market value, or as payment for services, purchased said property or chose to buy or live in said subdivision

rather than in other places; or misrepresenting how or why a person acquired property in any of respondents' subdivisions.

(b) Representing that any person who acquired real property in any of respondents' subdivisions free, for a nominal cost, at a price substantially below fair market value, or as payment for services, acquired such property and/or lives in such subdivision unless it is clearly disclosed in immediate conjunction with such representation and with the same conspicuousness that the person acquired his property free, for a nominal cost, at a price substantially below fair market value, or as payment for services, whichever is appropriate.

40. (a) Representing that Ed McMahon is an officer of any of the corporate respondents.

(b) Representing that any well-known person is an officer or employee of any of the corporate respondents unless such representation is true and unless said person performs duties commensurate with the office and spends a substantial portion of his time in such corporate capacity; *provided, however*, that respondents shall be permitted to make representations otherwise prohibited by this subparagraph when such representations are required by law, in the form and manner specifically prescribed by such law; and *further provided*, that documents containing such prescribed representations shall not be distributed to prospective purchasers or purchasers unless required by such law.

(c) Misrepresenting that any well-known person lives in one of respondents' subdivisions, owns stock in any of the corporate respondents, or is a substantial investor in any of the corporate respondents or in any of respondents' subdivisions.

41. Representing that General Electric Co. or its affiliates, subsidiaries, or divisions planned, designed, engineered, or developed any subdivision or part thereof, or put its entire corporate resources behind any subdivision; or misrepresenting the participation of General Electric Co. or any other company in respondents' subdivisions.

42. Representing that persons being solicited to purchase respondents' land are being asked to take the first step, are reserving the land, are taking an option to buy the land, are not making a final decision, or are not buying the land; or otherwise misrepresenting the legal significance of signing a contract.

43. Representing that prospective purchasers must sign a contract immediately in order to assure purchasing real property in a choice location or in a particular subdivision or community, unless such is the fact; or misrepresenting the number of lots available for

sale at present or in the future in any subdivision, group of interrelated subdivisions, or other area.

44. Failing to clearly and conspicuously disclose, both orally and in writing, to each prospective purchaser of any lot which is located within one-half mile of railroad tracks, the distance of the lot from said railroad tracks.

45. Including in any contract or other document any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this order, except as such waiver, limitation or condition is by this order expressly allowed.

46. Including in any contract for the sale of land, or in any document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language stating expressly or by implication:

(a) That no express or implied representations have been made in connection with the sale of respondents' land, or that any particular representation has not been made in connection therewith;

(b) That the purchaser has had an opportunity to examine or understand any property report, offering statement or similar document required by state or federal law to be made available to him; *provided, however*, that such language may be included when required by the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970).

47. Making any statement or representation concerning the rights or obligations of respondents or the purchaser which differs in any material respect from the rights or obligations of the parties as stated in the contract.

48. Misrepresenting the right of a purchaser to cancel a transaction or receive a refund under any provision of this order or any applicable statute or regulation.

49. Misrepresenting to any prospective purchaser or purchaser of land the contents or significance of any pleading, finding of fact, conclusion of law, order, decision, opinion, or any other document or written or oral ruling concerning any legal proceeding in a court, before an administrative agency, or in any other forum.

II

It is further ordered:

A. That within two months after this order becomes final respondents forward to all current purchasers of land in Palm Beach Heights the letter attached as Appendix A; *provided, however*, that if changes are necessary to render such letter accurate as of the date of

mailing, respondents shall submit such changes to the Commission not less than 45 days prior to the date of mailing. The Commission, within 30 days after its receipt of such changes, shall have the right to reject them in whole or in part, and respondents will then mail such letter with the changes, if any, which were not rejected by the Commission.

B. That within two months after this order becomes final respondents forward to all current purchasers of land in any of the Rotonda subdivisions who purchased their lots prior to June 1, 1978, the letter attached as Appendix B; *provided, however*, that if changes are necessary to render such letter accurate as of the date of mailing, respondents shall submit such changes to the Commission not less than 45 days prior to the date of mailing. The Commission, within 30 days after its receipt of such changes, shall have the right to reject them in whole or in part, and respondents will then mail such letter with the changes, if any, which were not rejected by the Commission.

C. That with respect to all contracts for the purchase of respondents' land other than the Perdido Bay Country Club Estates and Runaway Bay subdivisions entered into prior to the date this order becomes final, respondents or their agents or representatives shall not (i) take legal action, or threaten to take legal action, to recover unpaid balances due under such contracts in the event a purchaser defaults; or (ii) represent to purchasers that they are personally liable to complete the payments under their contracts. In addition, respondents shall obtain and destroy all copies of executed promissory notes other than those in the possession or control of purchasers.

D. (1) That within six months after this order becomes final respondents set aside and designate in the land records of Charlotte County, Florida, a portion of their property on Don Pedro Island, comprised of contiguous land exceeding five acres in size which fronts at least 400 feet on both the Gulf of Mexico and Lemon Bay, as not to be sold but to be retained by respondents in perpetuity for the use of residents of all the Rotonda subdivisions and as not to be further improved except in a manner consistent with such use, and file in the land records of Charlotte County a perpetual easement pursuant to which residents of all the Rotonda subdivisions will be granted access to the entire beach consistent with current state law; and (2) that respondents retain such property in perpetuity for the use of residents of all the Rotonda subdivisions and not improve such land except in a manner consistent with such use; *provided, however*, that nothing herein shall prevent respondents from causing such property to be conveyed to one or more duly constituted Rotonda property owners associations or prevent respondents from reserving

an easement over or title to such property for the purpose of assuring access over the property.

E. That for a period of seven years from the date this order becomes final respondents shall continue to provide free ferry service for Rotonda residents to Don Pedro Island, consistent with the ferry service previously provided such residents, and at the conclusion of such period respondents shall convey free and clear title to a ferry or other suitable water vehicle in good working condition, to one or more duly constituted Rotonda property owners associations.

F. That except with the prior authorization of the Commission, respondents, through June 30, 1990:

1. Shall limit the sale and development of land in Charlotte County, Florida, to the following land: the Rotonda subdivisions as platted on January 1, 1977, the land contiguous to the Rotonda subdivisions owned by respondents as of January 1, 1977, the Cape Haze subdivision, and Don Pedro Island; and

2. Shall not sell, in the land comprising the Rotonda subdivisions on January 1, 1977, a greater number of lots, or lots which would contain in the aggregate a greater potential population, than is contained in the plats in effect on January 1, 1977 for the Rotonda subdivisions. For the purposes of this subparagraph, (a) lots sold prior to the date this order becomes final shall be included in determining the number of lots sold or the potential population of the lots sold; and (b) lots returned to inventory due to forfeiture, exchange, or any other reason shall not be considered as sold.

G. 1. That respondent Cape Cave Corporation send copies to the Commission of any reports concerning land development at the Rotonda subdivisions, or the expenditures for or the financing of such land development, which are or may be required to be submitted to the Division of Florida Land Sales and Condominiums, Department of Business Regulation, State of Florida ["Division"], including but not limited to any "Improvement Trust Reports" required to be submitted to the Division pursuant to various Improvement Escrow Agreements to which the Division and Cape Cave Corporation are parties. Cape Cave Corporation shall submit copies of such reports within 15 days of the date said reports are required to be submitted to the Division.

2. Respondent Cape Cave Corporation shall maintain, for a period of 5 years after they are prepared, copies of all audited financial statements not submitted to the Commission pursuant to subparagraph (1) above, and shall make such financial statements

available during normal business hours to the Commission for inspection and copying.

III

It is further ordered:

A. That respondents deliver, by certified mail or in person, a copy of this order to all of their present and future salesmen and other employees, independent brokers, advertising agencies and others who sell or promote the sale of respondents' land or who otherwise have contact with the public on behalf of respondents;

B. That respondents provide each person so described in paragraph (A) above with a form to be returned to respondents, clearly stating that person's intention to conform his or her business practices to the requirements of this order;

C. That respondents inform each person described in paragraph (A) above that respondents shall not use any such person or the services of any such person, unless such person agrees to and does file notice with respondents that he or she will conform his or her business practices to the requirements of this order;

D. That in the event such person will not agree to so file notice with respondents and to conform his or her business practices to the requirements of this order, respondents shall not use such person or the services of such person;

E. That respondents so inform the persons described in paragraph (A) above that respondents are obligated by this order to discontinue dealing with those persons who engage on their own in the acts or practices prohibited by this order;

F. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in paragraph (A) above conform to the requirements of this order; and

G. That respondents discontinue dealing with any person described in paragraph (A) above, revealed by the aforesaid program of surveillance, who repeatedly engages on his own in the acts or practices prohibited by this order; *provided, however*, that in the event remedial action is taken, the sole fact of such dismissal or termination shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

IV

It is further ordered:

A. That in the event the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970), or any regulation promulgated pursuant thereto by the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development, requires an act or practice which is prohibited by any provision of this order, such order prohibition shall be inoperative.

B. That in the event any provision of this order requires an act or practice which is prohibited by the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970), or any regulation promulgated pursuant thereto by the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development, such order requirement shall be inoperative.

C. That in the event the Commission promulgates a valid trade regulation rule applicable to respondents' sale of land to consumers which contains provisions setting out the amount or percentage of moneys paid by a purchaser which may be retained by the seller in the event of the purchaser's default, then paragraph 19 of this order shall be deemed modified by said provisions of the trade regulation rule, and said provisions shall be incorporated into this order.

D. That in the event the Commission promulgates a valid trade regulation rule applicable to respondents' sale of land to consumers which contains provisions setting out disclosures to be made in contracts and/or in advertisements and promotional materials, any parts of paragraphs 3 and 4 of this order which are inconsistent with the disclosures set out in said trade regulation rule shall be deemed modified by said provisions of the trade regulation rule, and said provisions shall be incorporated into this order.

E. That in the event the notices required to be sent to purchasers by paragraphs II (A) and (B) of this order are required by law to be approved by another federal agency prior to dissemination, in the event respondents submit such notice or offer to the appropriate federal agency for approval at least 45 days prior to the date it is due to be disseminated under this order and such approval is not granted within 30 days, then the date by which the notice or offer must be disseminated will be extended to 15 days following the date respondents receive notice that such approval has been granted.

F. That this order shall become effective in accordance with standard Federal Trade Commission procedure; *provided, however*, that all written advertising and promotional materials, and form contracts, which must be filed with and accepted for dissemination by state or federal agencies, shall not be subject to the provisions of this order, except for those provisions which prohibit or limit the use of any statement, representation, or misrepresentation, for a period

of six months from the date this order becomes final or until said acceptance for dissemination is obtained from all applicable state or federal agencies, whichever occurs first; and *further provided*, that until said six month period expires or said acceptance for dissemination is obtained, whichever occurs first, respondents shall file with the Commission monthly reports detailing respondents' progress toward obtaining the aforementioned acceptance for dissemination by the applicable state or federal agencies.

V

It is further ordered, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions engaged in the sale of real property of consumers.

It is further ordered, That respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents, such as dissolution, assignment, reorganization, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

Commissioner Pitofsky did not participate.

APPENDIX A

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

BUREAU OF CONSUMER
PROTECTION

IMPORTANT NOTICE TO PALM BEACH HEIGHTS LOT BUYERS

The Federal Trade Commission is sending this letter to all Palm Beach Heights lot purchasers. It contains facts you should know about your lot.

Palm Beach Heights is owned by Palm Beach Heights Development and Sales Corporation. Lots in Palm Beach Heights were sold on behalf of the owner by Palm Beach Investment Properties, Inc., a subsidiary of Cavanagh Communities Corporation.

In 1975, the Federal Trade Commission began a lawsuit against Cavanagh Communities Corporation, Palm Beach Investment Properties, Inc., and other subsidiaries of Cavanagh. This letter is part of a Consent Order which has been reached in settlement of that lawsuit.

Please read this letter and think about it carefully.

559

Decision and Order

Your Palm Beach Heights lot.

Under your contract, the owner of Palm Beach Heights is required to put in unpaved (sand or gravel) roads. Many of these roads were required to be completed by December 31, 1975 or December 31, 1976. At the time of your purchase, county permits were not required in order to install the roads. Since that time, however, the county passed an ordinance which prohibits the construction of unpaved roads in subdivisions such as Palm Beach Heights, and therefore no roads have yet been constructed. The owner of Palm Beach Heights has filed a lawsuit in order to get unpaved roads approved for Palm Beach Heights, but has thus far been unsuccessful. If the county wins the lawsuit and if the owner refuses to put in paved roads, there will be no roads in Palm Beach Heights at all. Unless roads are constructed in Palm Beach Heights, your lot will not be usable as a homesite.

It will be difficult to resell your lot.

Even if the roads are put in, it is unlikely that you will be able to resell your lot in the foreseeable future at or near the price you have paid or are paying for it. You should be aware that neither Cavanagh nor Palm Beach Investment Properties will buy back your lot or help you resell it.

Palm Beach Heights is likely to remain undeveloped.

The owner of Palm Beach Heights is not required to put in electric or telephone lines, recreational canals, or any amenities whatever. In addition, the owner is not required to see that your lot has a water supply or a means of sewage disposal. The owner is required only to put in unpaved roads and drainage. Even if unpaved roads are eventually built, the owner does not have to maintain them, and they may become impassable due to erosion unless the property owners themselves decide to provide for maintenance.

Payment for improvements and taxes.

Under your contract, you are required to pay assessments for roads and drainage, taxes on your lot, and interest on both assessments and taxes if the owner has paid these costs on your behalf. You should be aware that you will be required to make a payment of between \$500 and \$1000 per acre after you complete your regular payments to pay for these additional costs.

The matters discussed in this letter are serious, and require your attention.

If you have any questions about the contents of this letter, write to me. Please do not telephone.

If you have questions about your account or your specific lot call Cavanagh *collect* at (305) 353-1200. An account executive will return your call. Instead of calling, you may wish to write to:

Cavanagh Communities Corporation
444 Brickell Avenue
Miami, Florida

In any letter you should include your name as set forth in your contract, your account number, your current address and telephone number, and the name of the subdivision in which your lot is located.

Sincerely,
Jeffrey Tureck
Attorney

APPENDIX B

IMPORTANT NOTICE TO ROTONDA LOT BUYERS

The Federal Trade Commission is sending this letter to all Rotonda lot buyers. It contains facts you should know about your lot.

In 1975, the Federal Trade Commission brought a lawsuit against Cavanagh Communities Corp., Cape Cave Corp. (the developer of Rotonda) and other Cavanagh subsidiaries. This letter is part of the Consent Order issued when the lawsuit was settled. The Deltona Corporation, which has managed Rotonda since May 1976, was not a party to the lawsuit or the Consent Order.

Please read this letter and think about it carefully. Then decide whether to go on making payments or stop. If you stop, you'll lose your lot and all the money you've paid for it so far.

In order to assist you in making your decision, you should consider all the facts outlined below:

I. LOT VALUE AND RESALE

[The following two paragraphs shall be included in letters to purchasers of lots in Rotonda West other than the Oakland Hills and Pebble Beach segments:]

There is no resale market in Rotonda for lots which have not been developed. If your lot is presently undeveloped, it is unlikely that you would be able to resell it now even at a substantial loss. The extent of community development and population growth in the particular area of Rotonda where your lot is located will determine whether or not you could resell your lot once it is developed. The population growth and community development necessary to enable you to sell your lot at or near the price you paid or are paying for it may not occur for many years.

You should be aware that neither Cavanagh nor The Deltona Corporation will buy back your lot or help you resell it.

[The following two paragraphs shall be included in letters to purchasers of lots in all Rotonda subdivisions other than Rotonda West, except that the words "if at all" at the end of the first paragraph shall be omitted in letters to purchasers of lots in Rotonda Heights, Rotonda Lakes, and Rotonda Shores:]

There is no resale market in Rotonda for lots which have not been developed. Since your lot is presently undeveloped, it is unlikely that you would be able to resell it now even at a substantial loss. After your lot is developed, it is unlikely that you will be able to resell it at or near the price you paid or are paying for it until there is substantial community development and population growth, which may not occur for many years, if at all.

You should be aware that neither Cavanagh nor The Deltona Corporation will buy back your lot or help you resell it.

II. STATUS OF ROTONDA

A. Changes in Plan of Development

The following changes or clarifications in the plans for the development of Rotonda have been announced by Cape Cave.

Except for the modifications described below, Cape Cave plans to complete

construction and development of the Rotonda Community consistent with its contractual obligations. However, there is no guarantee that Cape Cave will be able to live up to these obligations. It is important to note that many of the changes discussed in this notice must still be approved by the appropriate governmental agencies. The approval process can be lengthy and its results cannot be assured.

1. *Improvement Schedule* - Cape Cave presently estimates that the improvements in Rotonda Lakes, Rotonda Heights, and certain areas of Rotonda West (Broadmoor, Long Meadow, White Marsh, and Pine Valley) will be finished December 31, 1978, instead of December 31, 1977. Also, it is estimated that Rotonda Springs will be finished by July 31, 1983, instead of August 31, 1982. Cape Cave now plans to complete all other subdivisions on time *except* for about 1400 lots in Rotonda Sands (and about a hundred lots elsewhere) which cannot be developed *at all*. Purchasers of these lots will be notified within 30 days and will be advised of certain exchange rights to lots which can be developed.

2. *Improvement Assessments* - *Current studies indicate that Cape Cave's original improvement assessment estimates will no longer be accurate in most instances.* As a result, substantially higher assessment charges for many existing lot purchasers will be necessary. [Put in revised assessment figures.]

3. *Golf Courses* - The original design of Rotonda West was based upon construction of seven golf courses, one in each segment of Rotonda West except St. Andrews, by December 31, 1977. The golf course in the Oakland Hills segment of Rotonda West is complete and open to the public for play. However, while Cape Cave is also required by contract to complete the other six courses by that date, Cape Cave is no longer planning to do so. The areas formerly planned as golf courses will instead be landscaped to resemble golf courses, *but will not be playable.* Although Cape Cave has agreed to keep money in escrow to open the other golf courses later, this does not mean these courses will be built. Based on population projections, it does not seem that there will be a need for the second golf course for at least 5 years. The remaining courses are unlikely to be opened for many years, if ever.

B. Flood Prevention Costs

The Rotonda subdivisions, like most of coastal Florida, are located within an area now designated by the U.S. Department of Housing and Urban Development as a 100-year flood plain. That means it is expected that property in the area which is below a certain height may be subject to flooding once in 100 years. The Charlotte County Zoning Regulations now require that new houses shall have the lowest floor of the house built at or above the level of the 100-year flood. Many lots in Rotonda, including all or most lots in Rotonda Springs, Villas, [etc.] are below the 100-year flood level and will not be raised by the developer to such a level. Additional fill dirt or pilings paid for by the lot owner would therefore be required in order to build on these lots. The cost of fill dirt depends on the size of the house and lot and on the number of feet of elevation needed. For average houses and lots, the cost of fill dirt presently ranges from about \$400 for one foot of elevation to about \$2300 for four feet of elevation. Should you decide to use pilings, the cost is much greater.

C. Various Improvements, Amenities and Facilities

The complaint issued by the Federal Trade Commission also alleged that certain statements had been made regarding other plans for Rotonda which are not dealt with in your contract. The following information deals with those matters:

1. *Waterways* - In order to get permits to develop Rotonda, Cape Cave has had to make significant changes in the Rotonda canal system. Only 26 miles of the original

32-mile canal system are still proposed to be completed. None of the canals will connect with either Coral Creek (the large lake in Rotonda West) or the Gulf of Mexico. Although Deltona may attempt to get permits to connect the canal system to the Gulf, it is unlikely that they will be successful. Finally, you should be aware that the canal system will not be usable for such sports as water skiing.

2. *Don Pedro Island*

(a) While there are no current plans for development, it is anticipated that Don Pedro Island, where the beach for Rotonda is located, may eventually be developed with high-rise condominiums and other structures.

(b) Cape Cave will designate an area of Don Pedro Island, comprising not less than 400 feet of beach frontage, for the perpetual use of Rotonda residents. This area is in addition to the beach frontage along the entire beach which must be maintained as a public area under Florida law.

(c) Access to Don Pedro is presently available free of charge by ferry from Gasparilla Marina, near Rotonda. Cape Cave has agreed to continue free ferry service to Don Pedro Island through 1983, after which the ferry will be donated to a Rotonda property owners association.

3. *Clubhouses* - At one time plans were announced to build a multi-million dollar clubhouse in Oakland Hills. This structure will not be erected. A more modest clubhouse has been constructed at a cost of approximately \$300,000. Other clubhouses are planned to be built when additional golf courses are opened, which probably will not occur for many years, if at all.

4. *Power Lines, Curbs and Gutters* - The Oakland Hills segment of Rotonda West will be serviced by underground power and telephone lines. All other power lines throughout Rotonda will be above ground. Oakland Hills will also be the only part of Rotonda to be constructed with curbs and gutters. In the rest of Rotonda, drainage will be provided by grass swales next to the paved roadway system.

5. *Commercial Establishments, Facilities, and Residential Housing* - Cape Cave assumes no responsibility, and has no plans, for development of the central core of Rotonda West. The company also assumes no obligation to establish commercial facilities in any other area of Rotonda or to assure that any existing commercial establishments remain in operation. A number of proposed housing projects and facilities that were previously announced will not be constructed. These include a hotel, garden apartments, and a townhouse complex.

D. Environmental Problems

The development of some areas in Rotonda is subject to the issuance of permits by government agencies. Delays, or rejection of proposed developments, are often encountered in attempting to obtain the necessary permits required for construction to proceed in such areas.

Permits to develop Rotonda _____ have not been applied for at this time from the appropriate government agencies. Since the development of these subdivisions could have an adverse impact on the environment, there is a chance that these permits will be denied. If these permits are denied, Rotonda _____ etc. could not be developed as planned. Therefore, if you continue to make payments you should be aware that there is some degree of risk that the permits will be denied, and your lot may not get developed.

IV. OPTIONS AVAILABLE TO PURCHASERS

Decision and Order

There are a number of options available to you at this time which you should review based on the information provided in this notice:

1. You can continue making your payments.
2. You can refuse to make any further payments. According to your contract and the FTC Consent Order you *cannot* be required to pay any more money. If you elect this option, you will lose your land and all the money you have paid. Also, if you purchased your lot as an investment and not for your own use as a homesite, you may be able to declare the money you lost as a tax loss, deductible from your income on federal and state tax returns. It is suggested that you contact your local District Director of the Internal Revenue Service before deciding whether to stop payments, if your decision is based on the possibility of taking a tax loss. Whether your loss is deductible will be based on your specific situation.
3. Under your contract, you may have the right to exchange your lot for a different lot in Rotonda. You may be required to pay more money for this new lot, however.
4. Your contract has a "grace period" under which you can withhold payments without giving up your land for a period of from 60-150 days, depending upon the amount of money you have paid on your contract.

If you have any questions about the contents of this letter, write to me. Please do not telephone.

If you have questions about your account or the development of your specific lot call the Rotonda Customer Affairs Department of Deltona *toll free* at (800) ————. An account executive will return your call. Instead of calling, you may wish to write to:

Rotonda Customer Affairs
P. O. Box 450783
Miami, Florida 33145

In any letter, you should include your name as set forth in your contract, your account number, your current address and telephone number, and the name of the Rotonda subdivision in which your lot is located.

Sincerely,

Jeffrey Tureck
Attorney