IN THE MATTER OF

FORD MOTOR COMPANY, ET AL.

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

Docket 9073. Complaint, Feb. 10, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Dearborn, Mich. manufacturer of motor vehicles, and the Ford Motor Credit Company to incorporate into specified documents a system for determining and accounting for all surpluses realized on repossessed vehicles resold by its dealers and to institute training programs designed to familiarize employees and dealers with their obligations in handling repossessions. Following such training, Ford is required to conduct a series of field audits to verify that dealers are calculating and paying surpluses correctly, and to submit timely compliance reports to the Commission. Additionally, respondents are required to inform dealers of their obligations to pay surpluses on past and future repossessions, and advise customers of their surplus and/or redemption rights, in the manner set forth in the order.

Appearances

For the Commission: *Bruce Carter, Barry Barnes, Dean A. Fournier* and *Daivd R. Pender.*

For the respondents: *George V. Burbach,* Dearborn, Mich. for Ford Motor Credit Co., *David R. Larrouy,* Dearborn, Mich. for Ford Motor Co., *Micheal Esler, Haessler, Stamer & Esler,* Portland, Ore. for Francis Ford, Inc. and *Carlton Harkrader* and *Thomas Brunner, Wald, Harkrader & Ross,* Washington, D.C. for Ford Motor Co. and Ford Motor Credit Co.

For the intervenor: *Glenn Mitchell, Stein, Mitchell & Mezines,* Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ford Motor Company, Ford Motor Credit Company and Francis Ford, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Ford Motor Company ("Ford") is a Delaware corporation with its office and principal place of business at The American Road, Dearborn, Michigan.

Respondent Ford Motor Credit Company ("Ford Motor Credit") is a Delaware corporation with its office and principal place of business

at The American Road, Dearborn, Michigan. It is a wholly-owned subsidiary of Ford Motor Company.

Respondent Francis Ford, Inc. ("Francis Ford") is an Oregon corporation with its office and principal place of business at 509 S.E. Hawthorne Boulevard, Portland, Oregon.

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

PAR. 2. *Respondents' Business.* Ford manufactures, distributes and sells motor vehicles, including automobiles and trucks. It also owns all or part of the voting stock of various retail dealers of its vehicles, whose business operations and policies it controls. It is responsible for the acts and practices of its wholly- or partially-owned dealers.

Wholly- or partially-owned as well as independent retail Ford dealers are referred to below as "Ford dealers."

Ford Motor Credit is a finance company which provides retail financing to customers of Ford dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by Ford dealers.

Francis Ford is a franchised Ford dealer selling new and used motor vehicles.

PAR. 3. *Commerce.* Each of respondents participates in some or all phases of the sale, distribution and repossession of motor vehicles, and in the transmission across state lines of contracts, monies, and other business papers related to the extension and enforcement of credit obligations. Respondents each maintain a substantial course of trade in motor vehicles and motor vehicle credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. *Retail Installment Contract Sales.* Francis Ford and most other Ford dealers arrange financing through Ford Motor Credit or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by Ford Motor Credit are executed on a printed "retail installment contract" form provided by Ford Motor Credit, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract is to be assigned to Ford Motor Credit for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, Ford Motor Credit and Francis Ford and other retail Ford dealers have also undertaken the obligation, by express or implied representations in their retail installment contracts, to account to the defaulting buyer for any surplus arising from the resale of repossessed collateral. This

obligation is reaffirmed after default in notices sent to defaulting buyers by Ford Motor Credit. These representations have the tendency and capacity to lead buyers to a reasonable expectation that Ford Motor Credit will refund any surplus.

PAR. 5. *Statutory Duty to Account for Surplus.* The respective rights and duties of the defaulting buyer and secured party after repossession are defined by state commercial law, derived by almost every state from Article Nine of the Uniform Commercial Code, and the retail installment contract. State law requires the secured party, after repossessing and/or disposing of the collateral, to account to the defaulting buyer for any surplus of proceeds from the sale or disposition in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees.

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where Ford Motor Credit as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by Ford Motor Credit and the dealer after repossession are determined by a master agreement embodied in the "Ford Motor Credit Company Retail Plan," between Ford Motor Credit and the dealer, as well as by the terms of the assignment of each retail installment contract to Ford Motor Credit. Additional terms are spelled out in Ford Motor Credit's legal guides and operations manuals. A majority of the agreements executed between Ford Motor Credit and Ford dealers in the United States are repurchase or similar agreements (hereinafter "repurchase" agreements).

PAR. 7. *Repurchase Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, Ford Motor Credit in most instances returns the repossessed vehicle to the repurchase dealer and receives from the dealer a payoff, consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Joint Liability.* Under applicable state law, a dealer who receives a transfer of collateral from a secured party pursuant to a repurchase agreement has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. Ford Motor Credit also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. Ford Motor Credit shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect

to the defaulting buyer's equity interest; (2) Ford Motor Credit, as assignor of the contractual duties of a secured party, continues to be liable for performance of those duties; (3) Ford Motor Credit has dictated, controlled and acted jointly with the repurchase dealer in executing relevant aspects of the credit transaction; and (4) Ford Motor Credit has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 9. *Failure to Account for Surpluses.* In a substantial number of instances Ford Motor Credit, Francis Ford, and other Ford repurchase dealers, have (1) failed to institute or follow correct procedures for determining the existence or amounts of surpluses realized from the sale of repossessed vehicles, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched Ford Motor Credit and its repurchase dealers. These practices are therefore unfair and deceptive.

PAR. 10. *Failure to Disclose Material Facts Concerning Redemption.* Ford Motor Credit and its repurchase dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 11. *Owned Ford Dealers Using Non-Ford Motor Credit Financing.* A number of wholly- or partially-owned Ford dealers engage in the acts and practices ascribed to dealers in Paragraphs Nine and Ten, in instances where retail installment financing for their customers is obtained from finance institutions other than Ford Motor Credit. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 12. *Conclusion.* The acts and practices of respondents set forth in Paragraphs Nine, Ten, and Eleven are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

Commissioner Nye dissented.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint together with a proposed form of order; and

The respondents Ford Motor Company and Ford Motor Credit Company, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, admissions by these respondents as to the Commission's jurisdiction, 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 the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Commission having thereafter, in accordance with Section 3.25(c) of its Rules, withdrawn this matter from adjudication as to Ford Motor Company and Ford Motor Credit Company; and

The Commission having considered the matter 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 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 Ford Motor Company is a Delaware corporation with its office and principal place of business located at The American Road, Dearborn, Michigan.

2. Respondent Ford Motor Credit Company is a Delaware corporation with its office and principal place of business located at The American Road, Dearborn, Michigan.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as to Ford Motor Company and Ford Motor Credit Company, and of these respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for purposes of this order the following definitions shall apply:

A. "Ford respondents" means Ford Motor Company ("Ford") and Ford Motor Credit Company ("Ford Credit"), corporations. It shall not refer to Francis Ford, Inc. References to either or both of the Ford respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. *Provided, however,* that references to Ford shall not include Ford Credit and references to either or both of the Ford respondents shall not include dealerships.

B. "Vehicle" means a passenger car or a truck with a gross vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship that is a Ford, Lincoln or Mercury vehicle dealership but excludes truck dealerships whose principal business is the sale of trucks with a gross vehicle weight more than 8,000 pounds (3,629 kilograms).

D. "Retail sale" means the installment credit sale of a vehicle, other than for purposes of resale, (*e.g.,* sale to dealers or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "Repurchase financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Repurchase dealership" or "repurchase dealer" means a dealership that engages more than occasionally in repurchase financing transactions.

G. "Equity dealership" means a dealership in which Ford has a controlling equity interest, holds 50 percent or more of the voting stock, or is entitled to elect 50 percent or more of the board of directors.

H. "Liquidating dealership" means an equity dealership that has ceased or is in the process of ceasing normal operation of a dealership and whose business has been or is being wound up by Ford or under Ford's supervision. It shall not mean a dealership not previously an equity dealership whose assets come into the possession or control of either of the Ford respondents by virtue of default on or compromise of a debt obligation.

I. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

J. "Disposition" or "dispose" refers to a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and

returned to it by or for a financing institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.,* it does not include a sale or lease to the financing institution, the dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed vehicle. Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "Proceeds" means whatever is received upon disposition of the repossessed vehicle, but exclusive of sales taxes, services contracts or separately priced warranties.

L. "Allowable expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for sale and reselling of the vehicle, and not otherwise reimbursed to the dealership. They are limited to the following charges (if allowable under applicable state law):

1. expenses paid to others, who are not employees of the dealership or of the financing institution that financed the vehicle, for repossessing, towing or transporting the vehicle;

2. filing fees, court costs, cost of bonds, fees paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of the dealership or the financing institution for obtaining possession of or title to the vehicle;

3. fees paid to others to obtain title to the vehicle, to obtain legally required inspection of the vehicle, or to register the vehicle;

4. expenses paid to others for storage (excluding a charge for storage at facilities operated by the dealership);

5. labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance of the vehicle in preparation for resale, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance or warranty recovery;

6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the vehicle in preparation for resale;

7. sales commissions paid for actual participation in the sale of the particular vehicle, computed at a rate no higher than for a similar, nonrepossessed vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. expenses of advertisements that specifically mention the

particular vehicle, including a proportional share of any advertisement that also mentions other vehicles;

9. auctioneer expenses and fees paid; and

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning and resale of the vehicle.

M. "Contract balance" means (1) the unpaid balance as of the date of repossession less applicable finance charge and insurance premium rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed prior to repossession.

N. "Surplus" means the excess of (1) the proceeds plus applicable insurance or warranty reimbursements received by the dealership or financing institution plus any other applicable rebates or credits not deducted by the financing institution, over (2) the contract balance, allowable expenses, and amounts paid to discharge any security interest provided for by law.

O. "Pay" or "paid," in reference to payment of a surplus, means a reasonable attempt to pay in accordance with the standards set forth in the Initial Compliance Report.

II.

It is further ordered, That Ford shall provide to all dealers within 60 days of the effective date of this order, and to each new dealer within 30 days of entering into a sales and service agreement, a system for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. This system (hereinafter the "accounting system") shall be made a part of the Ford Manual of Dealer Accounting Procedure referred to in the various dealer sales and service agreements between Ford and its dealers. Such agreements provide that this Manual is to be followed in dealership operations. Ford shall not change the sales and service agreements so as to affect the status of the accounting system portion of the Manual without 60 days notice to the Commission and shall not subsequently so change the sales and service agreements so as to affect the status of the Manual if the Commission, within that time period, advises Ford that it objects to the change. The accounting system shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The accounting system shall include a standardized form ("Ford accounting form") for dealers' use in determining the existence and amount of surpluses and of any deficiencies sought,

and in recording payment of each surplus in accordance with the provisions of Paragraph II.C below.

C. The accounting system shall provide that:

1. Each surplus is to be determined according to Paragraphs I.J through I.N of this order and paid to the repurchase financing customer within 45 days of disposition;

2. Expenses other than allowable expenses are not to be deducted in calculating surpluses and deficiencies sought;

3. Dispositions are to be commercially reasonable, which in practice means that the dealer should make the same efforts to obtain the best available price for a repossessed vehicle as would be made for a comparable used vehicle except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles;

4. If any rebate owing to the repurchase financing customer's account has not been received at the time the Ford accounting form is completed, such rebate is to be applied for promptly;

5. If any rebate is received after completion of the Ford accounting form, any surplus or deficiency is to be redetermined and any remaining surplus paid within 45 days of disposition or within 10 days of receiving the rebate, whichever is later;

6. The Ford accounting form is to be prepared by the dealer for each disposition of a repossessed vehicle and:

a. is to set forth the calculation of each surplus, and of each deficiency upon which collection is attempted;

b. is to be certified by a person authorized to sign retail installment contracts on behalf of the dealership;

c. a copy of the form is to be sent with the surplus payment to each repurchase financing customer to whom a surplus is paid and to each repurchase financing customer from whom a deficiency is sought; and

d. is to be retained by the dealer, together with all relevant underlying documentation, for at least two years from the date of disposition;

7. Dealers are not to obtain waivers of surplus or redemption rights from repurchase financing customers.

D. The accounting system shall state that failure to adhere to the standards of Subparagraphs II.C.1 through II.C.7 or to account properly to customers for surpluses will expose the dealer to legal action by the Federal Trade Commission and/or consumers.

E. Ford shall give the Federal Trade Commission 30 days advance notice of any change in its manner and form of carrying out the requirements of Part II of this order.

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales in Louisiana.

G. The Federal Trade Commission has proposed a trade regulation rule that defines duties involved in disposing of a repossessed vehicle differently from the method described in Subparagraph II.C.3 above. Said subparagraph is not to be considered a ratification or acceptance by the Commission of that method of disposition.

III.

A. *It is further ordered,* That the Ford respondents:

1. shall, within 90 days of the effective date of this order, develop and provide to every repurchase dealer detailed educational materials and training to carry out the purposes of Part II of this order and of Part VI (insofar as it relates to reinstatement and redemption rights), as further described in the Initial Compliance Report.

2. shall, commencing no later than 180 days after the effective date of this order, include detailed information on all pertinent aspects of Part II of this order and Part VI (insofar as it relates to reinstatement and redemption rights) in all appropriate seminars, correspondence courses and other training materials offered to dealers.

3. shall provide no instructions to dealers inconsistent with this order.

B. *It is further ordered,* That Ford:

1. shall, within 60 days of the effective date of this order, send to each repurchase dealer a letter which contains information to the following effect, with nothing to the contrary or in mitigation thereof:

a. state law requires that any surplus generated on the disposition of a repossessed vehicle must be returned to the defaulting customer;

b. the duty to pay surpluses has existed for many years and the company urges dealers to pay all surpluses on repossessed vehicles disposed of prior to the date of the letter, as well as those arising later;

c. except in California and Louisiana, state law provides that if a dealer does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price;"

d. if a customer to whom a surplus is owed has been reported by the dealer or its agent to a credit reporting agency as owing a

deficiency, the dealer should promptly advise such agency of the correct facts; and

e. the Federal Trade Commission has issued complaints against three automobile dealers charging that their failure to pay past surpluses violated federal law.

2. shall include in the above mailing a copy of this order, together with the Commission's published Analysis of Consent Order.

3. shall, within 90 days of the effective date of this order, develop and provide to all Ford Dealer Development branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this order, as further described in the Initial Compliance Report.

4. shall provide to authorized representatives of the Federal Trade Commission upon 30 days written notice a set of mailing labels addressed to the president of each dealership, together with a list containing the same information and a certification that the labels and list are complete.

C. *It is further ordered,* That Ford Credit:

1. shall, within 60 days of the effective date of this order, send to each dealer to which Ford Credit has returned a vehicle, pursuant to a repurchase agreement, that was repossessed since May 1, 1974:

a. a letter containing the same information required by Subparagraph III.B.1 above; and

b. a list containing the following data for each Ford Credit repossession returned to the dealer between May 1, 1974 and the effective date of this order: name, address and account number of the financing customer, net payoff and date of repossession of the vehicle.

2. shall, within 90 days of the effective date of this order, develop and provide to all Ford Credit branch personnel involved in repurchase financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this order, as further described in the Initial Compliance Report.

IV.

It is further ordered, That:

A. To determine whether dealers are correctly calculating and paying surpluses, Ford shall conduct an audit ("initial sample audit") of repurchase dealers. This audit shall:

1. consist of 100 repurchase dealers randomly selected pursuant to a sampling method as set forth in the Initial Compliance Report accepted by the Federal Trade Commission;

2. begin within sixteen months after the effective date of this order and be completed and reported to the Federal Trade Commission in accordance with Subparagraph IV.I.2 below within the next eleven months, exclusive of the month of December, as set forth in the Initial Compliance Report.

B. An audit conducted pursuant to Paragraph IV.A or IV.C shall be deemed to demonstrate dealer compliance if less than 1.5 percent of the dispositions audited are noncomplying transactions. A "noncomplying transaction," as further described in the Initial Compliance Report, means a disposition that results in a surplus not correctly calculated and paid in full to the financing customer.

C. In the event the initial sample audit does not demonstrate dealer compliance Ford shall conduct further audits ("follow-up sample audits"), each to consist of 85 dealers randomly selected pursuant to the procedure and schedule described in the Initial Compliance Report, until an audit demonstrating dealer compliance has been attained or a total of four follow-up sample audits have been conducted, whichever occurs first.

D. Within thirty days after a determination by Ford or advice by the Commission's representatives that the initial sample audit or a follow-up sample audit does not demonstrate dealer compliance, Ford shall supplement the accounting system to provide that each dealer submit to Ford:

1. no later than six months after the above advice or determination, the completed Ford accounting forms described in Paragraph II.B of this order for all repurchase financing repossessions disposed of by the dealer that were returned to the dealer during the audit period covered by the prior sample audit; and

2. with each of the above submissions, a signed statement that the Ford accounting forms submitted include all repurchase financing repossessions disposed of by the dealer that were returned to the dealer during the audit period or, alternatively, that there were no such repossessions.

No submission shall be necessary after the last follow-up sample audit.

E. Ford shall review all Ford accounting forms submitted to it pursuant to Paragraph IV.D within 90 days of their receipt. This review shall be conducted by trained clerical personnel in accordance with the Initial Compliance Report, but Ford shall not be required to undertake a detailed analysis of these Ford accounting forms and shall not be deemed to have violated this paragraph if, despite good faith efforts, there are errors or omissions in that review.

F. Three years after completion of the last audit required pursuant to Paragraph IV.A or IV.C, Ford shall conduct a "final sample audit" of 85 randomly selected dealers pursuant to the procedure and schedule described in the Initial Compliance Report.

G. In addition to the audits provided for above, Ford shall conduct a supplemental audit of each dealership:

1. found by Ford, in the immediately preceding initial sample audit or follow-up sample audit of the dealership, to have had noncomplying transactions as set forth in the Initial Compliance Report;

2. which failed to submit either the Ford accounting forms required by Paragraph IV.D or a signed statement that no repurchase financing repossessions were returned to the dealership during the relevant period;

3. which failed to indicate payment of a surplus identified on any Ford accounting form submitted pursuant to Paragraph IV.D;

4. which failed more than occasionally, as further described in the Initial Compliance Report, to sign the certification on Ford accounting forms submitted pursuant to Paragraph IV.D; or

5. found, based on review of the Ford accounting forms submitted pursuant to Paragraph IV.D, to have deducted expenses other than allowable expenses.

Each supplemental audit required by this paragraph shall be completed within six months of detection of the event which triggers it and shall be conducted pursuant to the procedure set forth in the Initial Compliance Report.

H. Within sixty days after completion of each audit of a dealership provided for in Paragraphs IV.A, C, F and G above, Ford shall:

1. submit to the Federal Trade Commission a summary report of the audit for that dealership, containing: (a) the name and address of the dealership; (b) the number of dispositions examined; (c) the number and dollar value of surpluses properly calculated and paid; (d) the number and dollar value of surpluses as to which attempts to pay were unsuccessful; (e) the number of repossessed vehicles sold at wholesale; (f) the number of noncomplying transactions and, for each such transaction, the amount owed, copies of the audit worksheets, the Ford accounting form and business records of the dealership and/or financing institution sufficient to establish such noncompliance; and (g) a certification by the auditor attesting to his or her findings concerning each noncomplying transaction, including the reason for noncompliance and any explanation provided by the dealership; and

2. for each dealership found to have noncomplying transactions as set forth in the Initial Compliance Report, commence further dealership training to correct such noncompliance.

I. The audits provided for in Paragraphs IV.A, C, and F of this order shall conform to Subparagraphs 1–7 below. The audits conducted pursuant to Paragraph IV.G shall conform to Subparagraphs 3–7 below. The audits and report submissions provided for in Paragraphs IV. C, D, E and G shall also conform to Subparagraph 8 below.

1. The Federal Trade Commission shall be given reasonable advance notice of the time of random selection and shall have the opportunity to have its representatives observe and review the random selection process.

2. Ford shall provide to the Commission a summary report of each entire sample audit, within 60 days after completion of such audit, specifying (a) the name and address of each dealership included, (b) the total number of dispositions examined, (c) the total number and dollar value of noncomplying transactions, (d) the number and dollar value of surpluses properly calculated and paid, (e) the number and dollar value of surpluses as to which attempts to pay were unsuccessful, and (f) the number of repossessed vehicles sold at wholesale.

3. For each dealer audited, each repurchase financing repossession returned to the dealer during the audit period shall be examined to determine whether it is a noncomplying transaction.

4. The audit shall be conducted by the General Auditor's Office of Ford Motor Company (or by other qualified auditors designated by Ford), in accordance with the procedure described in the Initial Compliance Report.

5. The Ford respondents shall direct their personnel (including retained consultants or experts) that they are not to inform dealers or other third parties of the audit procedure, the sample period, the method of drawing the sample, or the identity of dealers selected for audit except to the extent described in this order, and the Ford respondents shall take all reasonable measures to ensure that their personnel adhere to this direction.

6. No dealer selected for audit shall be given more than ten business days advance notice of the scheduled audit.

7. Upon request by the Commission's representatives, Ford shall, within 30 days, submit copies of the auditors' worksheets and summary comments on any dealership audited.

8. In particular circumstances of dealer noncompliance, the

schedule and scope of audits and report submissions shall be modified as described in the Initial Compliance Report.

V.

It is further ordered, That Ford:

A. Shall require each Ford employee who is a director of an equity dealership to vote for resolutions so that each such dealership:

1. within 60 days of the effective date of this order or within 60 days of initiating operation as a dealership, whichever is later, adopts and maintains the accounting system described in Part II of this order;

2. pays all surpluses (*provided, however,* that a dealership's failure to pay a surplus which has not come to the attention of any Ford employee whose primary responsibilities concern equity dealerships shall not be deemed a violation of this subparagraph); and

3. has an annual examination of its documents by a certified public accounting firm, for each year up to and including the year that the final sample audit is completed, to determine whether the dealership is following the accounting system; such examination shall (a) include an inspection of underlying documents supporting entries on the Ford accounting form (described in Paragraph II.B of this order) for all repossessed vehicles returned to the dealership during the year covered by the examination and (b) be followed by a report to the dealership board of directors regarding any noncomplying transactions.

B. Shall require that, at every accounting review of an equity dealership, but in any event at least once every calendar year commencing after the effective date of this order, Ford's employees shall randomly select and examine underlying documents supporting entries on the Ford accounting form for at least one-fourth of the repossessed vehicles returned to the dealership since the previous such review or since January 1, 1978, whichever is later. If the examination reveals that the dealership has any noncomplying transactions, then:

1. Ford's employees shall examine underlying documents for the remaining three-fourths of the repossessions and report all noncomplying transactions to the dealership's board of directors; and

2. Ford employees who are members of such board of directors shall institute appropriate measures to correct the noncompliance.

C. Shall ascertain for each liquidating dealership whether any unpaid surpluses have arisen since the last audit by an independent certified public accounting firm, and pay each such surplus.

D. Shall, within 60 days of the effective date of the order, with

respect to repossessed vehicles returned between May 1, 1974 and December 31, 1977 to dealerships which are equity dealerships as of the effective date of this order, and with respect to repossessed vehicles returned between May 1, 1974 and December 31, 1977 to liquidating dealerships, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all surpluses have been paid; and

2. in each instance where a customer entitled to receive a surplus pursuant to Subparagraph V.D.1 above had been previously reported by the dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently advised of the correct facts.

VI.

It is further ordered, That Ford Credit:

A. Shall incorporate provisions to the following effect into the "Retail Plan" section of its "Automotive Finance Plans for Ford Motor Company Dealers," within 60 days of the effective date of this order, and into any subsequent edition of that document or any comparable successor document:

1. dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition;

2. dealers are to permit redemption in accordance with the post-repossession notice sent by Ford Credit to the customer;

3. dealers are to determine whether a surplus exists on a repurchase financing repossession according to the accounting system described in Part II of this order;

4. in determining surpluses and deficiences, dealers are not to deduct expenses other than allowable expenses;

5. dealers are to account for and pay each surplus within 45 days of disposition.

B. Shall, as soon as practicable, but no later than twelve months after the effective date of this order, develop and distribute to all dealers who use Ford Credit's form of retail installment contract, revised Ford Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. no expenses other than reasonable expenses incurred as a direct result of repossessing (including, where permitted, attorney's fees and court costs), holding, preparing for sale and selling the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and

2. any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

C. Shall direct its branch offices that, commencing two weeks after the distribution to a dealership of the revised Ford Credit retail installment contract forms described in Paragraph VI.B, they are not to purchase from that dealership Ford Credit forms of retail installment contracts that are not on the revised forms and shall, for a period of two years thereafter, periodically examine its branch office files, in accordance with its usual monitoring procedures, to determine whether prior retail installment contract forms are being used, and, if so, shall institute appropriate corrective action.

D. Shall, commencing 75 days after the effective date of this order, include the following information in clear lay language in at least one notice sent prior to repossession to every Ford Credit repurchase financing customer to whom a notice of intent to repossess is sent:

1. the total amount past due at the time the notice is mailed;

2. in transactions where the customer is entitled to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by law;

3. that the customer will have an absolute right to redeem the vehicle at any time prior to a binding agreement for its disposition, and that this right can be exercised by paying the contract balance plus all expenses incurred as a direct result of repossessing, holding and preparing the vehicle for sale;

4. the date or interval of time prior to which the vehicle will not be sold;

5. that if the vehicle is not redeemed or the contract reinstated, the customer will be entitled to a refund of any surplus within 45 days of disposition;

6. that failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law.

E. Shall, within 60 days after the effective date of this order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to Ford Credit financing customers as soon as practicable after repossession. Ford Credit shall periodically examine its branches' files, in accordance with its usual monitoring procedures, to determine whether the post-repossession notices have been and are being sent, and shall institute appropriate

actions to assure that this procedure is adhered to. In the event of any charge of failure to follow the procedure for uniformly sending post-repossession notices, Ford Credit shall not be deemed in violation unless it is shown that Ford Credit has failed to send such notices at least ten days prior to the earliest resale date stated pursuant to Subparagraph VI.E.4 below on more than five percent of the repossessions of each of three Ford Credit branch offices in any twelve-month period. The post-repossession notice shall specify in clear, lay language:

1. the name, address and telephone number of the dealership to which the vehicle has been or will be returned for disposition, if applicable, and the address and telephone number of the Ford Credit branch office to be contacted;

2. the date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;

3. the net amount necessary to redeem the vehicle, and, in transactions where the customer is entitled to reinstatement, the amount necessary to reinstate the contract, at the time the notice is sent;

4. the date or interval of time prior to which the vehicle will not be sold;

5. that the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

6. that additional expenses incurred as a direct result of holding and preparing the vehicle for sale may increase the amount necessary to redeem the vehicle if redemption is delayed;

7. that Ford Credit should be contacted to reinstate the contract in states where the customer is entitled to reinstatement;

8. that Ford Credit should be contacted for further information about redemption including the procedure for redeeming the vehicle;

9. that, where the vehicle has been returned to the dealer and is not redeemed or the contract is not reinstated, any surplus must be paid to the customer within 45 days after disposition (the notice may also state that a contract between the dealer and Ford Credit provides that the dealer is to pay any surplus);

10. that failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law;

11. that the customer may be liable for a deficiency or that state law prohibits Ford Credit and the dealer from collecting any deficiency (the notice is to include the applicable language only);

12. that the customer has the right to direct the dealer to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the dealer has, on behalf of the customer, obtained a credit life, accident and health or collision insurance policy.

F. Shall obtain no waivers of redemption or surplus rights from financing customers.

G. Shall, commencing three months and to be completed no later than twelve months after the effective date of this order, revise all pertinent Ford Credit forms, form letters, notices and internal written procedures to be consistent with the provisions of this order.

VII.

It is further ordered, That:

A. In the event the Federal Trade Commission issues a final trade regulation rule establishing standards less restrictive on automobile manufacturers, financing companies or vehicle dealerships than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the rule, supersede and replace the corresponding provision(s) of this order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. *Provided, however,* that the Ford respondents shall advise the Commission of their intention to rely upon any provision of a trade regulation rule as having superseded any provision of this order 30 days in advance of reliance thereon. *Provided further,* that this paragraph shall not be construed as exempting the Ford respondents from any trade regulation rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any trade regulation rule.

B. In the event any of the proceedings presently bearing Dkts. 9072, 9073, or 9074 results in a final adjudicated or consent order prescribing standards less restrictive than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including

their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a Ford respondent's petition pursuant to Section 3.72 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order or other relief as necessary and appropriate to conform this order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

C. In the event a Ford respondent is of the opinion that changed conditions of law require that this order be altered or modified, the Ford respondent may, pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, file a petition requesting a reopening of this proceeding for that purpose.

VIII.

It is further ordered, That:

A. The Ford respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this order, including but not limited to copies of notices sent to financing customers pursuant to Paragraphs VI.D and E above, and records prepared pursuant to Paragraphs V.A-C for each equity and liquidating dealership. The Ford respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Each of the Ford respondents shall, within 120 days after the effective date of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Ford shall forthwith distribute a copy of this order to its Ford, Lincoln-Mercury and Parts and Services divisions, and to the Dealer Development activity, and Ford Credit shall forthwith distribute a copy of this order to each of its Regions.

D. Each of the Ford respondents shall notify the Commission at least thirty days prior to any proposed corporate change such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, the discontinuance of Ford's present program for investing in equity dealerships, or any other change which may affect compliance obligations arising out of this order.

IN THE MATTER OF

ROYAL FURNITURE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 9090. Complaint, Oct. 26, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Bronx, N.Y. furniture and appliance retailer to cease failing to advise consumers that co-signers may be required in credit transactions; signed documents are not final until they have been approved; and that customers may, upon denial of credit, cancel their purchases and receive refunds of downpayments. The Company is required to honor valid cancellations; make proper refunds; and furnish consumers with credit disclosures required by Federal Reserve System regulations and booklets outlining their legal and contractual rights. Additionally, the firm is prohibited from engaging in harassing debt collection practices, including false threats of repossession and garnishment; and improper third-party contact. The order also requires the firm to establish procedures for handling complaints regarding defective, damaged or nonconforming merchandise; and maintain specified records.

Appearances

For the Commission: *Henry R. Whitlock* and *Sandra L. Bird.*

For the respondents: *Howard Mann, Weiss, Rosenthal, Heller, Schwartzman & Lazar,* New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Royal Furniture Co., Inc., a corporation, and Milton Landes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the regulation promulgated under the Truth in Lending 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. For the purpose of this complaint and the proposed order attached hereto, the following definitions of terms shall apply:

1. "Consumer" refers to a natural person who seeks or acquires goods, services or money for personal, family or houshold use.

2. "Co-signer" refers to a natural person who, by agreement, and without compensation, renders himself liable for the credit purchases of a consumer.

3. "Retail Installment Credit Agreement" refers to a written agreement pursuant to which respondents extend credit to consumers for the present and future purchase of respondents' merchandise.

4. "Debt collection" refers to any activity other than the use of judicial process which is intended to bring about or does bring about repayment of all or part of a consumer debt, except:

(1) Inquiry to locate a consumer whose whereabouts are genuinely unknown to the creditor; and/or

(2) Inquiry to determine the nature and extent of a consumer's wages or property;

Provided that, in these two instances, no specific mention is made of the alleged indebtedness.

PAR. 2. Respondent Royal Furniture Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 2936 Third Ave., Bronx, New York.

Respondent Milton Landes is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the purchasing, advertising, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two and Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. Respondents maintain and have maintained a substantial course of business including the acts and practices, as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents, through advertising brochures and oral statements of

respondents' salesmen, employees or representatives (hereinafter referred to as "representatives") have made, and continue to regularly make, numerous and various statements and representations concerning the terms and methods of payment, and the availability of credit for the purchase of respondents' merchandise.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following statements often used in conjunction with one another by their being interspersed throughout respondents' advertising brochures:

- Use Royal's Easy Credit
- Budget Terms
- Budget Accounts Invited at Royal
- Royal Welcomes People on Welfare, Social Security and Pensions, Newlyweds, Students and Teenage Accounts, Civil Service Employees and Union Members
- Terms especially made to fit your budget
- Low downpayment, convenient credit terms
- Arrange your own downpayment
- Use your credit
- House Full of Luxury - Instant Credit Too

PAR. 6. By and through the use of the above-quoted statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented and continue to represent, directly or by implication, that:

1. Respondents offer liberal policies with regard to the extension of credit, downpayments required, terms and conditions of repayment of the indebtedness and/or collection practices.

2. Respondents offer personalized credit and allow their customers to arrange downpayments, payment schedules and credit terms to suit the customer's own financial needs and budget limitations.

3. Customers on low and fixed incomes can establish their own credit accounts.

4. Customers will be given immediate credit from respondents without difficulty.

PAR. 7. In truth and in fact:

1. Respondents do not offer liberal credit terms and customers who fall behind in their payments are subjected to late charges and strict collection practices including law suits.

2. Respondents do not offer personalized credit terms and do not

allow their customers to determine the amount of the downpayment, payment schedule, or credit terms.

3. In many instances customers with low and fixed incomes are not extended credit solely on their own account and must secure one or more co-signers.

4. In many instances, credit is not extended immediately or is withdrawn or otherwise subjected to conditions subsequent to respondents' acceptance of the credit transaction or execution of the contract.

PAR. 8. Therefore, the aforesaid statements, representations, acts and practices regarding the terms, conditions and availability of credit offered by respondents were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Eight hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. In the further course and conduct of their business as aforesaid, respondents use a form printed on two sides, the front serving as respondents' sales slip and the back containing respondents' Retail Installment Credit Agreement.

The sales slip on the front of said form sets forth a description and price of the consumers' present purchases, downpayment, if any, the balance owed and the amount and time schedule for the consumer's minimum periodic payments.

The Retail Installment Credit Agreement on the back of said form sets forth the terms under which respondents are extending credit to the consumer for his present and future purchases. Such terms include, but are not limited to, the amount and method of assessing finance charges, acceleration of balance due upon default, and liability for attorney's fees. The Retail Installment Credit Agreement incorporates by reference the terms set forth on the sales slip.

PAR. 10. By virtue of respondents' false, misleading and deceptive representations, acts and practices as set forth in Paragraphs Five and Six, consumers have been induced to order merchandise on credit and in regard thereto have paid substantial sums of money to respondents as deposits or downpayments and have entered into Retail Installment Credit Agreements as described herein with respondents.

In many instances, at the time the credit agreements are entered into, respondents represent, directly or by implication, that the sales slips and the credit terms contained in the Retail Installment Credit Agreements have been accepted by or on behalf of respondents, and that the sales have been consummated in mutually binding agreements.

PAR. 11. In many instances, after having received moneys from consumers as deposits or downpayments for merchandise, respondents have failed or refused to honor the terms of the agreement by conditioning delivery of merchandise upon consumers paying larger downpayments or deposits, obtaining co-signers or agreeing to purchase less expensive merchandise than originally ordered.

Therefore respondents' aforesaid misrepresentation that the sales slips and the Retail Installment Credit Agreements between themselves and consumers mutually bind the store and the customer was and is a false, misleading and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended, and respondents' failure or refusal to honor their agreements with consumers to deliver the merchandise originally ordered by consumers on the credit terms originally agreed upon was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 12. In the further course and conduct of their business, as aforesaid, in many instances respondents, directly or indirectly, have told consumers who did not agree to the foregoing changes in the terms of either their sales slips or Retail Installment Credit Agreements that respondents would not cancel said consumers' contractual obligations, and/or would not refund any moneys already paid to respondents.

Therefore, the aforesaid act or practice was and is an unfair practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. As a result of the foregoing respondents have (a) 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 respondents' merchandise, and (b) have continued to retain substantial sums of said monies and/or have continued to refuse to cancel contractual obligations.

PAR. 14. The use by respondents of the aforesaid acts and practices, including their continued refusal to honor their agreements with consumers on the credit terms originally agreed upon and their continued retention of said sums and their continued refusal to cancel contractual obligations of their customers, was and is unfair

and injurious to the public in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Fourteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 15. In the further course and conduct of their business as aforesaid, respondents, in many instances, have required consumers, who want to purchase merchandise on credit, to obtain one or more persons to act as co-signers of the Retail Installment Credit Agreement between respondents and said consumers. The persons acting as co-signers are designated as co-buyers on the Retail Installment Credit Agreements, but in most instances respondents treat said persons as co-signers.

PAR. 16. In most instances where respondents have required co-signers as aforesaid, respondents have not, prior to said co-signers becoming obligated, either orally or in a writing readily understandable to a person without legal experience or background, disclosed to the co-signers their legal obligations and rights as co-signers and which, if any, of the terms and conditions of the Retail Installment Credit Agreements apply to co-signers.

PAR. 17. Respondents have further failed to disclose to potential co-signers that, in many instances, respondents have:

1. Sued co-signers for the unpaid balance owed by consumers plus accrued finance charges and attorney's fees.
2. Applied the technical terms of the Retail Installment Credit Agreements, such as those terms specifically listed in Paragraph Nine above, to the co-signers.
3. Sued co-signers without giving them any notice of consumers' defaults or an opportunity to pay prior to suit.
4. Sued co-signers in the same action as consumers and enforced the judgment obtained against co-signers prior to or simultaneously with enforcement against consumers.

Thus respondents have failed to disclose material facts which if known to certain co-signers would likely affect their decision to become co-signers of respondents' Retail Installment Credit Agreements.

PAR. 18. Therefore respondents' failure to disclose material facts as to the obligations of the aforesaid co-signers and possible

consequences of their agreement, prior to the completion of the credit sale and in a meaningful manner and in clear, plain language, was and is unfair, misleading and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Eighteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 19. In the course and conduct of their business as aforesaid, in instances where respondents have required consumers to provide one or more co-signers on respondents' Retail Installment Credit Agreements, respondents have often further required said co-signers to sign a Continuing Guarantee and Waiver containing, inter alia, the following provisions:

1. The co-signer guarantees payment for any future indebtedness contracted by the consumer for two years from the date of the guarantee, up to a specified maximum amount.
2. The co-signer waives the sending of notice to himself of a default on the part of the consumer.
3. The contract of guarantee is irrevocable as to future credit purchases for a two year period.
4. The co-signer agrees to pay all present or future indebtedness without first requiring the respondents to seek payment from the consumer.

PAR. 20. By and through the use of the aforementioned Continuing Guarantee and Waiver respondents:

1. Extend the co-signer's obligation beyond the amount specified in the original sales contract to include all future credit purchases of the consumer for a two year period, and up to a specified maximum, without the co-signer's specific knowledge of or control over the amount, frequency or terms of said purchases, and without said co-signer having an opportunity to re-evaluate the consumer's ability to pay for future purchases.
2. Deny the co-signer any opportunity to attempt to rectify a default prior to his being sued.
3. Prevent the co-signer from cancelling his future liability upon a change in either the consumer's or the co-signer's financial situation.

4. Place the co-signer in a position where he may be held primarily and/or solely liable for the debts of another.

PAR. 21. The aforementioned obligations and liabilities are not bargained for provisions and are not generally understood by persons without legal experience and background.

PAR. 22. Therefore, the use by respondents of the Continuing Guarantee and Waiver in which co-signers may be held primarily and/or solely liable for respondents' customers' debts, under the terms described herein, was and is an unfair act and practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Twenty-Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 23. In the further course and conduct of their business as aforesaid, in most of the instances where respondents have required that co-signers sign the aforementioned Continuing Guarantee and Waiver, respondents have not, prior to the co-signers signing, either orally or in a writing readily understandable to a person without legal experience or background, disclosed to the co-signer his legal obligations and rights under the technical terms of the Continuing Guarantee and Waiver as set forth more fully in Paragraphs Nineteen and Twenty.

PAR. 24. The circumstances surrounding the credit transaction as set forth more fully in Paragraphs Fourteen, Fifteen and Sixteen herein and the failure of respondents to meaningfully disclose to co-signers their legal obligations and rights under the Continuing Guarantee and Waiver, has the tendency and capacity to mislead prospective co-signers into the mistaken belief that: co-signers are liable to pay only for consumers' purchases listed on the form serving as respondents' sales slip, as described in Paragraph Fourteen herein.

Thus, respondents have failed to disclose material facts, which, if known to certain co-signers, would likely affect their consideration of whether or not to act as co-signers of credit sales with respondents.

PAR. 25. Therefore respondents' failure to disclose the aforementioned material facts in a meaningful manner and in plain language, prior to the completion of credit sales, was and is unfair, misleading

and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Twenty-Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 26. In the further course and conduct of their business as aforesaid, in those instances where respondents have required co-signers to sign Retail Installment Credit Agreements and/or Continuing Guarantees and Waivers, respondents have often failed to furnish the aforesaid co-signers with copies of all the agreements they have signed in the credit transaction.

PAR. 27. Therefore the aforesaid act or practice was and is unfair in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VII

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, Paragraphs Two through Twenty-Seven hereof are incorporated by reference as if fully set forth herein verbatim.

PAR. 28. In the course and conduct of their business as aforesaid, respondents in numerous instances have commenced legal proceedings to collect monies owed respondents under the terms of the Retail Installment Credit Agreements and/or Continuing Guarantee and Waivers.

PAR. 29. Subsequent to the service and filing of the summons in the aforementioned legal proceedings, respondents in many instances, directly or by implication, have advised persons who have been sued and who contact respondents concerning the action, to continue making payments and to ignore summonses or other legal notices. In connection with the aforesaid, respondents have accepted and/or agreed to accept payments from consumers and co-signers, and have failed to file with the court a notice of discontinuance, settlement or any other papers which would indicate that an agreement has been reached between the parties to the action. As a result of, and in reliance on, such deceptive or misleading representations, the aforementioned persons default in appearing in said action, or fail to take other necessary legal action.

PAR. 30. The legal consequences as well as the potential effect on

an individual's credit rating of failing to appear in legal proceedings, of failing to file documents showing that a case has been settled or discontinued and of failing to take other affirmative legal actions, are not generally known or understandable to persons without legal experience or background.

PAR. 31. As a result of the foregoing respondents have (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 respondents' merchandise, and (ii) have continued to accept and retain payments from persons whom they advised, directly or by implication, to ignore court summonses and other legal papers while respondents have proceeded with their legal suits against these persons or have failed to discontinue or formally settle said legal suits.

The use by respondents of the aforesaid acts and practices, was and is an unfair and deceptive act or practice to the injury of the public in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VIII

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Four hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 32. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms and warehouse, have maintained, and are now maintaining, floor models and displays of merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered and the services that will be provided by the respondents.

Moreover, subsequent to making sales and deliveries, respondents and their representatives have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 33. By and through the use of the aforementioned floor models and displays, together with the aforesaid oral statements,

representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Merchandise delivered will conform in color, material, style, quantity and quality to that ordered.
2. Merchandise sold by respondents will be delivered to the customer free from damage and defects.
3. Merchandise which is delivered to purchasers with damages or defects or which does not conform to the merchandise ordered, will be repaired or replaced within a reasonable time.
4. Merchandise which is delivered to purchasers with damages or defects or which does not conform to the merchandise ordered will be repaired or replaced to the satisfaction of the purchaser.

PAR. 34. In truth and in fact:

1. In many instances, merchandise delivered does not conform in color, material, style and quality to that ordered.
2. In many instances, merchandise sold by respondents is delivered to purchasers with damages and/or defects.
3. In many instances, merchandise which is delivered to purchasers with damages and/or defects and/or does not conform to the merchandise ordered is not repaired or replaced within a reasonable time.
4. In many instances, merchandise which is delivered to purchasers with damages and/or defects and/or does not conform to the merchandise ordered is not repaired or replaced to the satisfaction of the purchasers.

PAR. 35. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services, were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IX

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Four and Thirty-Two through Thirty-Five hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 36. By virtue of respondents' misleading, deceptive and false representations, acts and practices, set forth in Count VIII customers have been induced to pay substantial sums of money to respondents for furniture and other merchandise. Respondents have received said

sums and have failed or refused, and continue to fail or refuse, to repair or replace, or make refunds for, damaged, and/or defective and/or non-conforming merchandise, or to honor the implied warranties imposed by law upon such sales.

PAR. 37. Therefore, the use by the respondents of the aforesaid practices was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT X

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Thirty-One hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 38. In the further course and conduct of their business, respondents and their representatives have engaged in a variety of harrassing and threatening debt collection activities including but not limited to the following:

1. Telephone calls to consumers and consumers' neighbors threatening repossession or seizure of merchandise purchased from respondents.
2. Telephone calls to consumers threatening immediate wage garnishment and other extraordinary action prior to institution of legal proceedings.
3. Telephone calls to consumers and their neighbors, friends and employers by persons representing themselves as New York City marshals, sheriffs or attorneys or other state or local officials.
4. Mailing to allegedly delinquent consumers a "Speed-O-Gram" which by its color and appearance, styling, printing and format simulates a telegraphic message.

PAR. 39. In truth and in fact:

1. Respondents have not caused repossession or seizure and under state law, respondents have no legal right to cause repossession or seizure of merchandise purchased in a retail installment credit transaction prior to obtaining a final judgment in a legal proceeding.
2. Respondents have not caused immediate wage garnishment or other extraordinary action and under state law respondents have no legal right to cause wage garnishment or other extraordinary action prior to obtaining a final judgment in a legal proceeding.
3. In many instances telephone calls to consumers, their neighbors, friends and employers, by persons claiming to be New York

City marshals, sheriffs or attorneys or other state or local officials are not made by such persons but are made by respondents and their representatives.

4. The "Speed-O-Gram" is not a telegraphic message; rather it is a form collection letter sent through the regular United States mail which because of its simulation misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the statements and representations set forth in Paragraph Thirty-Eight are false, misleading and deceptive.

PAR. 40. In the further course and conduct of their debt collection activities respondents or their representatives have:

1. Telephoned alleged debtors' neighbors and friends and made specific mention of the alleged indebtedness.

2. Telephoned alleged debtors' places of employment and made specific mention of the alleged indebtedness to persons other than the alleged debtors.

PAR. 41. Respondents' aforementioned conduct has the capacity directly or indirectly to jeopardize consumers' employment, cause embarrassment and damage to reputation and to coerce consumers to make payments of amounts allegedly owed and/or to forego or waive defenses.

Therefore the aforementioned acts and practices are unfair.

PAR. 42. In some instances respondents have engaged in the debt collection activities set forth in Paragraphs Thirty-Eight and Forty and/or have instituted legal proceedings against consumers while there is a dispute between respondents and consumers as to acceptability of merchandise or repairs, and/or correctness of billing. Said conduct has the capacity directly or indirectly to coerce consumers to make payments of amounts allegedly owed and/or to forego or waive defenses.

Therefore respondents' aforesaid acts and practices are unfair.

PAR. 43. Therefore, the representations, acts and practices set forth herein are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT XI

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended the allegations of Paragraphs Two through Forty-Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 44. In the course and conduct of their business as aforesaid,

and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 45. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 46. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT XII

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two and Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 47. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend, and for some time in the past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 48. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are now causing, customers to execute binding "retail installment credit agreements," hereinafter referred to as the "credit agreement," for the purchase of respondents' goods and services. Said agreements constitute the only disclosure of consumer credit terms made to customers before a transaction is consummated.

PAR. 49. In connection with extensions of credit, respondents make disclosures to consumers describing the credit terms of their

agreements and consumers' accounts. Said disclosures include, but are not limited to, disclosure that the finance charges will be computed by a periodic rate and disclosure of the annual percentage rate of such charges. Furthermore, in connection with their extensions of credit, respondents have caused to be delivered, and are delivering, to their customers, periodic billing statements. Based upon the foregoing, respondents profess to be extending open end credit.

PAR. 50. However, in further connection with their extensions of credit, respondents:

1. Fail to disclose, before the first transaction is made on the account, the minimum payment which will be required on future purchases.

2. Require customers to execute a new retail credit agreement for each subsequent purchase made on the account.

3. Require that under certain circumstances co-signers be obtained before additional purchases can be made.

4. Reverify as a matter of course the credit status of consumers with third parties before delivering merchandise purchased subsequent to the first sale.

PAR. 51. For the reasons set forth in Paragraph Fifty, and for other reasons not specifically set forth herein, respondents are not extending consumer credit on an account pursuant to a plan under which the respondents permit consumers to make repetitive transactions on a revolving basis, and are, therefore, extending other than open end credit.

PAR. 52. By and through the use of the aforementioned credit agreement, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Fail to make the disclosures required by Section 226.8 of Regulation Z prior to the time the transaction is consummated either on:

(a) the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) one side of the separate statement which identifies the transaction as required by Section 226.8(a) of Regulation Z.

3. Fail to use the term "cash price" to describe the cash price, as

defined in Section 226.2(n) of Regulation Z, of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

4. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale as prescribed by Section 226.8(c)(2) of Regulation Z.

5. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

6. Fail to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not a part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

7. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with (c)(7) of Section 226.8 of Regulation Z, as required by Section 226.8(c)(7) of Regulation Z.

8. Fail to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge" as required by Section 226.8(c)(8)(i) of Regulation Z and also fail to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

9. Fail to disclose the sum of: the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

10. Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

11. Fail to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

12. Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Fail to disclose the method of computing any unearned

portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

PAR. 53. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Royal Furniture Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 2936 Third Ave., Bronx, New York.

Respondent Milton Landes is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporate respondent.

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 I

A. *It is ordered,* That respondents, Royal Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Milton Landes, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture or other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' terms of credit are lenient, including but not limited to representations that respondents offer "easy credit" or "instant credit" or that customers can arrange their own downpayments.

2. Failing to disclose conspicuously, in close conjunction with every mention of the availability of credit and credit terms in respondents' advertising, and in a manner appropriate to the media used, that co-signers may be required of persons whose credit ratings do not meet respondents' standards for credit accounts if respondents, in the course of their business, ever require co-signers.

3. Failing to offer to refund any consumer deposit placed towards purchases at the time the consumer's credit agreement for a purchase or credit account is disapproved and failing to make such refund within seven (7) business days from the request for such refund.

4. Failing to provide any consumer whose credit account or purchase is subject to credit approval with the following information, at the time the credit agreement is signed, in at least 12 point type:

IMPORTANT!

PLEASE READ THIS BEFORE YOU SIGN!

This contract will be checked by our credit department before we will deliver anything. Maybe they won't approve it. If they don't, we may ask you for a bigger downpayment. Or for bigger monthly payments. Or for one or more added signatures by relatives or friends (called co-signers) who'll promise to pay if you don't.

If you don't agree with those changes, you can cancel your order. As soon as you do that, we'll refund your downpayment.

Royal Furniture Co.

5. Unilaterally, and without the consumer's written consent, changing the terms of any credit agreement with a consumer after the consummation of the credit agreement including but not limited to requiring a larger deposit, co-signers, or purchase of less expensive merchandise. The consumer's right to give written consent can not be waived.

6. Using any collection or dunning letter which simulates a telegram or using any other methods or forms or types of communications which misrepresent the nature, import or urgency of any communication.

7. Representing to any consumer or co-signer against whom legal proceedings have been commenced, directly or by implication, that the account has been adjusted or such suits discontinued, unless:

(a) Within seven (7) business days of making an adjustment with such consumer or co-signer, respondents discontinue the legal proceedings by filing, or causing to be filed, with the court a notice of discontinuance or notice of settlement in the form required by the court.

(b) Within ten (10) business days from making such adjustment respondents send a copy of the papers required to be filed with the court in Order I(A)(7)(a) herein to the consumer and/or co-signer involved and, where applicable, to counsel representing the consumer and/or co-signer.

8. In the course of collecting a debt communicating or threatening to communicate with the consumer's employer or any agent of the employer or any other person not liable for the debt other than the spouse or attorney of the consumer or threatening repossession, wage garnishment, or other extraordinary measures, except:

(1) Inquiry to locate a consumer whose whereabouts are genuinely unknown to the creditor; and/or

(2) Inquiry to determine the nature and extent of a consumer's wages or property;

(3) Communication with credit bureaus to the extent permitted by the Fair Credit Billing Act, 15 U.S.C. 1666, and regulations promulgated thereunder.

Provided that, in these instances, no specific mention is made of the alleged indebtedness, except as permitted by the Fair Credit Billing Act, 15 U.S.C. 1666, and regulations promulgated thereunder.

9. Misrepresenting directly or by implication that respondents or

their representatives are New York City marshals, sheriffs, attorneys or any other state or local official.

10. Misrepresenting directly or by implication the debt collection activities that respondents or their representatives are engaging in or will engage in, including but not limited to threats of immediate repossession or wage garnishment prior to obtaining judgment.

11. Failing, at all times subsequent to the effective date of this order, to maintain complete records of all notices required by Order I(A) during the immediately preceding three-year period.

12. Failing to furnish to each customer who purchases any merchandise exceeding $50 in cost, and to each customer upon the opening of a credit or charge account, a booklet containing clear disclosures, in language which is easily understandable to such customers, describing their rights and obligations in respect to respondents': (1) warranties and guarantees; (2) refund policies, including the procedures established by Order I(A)(3), I(B)(1)(b), (c), (d) and (e); (3) delivery terms; (4) procedures for repair or replacement of non-conforming, defective or damaged merchandise, including the procedures established by Order I(B); and any other rights provided for in this order and any other material information. Such disclosures shall clearly delineate the conditions which customers must comply with in order to avail themselves of any procedure established by this order or by respondents. The booklet required herein shall be submitted for approval with the initial compliance report required by Order III(F).

13. Failing to disclose, orally and in writing, to each customer who purchases merchandise exceeding $50 in cost, and to each customer upon the opening of a credit or charge account, that the booklet required by Order I(A)(12) above is available and will be given to each such customer. Said written notice shall be given to such customers at the time of execution of their sales or credit agreements and shall contain the following language:

NOTICE TO CUSTOMER

BE SURE TO GET OUR BOOKLET!

Be sure to get our booklet that tells you about your rights. It contains our warranty and shows you what to do if something is wrong with the items we deliver. Or if the item you bought needs fixing. How to get repairs and replacements from us. Or how to get a refund.

Take the booklet home and study it carefully. Keep it handy for future reference.

14. Failing to display prominently and conspicuously the language required by Order I(A)(13) above in signs posted at four or more locations in that portion of respondents' business premises

most frequented by prospective customers, and in each location where customers normally execute sales agreements, consumer credit documents, or other binding instruments. Such language shall be considered prominently and conspicuously displayed only if so positioned as to be easily observed and read by intended individuals.

15. Failing to provide in such booklet that customers may have other legal rights concerning their contracts in addition to those set out in the contract and booklet.

16. Failing to comply with all requirements, or to fulfill all of the obligations to customers, which are set forth in Paragraph B of this Order I, and to comply with all of the procedures and rights set forth in this booklet.

B. *It is further ordered,* That beginning the effective date of this order respondents shall cease and desist from failing to act in accordance with the following procedures:

1. As to complaints, written or oral, of damaged, defective, or non-conforming merchandise, made within thirty (30) days of actual delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall repair to mint condition or make replacement or offer to make full refund of the purchase price of damaged, defective or non-conforming merchandise within a reasonable time not to exceed thirty-one (31) days from the date of complaint, unless: (1) such merchandise was sold "as is," and the notice requirements of Order I(B)(3) were complied with; or (2) the damage or defect in the merchandise was caused by the customer or another while the merchandise was in the customer's possession or control. Whenever respondents for either of the above reasons refuse a customer's request to repair or replace merchandise or to refund the purchase price thereof, respondents shall forthwith notify the customer in writing within the aforementioned thirty-one (31) day period of the specific reasons for the refusal and shall advise the customer of the customer's right to submit any dispute arising out of such refusal to a court of law including small claims court.

(c) If the repair or replacement of such damaged, defective or non-conforming merchandise is unsatisfactory to the consumer, respondents shall cancel all applicable contract provisions with a full

refund within seven (7) business days from receipt of the customer's request for cancellation. Whenever respondents for valid reasons refuse a customer's cancellation and refund request pursuant to this section, respondents shall within seven (7) business days from receipt of said request notify the customer in writing of the specific reasons for the refusal and shall advise the customer of the customer's right to submit any dispute arising out of such refusal to a court of law including small claims court.

(d) If the investigation, repair, or replacement cannot be completed within the time specified by Paragraph B, subparts 1(a) and 1(b) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing immediately upon ascertaining that respondents are unable to make timely performance, and shall, at the customer's option cancel all applicable contract provisions with a full refund within seven (7) business days from the date set for completion. In no event shall respondents' notice of inability to make timely performance be given to the customer after the last day set out for performance in Paragraph B, subparts 1(a) and 1(b) of this Order I.

(e) Respondents may refund in full the actual purchase price of the merchandise if repair is not commercially practicable and respondents are unable to provide replacement.

2. For purposes of the time limitations contained in Paragraph B of this Order I, customers may at any time give their written consent for an extension of respondents' time for performance. Such written consent shall set forth a date certain which shall be a date by which respondents actually expect to complete performance. No rights accruing from the provisions contained in this Order I shall be affected by such extension.

3. The provisions of Paragraph B of this Order I shall not apply to merchandise sold "as is," *provided, however,* that when merchandise is sold "as is" respondents shall provide the following information conspicuously on the face of the sales contract, invoice and receipt for merchandise:

WARNING — "AS IS" SALE.

NO WARRANTY.

This item may need repairs or replacements. Since it is sold "as is" without any warranty, you'll have to pay for them yourself. No matter what you've been told, we won't pay or return your money.

4. For purposes of the provisions of Paragraph B of this Order I,

non-conforming merchandise shall include, but not be limited to, merchandise which, when delivered, is worn in appearance.

5. Respondents shall not sell merchandise without the implied warranty of merchantability, or with any disclaimer or limitation of such implied warranty, except that respondents may sell merchandise which is clearly designated "as is."

6. The investigation, pick-up and delivery of repair or replacement merchandise within the provisions of Paragraph B of this Order I shall be at no additional cost to the consumer.

7. No rights of consumers or co-signers conferred by state or local statutory law or by the common law shall be affected by the provisions and rights contained herein.

C. *It is further ordered,* That whenever a customer has sought the relief contained in Paragraph B of this Order I, or has advised respondents of the discontinuance of payment on the ground that respondents failed to deliver merchandise, to replace non-conforming merchandise, to repair or replace defective or damaged merchandise, or to make any refund to which a customer is entitled by reason of this order, or otherwise, that respondents desist from any action to collect the amount owed or any part thereof other than mailing a routine statement of account in regard to such merchandise and to desist from giving any adverse information to any credit reporting agency, unless respondents have conducted a thorough investigation of such complaint and made a written reply to the customer, stating whether respondents have concluded that such grievance is justified or unjustified, with reasons in support thereof and what action will be taken.

D. *It is further ordered,* That before any action is taken to collect an amount due from a customer, other than the mailing of a routine statement of account, or before any adverse information is sent to a credit reporting agency, respondents shall ascertain that they are not engaged in a dispute with said customer relating to the quality of the merchandise, or its replacement, condition or repair and, if so involved, verify that respondents have investigated and found the grievance to be unjustified and have so advised the customer, in accordance with the provisions of Paragraph C of this Order I.

E. Order provisions C and D of Order I shall be deemed modified in the event that respondents extend open end credit to the extent that order provisions C and D of Order I are inconsistent with the Fair Credit Billing Act and the regulations promulgated thereunder.

F. *It is further ordered,* That respondents shall, at all times subsequent to the effective date of this order, maintain, and produce

for inspection and copying on reasonable demand by the Federal Trade Commission or its representatives, complete business records relating to the manner and form of their continuing compliance with this order during the immediately preceding three-year period, such records to include: (1) all refund, repair or replacement requests sent to respondents by customers; (2) all other grievance letters and documents received from customers; (3) adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting cancellation, refund, replacement or repair; (4) all investigation reports concerning such grievances; and (5) all records pertaining to those customers to whom any collection or dunning notices have been sent.

ORDER II

It is further ordered, That respondent Royal Furniture Co., Inc., a corporation, its successors and assigns, and its officer, Milton Landes, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of consumer credit, or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*) do forthwith cease and desist from:

1. Failing to make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to make all the required disclosures prior to the consummation of the transaction, in accordance with Section 226.8(a) of Regulation Z, either on:

(a) the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the consumer's signature; or

(b) on one side of a separate statement which identifies the transaction.

3. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale as prescribed by Section 226.8(c)(2) of Regulation Z.

4. Failing to use the term "cash price" to describe the cash price,

as defined in Section 226.2(n) of Regulation Z, of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

5. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

6. Failing to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

7. Failing to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with Section (c)(7) of Section 226.8 of Regulation Z.

8. Failing to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

9. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as that "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

10. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

11. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

12. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Failing to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

14. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4

and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

ORDER III

A. *It is further ordered,* That respondents prominently display the following notice in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO OUR CREDIT CUSTOMERS

If you're going to pay in installments, ask for a statement that shows exactly how much you're going to pay. The law says you must be given that statement before you sign any papers. *Don't sign before you've read the statement.* If there's anything you don't understand, please ask us.

B. *It is further ordered,* That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

C. *It is further ordered,* That respondents shall maintain, and produce for inspection and copying on reasonable demand by the Federal Trade Commission or its representatives, for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspapers, radio and television advertising, direct mail and instore solicitation literature, and any other such promotional material utilized in the advertising, promotion or sale of merchandise.

D. *It is further ordered,* That respondents 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 other change in the corporation which may affect compliance obligations arising out of the order.

E. *It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

F. *It is further ordered,* That the respondents herein shall within sixty (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.

IN THE MATTER OF

FEDERATED DEPARTMENT STORES, INC.

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

Docket C-2958. Complaint, April 2, 1979 — Decision, April 2, 1979

This consent order, among other things, requires a Cincinnati, Ohio operator of retail department stores to cease entering into or enforcing agreements which grant the firm the right to exclude certain tenants from shopping centers; control tenants' advertising, goods and prices; or otherwise restrict competition.

Appearances

For the Commission: *David I. Keniry.*

For the respondent: *G. Duane Vieth, Arnold & Porter,* Washington, D.C.

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 corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

a. The term "respondent" refers to Federated and its operating divisions, officers, agents, representatives, employees, successors, and assigns.

b. The term "shopping center" refers to a planned development of retail outlets in the United States of America, developed and managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 250,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent,

(2) at least two tenants other than respondent, (3) at least one major tenant, and (4) on-site parking.

c. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, which occupancy is for the sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to any occupant or potential occupant of space within respondent's store or other areas operated by respondent, which occupant is to operate a department for respondent pursuant to a lease or license from respondent.

d. The term "major tenant" refers to a tenant providing primary drawing power in a shopping center. A tenant occupying 50,000 square feet or more shall be presumed to provide primary drawing power.

e. The term "trading area" means the geographical bounds within which tenants of a shopping center derive the predominance of their customers.

f. The term "Boston market" means the Boston Massachusetts Standard Metropolitan Statistical Area as is defined in the Bureau of the Budget Publication, "Standard Metropolitan Statistical Areas, 1972."

PAR. 2. Respondent Federated Department Stores, Inc. (hereinafter referred to as "Federated") 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 222 West Seventh St., Cincinnati, Ohio. Respondent Federated operates and controls its 19 divisions from its principal office and place of business.

In fiscal 1975, Federated's total sales volume was approximately 3.7 billion dollars. Department stores sales accounted for approximately 2.7 billion dollars or 74% of Federated's total sales volume.

Federated and fourteen of its nineteen divisions are engaged in the operation of retail department stores (Abraham & Straus, Bloomingdale's, Bullock's South, Bullock's North, Burdine's, Filene's, Foley's, Goldsmith's, Lazarus, Levy's, Milwaukee Boston Store, Rike's Sanger-Harris, and Shillito's). In addition, Federated's I. Magin & Company division operates twenty-two specialty stores.

In 1975, Federated's 15 department or specialty store divisions operated approximately 141 department or specialty stores with cumulative floor space of approximately 30 million square feet.

In the Boston, Massachusetts metropolitan area, one of the thirteen metropolitan areas in which Federated operates depart-

ment stores, Federated owns, operates, directs and controls the Filene's department store chain, a division with its principal office and place of business at 426 Washington St., Boston, Massachusetts. Filene's is one of the leading department stores in New England. Federated operates six Filene's department stores in the Boston market encompassing approximately 1.3 million square feet of floor square.

Five of Filene's six department stores in the Boston market are located in the following shopping centers:

a. North Shore Shopping Center
Peabody, Massachusetts

b. South Shore Plaza
Braintree, Massachusetts

c. Burlington Mall
Burlington, Massachusetts

d. Natick Mall
Natick, Massachusetts

e. Chestnut Hill Mall
Chestnut Hill, Massachusetts

Federated also operates a Filene's department store in Boston's central business district and two limited-line Filene's stores in suburban Belmont and Wellesley. Federated operates three Filene's department stores in shopping centers outside of the Boston market, at the following locations:

a. Cape Cod Mall
Hyannis, Massachusetts

b. Worcester Center
Worcester, Massachusetts

c. Warwick Mall
Warwick, Rhode Island

PAR. 3. In the course and conduct of its business, Federated has engaged and is now engaged in acts and practices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondent purchases for resale a variety of consumer products from numerous suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its warehouses and retail department stores located in Massachusetts, Texas, Florida, California and other states. Such products have been and are advertised for sale by respondent in newspapers and

direct mailings circulated among and between the several states of the nation and by the interstate transmission of promotional sales messages by means of the various broadcast media.

PAR. 4. The movement of population, and particularly the higher income segment of the population, from the central city to the suburbs, has precipitated the growth of shopping centers in suburban areas. In 1960, there were approximately 4,500 shopping centers in the United States; their number now exceeds 14,000 and is projected to reach 20,000 by 1980. In 1970, retail sales in shopping centers amounted to $118 billion and accounted for 32.2% of all United States retail sales. Retail sales in shopping centers are projected to reach $200 billion by 1980.

Shopping centers reproduce to a substantial extent the retail facilities once available only in downtown business districts, and are displacing and replacing the central downtown business district as primary outlets for retail distribution of goods and services. Department store operators, including respondent herein, have recognized the potential business opportunities presented by the expanding suburban markets and have, in recent years, established themselves in shopping centers.

PAR. 5. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling household goods, home furnishings, apparel and diverse other consumer goods, has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparable brands of merchandise carried and sold by respondent.

PAR. 6. Federated, in its capacity as a tenant, has entered into agreements with developers and other major tenants at various shopping centers throughout the country, which agreements contain various kinds of restrictive covenants and provisions hereinafter more fully described.

PAR. 7. In the course and conduct of its business, Federated is and has been engaged in unfair methods of competition and unfair acts and practices in or affecting commerce, in that it has included, caused the inclusion of, or enforced or caused the enforcement of, restrictive agreements, provisions and covenants which lessen, prevent and foreclose competition in the resale and distribution at retail of goods and services.

PAR. 8. The inclusion or enforcement of the aforesaid covenants and provisions, and the rights, powers and privileges conferred thereby, have had and continue to have the tendency to restrain

a. Allowing Federated to choose its competitors and to exclude actual and potential competitors;

b. Hindering or discouraging certain types of retail operations, including discount stores;

c. Excluding tenants from shopping centers; and

d. Restricting and hindering developers in their choice of tenants in shopping centers.

PAR. 9. The inclusion or enforcement of the provisions and covenants referred to above constitute an unfair method of competition and unfair acts and practices in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

Commissioner Pitofsky did not participate.

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 Boston 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, as amended; 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 Act, and that complaint should issue stating its charges in that respect, 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 Federated Department Stores, Inc. 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 222 West Seventh St., Cincinnati, Ohio.

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.

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

(a) The term "respondent" refers to Federated and its operating divisions, officers, agents, representatives, employees, successors, and assigns.

(b) The term "shopping center" refers to a planned development of retail outlets in the United States of America, developed and managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 250,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent, (2) at least two tenants other than respondent, (3) at least one major tenant, and (4) on-site parking.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, which occupancy is for the sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to any occupant or potential occupant of space within respondent's store or other areas operated by respondent, which occupant is to operate a department for respondent pursuant to a lease or license from respondent.

(d) The term "major tenant" refers to a tenant providing primary drawing power in a shopping center. A tenant occupying 50,000 square feet or more shall be presumed to provide primary drawing power.

II.

It is ordered, That respondent, in its capacity as a tenant in a shopping center, cease and desist from obtaining, making, carrying out or enforcing, directly or indirectly, any agreement or provision of an agreement which:

1. Grants respondent the right to approve or disapprove the entry into a shopping center of any other tenant;

2. Prohibits the admission into a shopping center of any particu-

lar tenant or class of tenants, including, without limitation, for purposes of illustration:

(a) other department stores;

(b) junior department stores;

(c) discount stores; or

(d) catalogue stores;

3. Limits the types or brands of merchandise or services which any other tenant in a shopping center may offer for sale;

4. Specifies that any other tenant in a shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices;

5. Grants respondent the right to approve or disapprove the location in a shopping center of any other tenant;

6. Specifies or prohibits the content of any advertising by any other tenant or grants respondent the right to approve or disapprove the content of any advertising by any other tenant;

7. Grants respondent the right to approve or disapprove the amount of floor space that any other tenant may occupy in a shopping center; or

8. Prohibits the owner or occupant of real property adjoining, abutting or adjacent to a shopping center in which respondent is a tenant from using such property for the sale of merchandise or services similar or identical to the merchandise or services sold in the shopping center; *provided. however,* that nothing in this paragraph shall apply to an agreement or provision thereof which affirmatively prescribes particular land uses or zoning for any real property.

III.

A. *It is further ordered,* That this order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing any agreement or provision in any agreement relating to respondent's occupancy, or proposed occupancy, of space in a shopping center, which (1) identify in designated buildings respondent and those major tenants which have entered, or which are to contemporaneously enter or which the developer or landlord represents in writing have stated an intention to enter, into agreements for occupying space in the shopping center, (2) recite that respondent and such major tenants have contracted or shall contract with the developer or landlord to maintain and operate their stores for a specified term, not to exceed 25 years, in such designated buildings, and (3) provide for respondent's right to cancel, terminate or modify its agreement for occupancy if such major tenants do not occupy

such designated buildings or do not maintain and operate their stores for the specified term.

B. *It is further ordered,* That this order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing an agreement or provision in any agreement which:

1. Requires that in selecting other tenants in a shopping center the developer shall select businesses which are financially sound and which will in the aggregate provide a balanced and diversified grouping of retail stores, merchandise and services in the shopping center;

2. Requires that specified standards of appearance, signs, maintenance, heating, air conditioning, lighting and housekeeping be maintained in a shopping center;

3. Establishes a layout of a shopping center which layout may designate: (a) respondent's store and stores which are to be occupied by other major tenants; (b) the location, size and height of all structures (including any structure that is to be occupied by only one tenant) but not the amount of floor space that any other tenant may occupy in the shopping center; (c) the minimum floor space to be occupied by respondent and by major tenants; (d) uses of all structures to be used for purposes other than the retail sale of merchandise or services to the public; (e) parking ratios, parking areas (including stall sizes and arrangement), roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas; and (f) expansion areas and may within such areas establish a layout incorporating items (a) through (e) of this subsection 3;

4. Requires that any change or expansion of a shopping center not provided for in the initial layout:

(a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) shall not interfere with the efficient operation of respondent's store, including its utilities, and shall not interfere with the visibility of its signs from within the shopping center or from public highways adjacent thereto;

(c) shall not result in a change of (i) the shopping center's parking ratio, (ii) the location of a number of parking spaces reasonably accessible to respondent's store, (iii) the entrances and exits to and from respondent's store and any malls, and (iv) those parking area mall entrances and exits which substantially serve respondent's store; or

(d) shall be accomplished only after any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, parking ratio, and easements) of the shopping center, exclusive of the expansion area (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area;

5. Prohibits occupancy of space in a shopping center by types of tenants that create undue noise, litter or odor;

6. Permits respondent to establish reasonable categories of tenants from which the developer or landlord of a shopping center may select tenants to be located in the area immediately proximate to respondent's store; *provided,* that such categories shall not include specification of (a) trade names, (b) store names, (c) trademarks, brands or particular lines of merchandise, or (d) identity of particular retailers, including the listing of particular retailers as examples of a category; *provided,* that such area shall not exceed the greater of (i) 150 lineal feet from respondent's store on each level of the center, or (ii) 20% of the total lineal mall front footage, exclusive of respondent's store, on each level of the center;

7. Prohibits occupancy of space in a shopping center by clearly objectionable types of tenants, including, for purposes of illustration, establishments selling or exhibiting pornographic materials;

8. Requires that any space designated for occupancy by a major tenant in the initial layout of the shopping center not be leased for occupancy by other than a major tenant, that any sub-division of such space for occupancy by more than one tenant not result in any tenant occupying less than 50,000 square feet of such space or that each successive occupancy of such space be for the sale of merchandise or services to the public;

9. Prohibits or establishes limitations on the location in the shopping center of commercial office buildings, hotels, motor inns, new and used automobile dealers or funeral parlors; or

10. Establishes reasonable limitations on the location in the shopping center of fast food outlets, grocery supermarkets or movie theaters.

IV.

It is further ordered, That respondent shall:

A. Within thirty (30) days after service of this order upon

respondent, distribute a copy of this order to each of its directors, officers, and to each of its operating divisions;

B. Within thirty (30) days after service of this order upon respondent, notify each landlord of a shopping center in which respondent is a tenant, of this order by providing each landlord with a copy thereof by certified mail;

C. Within ninety (90) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

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

Commissioner Pitofsky did not participate.

IN THE MATTER OF

CRANE CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2959. Complaint, April 5, 1979 — Decision, April 5, 1979

This consent order, among other things, requires a New York City manufacturer and seller of various products to cause the Medusa Corporation to divest itself completely of its Dixon, Ill. cement plant, together with whatever assets associated with the plant that may be necessary to maintain the facility as an effective competitor in the production and sale of portland cement. The order further prohibits respondents from acquiring the whole or part of the assets of any firm engaged in the production or sale of portland cement without prior Commission approval.

Appearances

For the Commission: *James S. Teborek* and *Bert L. Slonim.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Thomas Mellon Evans ("T.M. Evans") presently influences the management of Crane Co. ("Crane"), H.K. Porter, Inc. ("Porter") and its subsidiary, Missouri Portland Cement Company ("MPC"), that Crane presently owns approximately forty-four (44%) percent of the shares of Medusa Corporation ("Medusa"), that Crane intends to tender for any and all of the outstanding shares of Medusa stock, that Crane's present ownership of Medusa capital stock, its acquisition of additional capital stock of Medusa, or the merger of Medusa with Crane violates or would violate individually or collectively, Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, 5(b), of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. Definitions

1. For the purpose of this complaint the following definitions shall apply:

a. "Portland cement" includes Types I through V of portland

cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. "Chicago Metropolitan Area" ("CMA") refers to that area of the State of Illinois composed of the counties of Cook, DuPage, Lake, McHenry, Kane and Will, including any and all independent cities, towns, or other political units located therein.

c. "Peoria Metropolitan Area" ("PMA") refers to that area of the State of Illinois composed of the counties of Peoria, Woodford and Tazewell, including any and all independent cities, towns, or other political units located therein.

II. Crane Co.

2. Crane is a corporation organized and existing under the laws of the State of Illinois with its principal office at 300 Park Ave., New York.

3. Crane manufactures and sells a variety of products, including pollution control devices, plumbing and related building materials, aircraft systems and accessories, and various other products through its subsidiaries.

4. In its fiscal year ended December 31, 1977, Crane had total net sales of $1,113,000,000, with total assets of $836,895,000. Net income for 1977 totaled $66,171,000.

III. Thomas Mellon Evans and the H. K. Porter Company

5. Approximately 12% of Crane's shares are owned by its largest shareholder T.M. Evans. Another 3% or more is held directly or indirectly by T.M. Evans' three sons or by corporations, charitable or otherwise, controlled by T.M. Evans or of which T.M. Evans serves as officer or trustee.

6. Mr. T.M. Evans also owns approximately 62% of the shares of Porter, a corporation organized and existing under the laws of the State of Delaware with principal offices at 1500 Porter Building, Pittsburgh, Pa.

7. In 1977, Porter's net sales totaled $113,683,000, with net income for 1977 of approximately $10,277,000. Through its wholly-owned subsidiary, MPC, which it acquired in 1976, Porter is engaged in the manufacture of portland cement.

8. MPC is a corporation organized and existing under the laws of the State of Delaware with its principal offices at 7711 Carondelet Ave., St. Louis, Missouri. MPC produces portland cement at plants located in Missouri and in Illinois. MPC operates distribution terminals in the Chicago and Peoria Metropolitan Areas, Tennessee,

Kentucky, Nebraska, and Alabama. In 1977, MPC's net sales totaled $67,411,000, with net income of $2,476,000. MPC's total assets were valued at $81,073,000.

9. Mr. T.M. Evans serves as a Director and Chairman of the Board of Crane, Director and Chairman of the Executive Committee of Porter and, until August 18, 1978, as a Director of MPC. Mr. T.M. Evans' three sons have stock holdings and or managerial positions in Crane, Porter and/or MPC.

IV. Medusa Corporation

10. Medusa is a corporation organized and existing under the laws of the State of Ohio, with its principal office at 3615 Warrensville Center Road, Shaker Heights, Ohio.

11. Medusa produces and sells portland cement, brick, asphalt and a variety of other highway construction materials or aggregates. Medusa also engaged in highway safety construction and asphalt paving. In 1977, Medusa's total revenues were approximately $243,000,000 with an operating profit of $29,000,000.

12. Medusa produces portland cement at plants located in Georgia, Illinois, Michigan, Ohio and Pennsylvania and operates nine distribution teminals including two located in the Chicago Metropolitan Area. In 1977, Medusa's sales of portland cement exceeded $100,000,000.

V. Jurisdiction

13. At all times relevant herein MPC and Medusa have been engaged in the production and sale of portland cement in interstate commerce and MPC, Crane, and Medusa are engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.* and each is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*

VI. The Initial Acquisition

14. On or about August 15, 1978, Crane acquired approximately 514,000 shares of Medusa's common stock thus increasing its holdings to approximately 600,000 shares or 20% of Medusa's outstanding shares.

VII. The Tender Offer

15. On or about September 28, 1978, Crane purchased an additional 700,000 shares of Medusa's common stock, approximately

24% of Medusa's outstanding shares, pursuant to a tender offer the terms of which are set forth in the Schedule 14D-1 filed by Crane with the Securities and Exchange Commission on or about September 5, 1978.

VIII. The Merger Agreement

16. On or about August 31, 1978, Crane and Medusa entered into an agreement in principle to merge upon the completion of Crane's tender offer. On or about November 14, 1978 Crane announced that it had abandoned its announced intention to merge with Medusa.

IX. The Exchange Offer

17. On or about November 14, 1978, Crane announced that it intended to make an exchange offer for any and all of the outstanding shares of Medusa stock where Crane would offer $10.00 in cash and $40.00 in principal amount of Crane's subordinated debentures for each Medusa share tendered.

X. Trade and Commerce

18. The relevant line of commerce is the manufacture and sale of portland cement.

19. A relevant section of the country or geographic market is the area of present competition between Medusa and MPC and various geographic markets thereof, including but not limited to CMA and PMA.

XI. Actual Competition

20. MPC and Medusa are and have been for many years actual competitors in the manufacture and sale of portland cement within certain geographic markets, including CMA and PMA.

XII. Effects; Violations Charged

21. The effect of T.M. Evans' stockholdings and managerial positions in Crane and Porter may be to substantially lessen competition or tend to create a monopoly or to constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

22. The effects of Crane's present holdings of Medusa's shares, and its pending tender offer for additional Medusa shares may be to substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18,

and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between MPC and Medusa in the manufacture and sale of portland cement may be eliminated;

(b) actual competition between competitors generally in the manufacture and sale of portland cement may be lessened;

(c) concentration in the manufacture and sale of portland cement may be increased and the possibilities for eventual deconcentration may be diminished;

(d) mergers or acquisitions between other portland cement producers may be fostered, thus causing a further substantial lessening of competition or tendency toward monopoly in the manufacture and sale of portland cement; and

(e) barriers to entry into the manufacture and sale of portland cement may be increased.

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts 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 Chicago Regional office and the Bureau of Competition 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 Clayton Act; and

The respondents, their attorneys, 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 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, 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 Crane Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 300 Park Ave., in the City of New York, State of New York.

Respondent Thomas M. Evans is an individual whose business address is the same as that of Crane Co.

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

It is ordered, That respondents — Crane Co., ("Crane") a corporation, its successors and assigns, and its officers and directors, and Thomas M. Evans, an individual, his successors and assigns — in connection with the acquisition by Crane, a corporation engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.,* of stock in Medusa Corporation ("Medusa") a corporation engaged in commerce as "commerce" is defined by the Clayton Act, as amended, 15 U.S.C. 12, *et seq.,* which acquisition is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*:

I

Within fifteen (15) months from the date of service of the consent order upon respondents, and subject to the prior approval of the Federal Trade Commission, respondents shall cause Medusa's cement plant located at Dixon, Illinois and such other of Medusa's assets associated with that plant as may be necessary, so that the plant may operate as a going concern and effective competitor in the production and sale of portland cement.

II

It is further ordered, That respondents shall not cause or permit the destruction, removal or impairment of any of the assets to be divested in accordance with Paragraph I of the consent order except in the ordinary course and operation of Medusa's business and except for normal wear and tear.

III

It is further ordered, That if the divestiture of assets required by

Paragraph I of the consent order is to be accomplished by a spin-off, then:

(a) Respondents shall cause Medusa to transfer the assets to be divested to a new corporation, whose stock is wholly-owned by Medusa, and then Medusa shall distribute that stock to Medusa's shareholders in proportion to their ownership of Medusa stock. Crane shall promptly thereafter distribute its share of the stock of the newly created corporation either to Crane's shareholders in proportion to their ownership of Crane stock or through a public offering to be completed within three months.

(b) No person who is an officer, director or executive employee of Crane or Porter or who owns or controls directly or indirectly more than one (1) percent of the stock of Crane or Porter shall be an officer, director or executive employee of the new corporation.

(c) Neither Thomas M. Evans nor any other person who is an officer, director or executive employee of Crane shall own or control, directly or indirectly, more than one (1) percent of the stock of the new corporation.

(d) Any person who must sell or dispose of stock interest in Crane or H.K. Porter or the new corporation in order to comply with subparagraphs (b) or (c) shall do so within one hundred eighty (180) days after the date on which distribution of the stock of the new corporation is made to stockholders of Crane.

IV

It is further ordered, That for a period of five (5) years from the date of service of the consent order upon respondents, respondents shall cease and desist from acquiring directly or indirectly, by any device or through any corporation, subsidiary or otherwise:

(a) the whole or any part of the assets of any firm engaged in the production or sale of portland cement;

(b) any equity securities in excess of three (3) percent of the outstanding shares of such securities of any firm engaged directly or indirectly in the production or sale of portland cement, except that respondents shall be permitted to acquire Crane, Porter or Medusa stock without restriction;

without the prior approval of the Federal Trade Commission.

V

It is further ordered, That for any company in which respondents

own securities pursuant to Paragraph IV of this order, respondents, their designees, agents, nominees, or representatives shall not seek or accept representation on the Board of Directors of such company.

VI

It is further ordered, That nothing in this consent order shall prevent Evans & Company, a registered securities broker-dealer, from trading in the securities of any firm engaged in the production or sale of portland cement in the ordinary course of its business for:

(a) those of its customers who are not affiliates or subsidiaries of respondents;
(b) respondents acquiring securities pursuant to paragraph IV.

VII

A. *It is further ordered,* That respondents distribute a copy of this order to all operating divisions of said corporation.

B. *It is further ordered,* That respondents 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 other change in the corporation which may affect compliance obligations arising out of the order.

C. *It is further ordered,* That within sixty days and every sixty days thereafter until Medusa has divested absolutely the assets required by the consent order, respondents shall submit a detailed written report of their actions, plans and progress in complying with Paragraphs I, II and III of the consent order, and in fulfilling the objectives of these provisions.

D. *It is further ordered,* That annually on the anniversary date of the service of the consent order, for a period of five years, respondents shall submit a detailed written report of their actions in complying with Paragraphs IV and V of the consent order, and in fulfilling the objectives of these provisions.

IN THE MATTER OF

GAC CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2523. Decision, July 23, 1974 — Modifying Order, April 17, 1979

This order modifying an order to cease and desist issued on July 23, 1974, 39 FR 34021, 36960; 84 F.T.C. 163, requires the incorporation of the terms of the 1974 order within any GAC plan of reorganization under provisions of the Bankruptcy Act confirmed by the Bankruptcy Court. Upon such confirmation, the modified order requires the company to establish a $10,000,000 accrual Reserve Fund to be used to defray costs of building individual septic tanks or wells in the northern section of Golden Gates Estates, and to reimburse those whose land is found to be unsuitable for homesites. Because of GAC's poor financial condition, the company is only required to develop a portion of Golden Gates Estates, rather than the entire subdivision, as previously mandated; and is provided with additional time in which to fulfill its contractual obligations to land owners. The modified order further requires GAC to provide financial compensation or alternate homesites to those owning property in the area to be left undeveloped.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 13, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 23, 1974 (hereafter sometimes referred to as "the Commission Order of 1974"), modified.

Respondents having filed an answer consenting to the proposed changes of the Commission Order of 1974, and the Commission having considered the comments filed by interested persons,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the show cause order subject to, and contingent upon, satisfaction of all of the following conditions:

(1) the incorporation of the terms of the Commission Order of 1974, as modified, within any plan of reorganization of the respondent confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings (hereafter referred to as the "plan of reorganization") such incorporation to be without any alterations, substitutions, changes or deletions of the Commission Order of 1974, as modified;

(2) the incorporation of an express provision within any plan of reorganization of the respondent confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings that the reorganized company which is created thereby shall be subject to the requirements of the Commission Order of 1974, as modified;

(3) the incorporation of an express provision within any plan of reorganization of the respondent, confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings, that the reorganized company shall stipulate and agree to the enforcement as provided by law, including, but not limited to, as provided under Section 45(1), Title 15, United States Code. Provided further that nothing contained in the order modifying the Commission Order of 1974, and no action taken by the Bankruptcy Court in the aforesaid Chapter X proceedings, shall in any way restrict the right of any lot purchaser or title holder who chooses to reject the alternatives provided in the Commission Order of 1974, as modified, from filing any claim he or she may otherwise have against the respondent in the aforesaid Chapter X proceedings; however, the acceptance of any of the alternatives provided shall act as a bar to the filing of any other claims relating to the same land of the lot purchaser or titleholder or the contract applicable thereto prior to confirmation of the plan of reorganization.

Upon full satisfaction of all of the above conditions, the Commission Order of 1974 shall be modified, without necessity of further action by the Commission, as follows:

ORDER

For purposes of this order the following definitions shall be applicable:

"Land" shall mean real property subdivided into parcels without any house or building constructed thereon, but shall not include anything defined below as "other real property."

"Other real property" shall mean a house or building constructed for residential purposes and the land upon which it is situated, including land upon which, pursuant to a purchase agreement or contract, a house or building is to be constructed within 12 months and with respect to which no consideration will pass to respondents until closing other than moneys held in escrow or a minimal earnest money deposit.

"Consumer" shall mean a natural person to whom respondents offer to sell or sell land or other real property; *provided, however,* that the term "consumer" shall not include a natural person who purchases land in a single transaction for a sum in excess of $50,000.

I.

As used in this section of the order, a requirement to cease and desist from representing or misrepresenting shall unless otherwise

indicated, include representing or misrepresenting directly or by implication, and by any manner or means.

It is ordered, That respondents GAC Corporation, GAC Properties, Inc. and GAC Properties, Inc. of Arizona, corporations, and their officers, and their subsidiaries and the said subsidiaries' officers, 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 land and other real property to consumers in 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 initial communication to consumers concerning any event or activity, including but not limited to dinner parties or other gatherings, contests, awards of free or low cost gifts or vacations, and sightseeing tours, or for any other goods or services, which invitation or communication 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 attempt to sell you land presently undeveloped in [name of State in which land is located].

(b) (i) If the invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously and in conjunction with the invitation or communication; (ii) if the 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; and (iii) if the invitation or communication is made by telephone, such disclosure shall be made orally and clearly and conspicuously in conjunction with the telephone invitation or communication and in writing by mail to be received by the prospective purchaser at least 24 hours prior to the event or activity; *provided, however,* with respect to subpart (iii) above, that if the event or activity is a sales presentation to be conducted in the home of the consumer, such written disclosure may be made at any time prior to the sales presentation, but in no event shall such disclosure be made later than the introductory remarks of the salesman; and, *further provided,* with respect to subpart (iii) above that if the invitation or communication is received at a place other than the consumer's residence or place of employment, such written disclosure may be made at any time prior to the consumer's attendance at the sales presentation.

2. Misrepresenting the true nature and purpose of any event or activity, including but not limited to dinner parties or other

gatherings, contests, awards of free or reduced gifts or vacations, and sightseeing tours.

3. Failing to furnish the purchaser with a fully completed copy of the contract at the time of its signing by the purchaser, which is in the same language 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; *provided, however,* that a foreign language copy of the contract need not be furnished if the purchaser is literate in the English language; and, *further provided,* that the contract need not at this time contain the signature of respondents.

4. Failing to set forth as the title of any contract for the purchase of land, in boldface type, the following language: "Contract for Deed for the Purchase of Land."

5. (a) Failing to print clearly and conspicuously in 12-point boldface type on the top half of the first page of all contracts for the sale of land, in addition to that language required by Paragraph 4 above, the following:

"THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU HAVE 10 DAYS IN WHICH TO DETERMINE WHETHER TO CONTINUE THIS CONTRACT OR CANCEL IT WITH FULL REFUND. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. USE THIS TIME TO EXAMINE WITH CARE THE PROPERTY REPORT (SOMETIMES CALLED A PUBLIC OFFERING STATEMENT) WHICH MUST BE GIVEN TO YOU AT OR BEFORE THE TIME YOU SIGN THIS CONTRACT.

"THE FUTURE VALUE OF THIS LAND, LIKE ALL UNDEVELOPED REAL ESTATE, IS UNCERTAIN. IT IS UNLIKELY THAT A PURCHASER WILL BE ABLE TO RESELL HIS LAND WITHOUT SUBSTANTIAL COMMUNITY DEVELOPMENT AND POPULATION GROWTH, WHICH MAY NOT OCCUR FOR A NUMBER OF YEARS AFTER YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS, IF AT ALL. IT IS SUGGESTED THAT YOU HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, REALTOR OR OTHER QUALIFIED PROFESSIONAL.

(b) In addition, there shall appear, in the form and place described in subparagraph (a) such of the following statements as are applicable:

(i) For contracts for the sale of lots to which respondents are not obligated to make a central sewer system available at the time title passes to the purchaser, add the following, including the second and third sentence only where applicable:

A central sewer system will not be available when you have completed your contract payments. Installation of a septic tank would be at your expense. However, the use of a septic tank on your lot is contingent on passing a soil test and approval by governmental authorities.

(ii) For contracts for the sale of lots to which respondents are not obligated to make a central water system available at the time title passes to the purchaser, add the following, including the second sentence only where applicable:

A central water system will not be available when you have completed your contract payments. Installation of a well would be at your expense.

(iii) For contracts for the sale of lots to or on which respondents are not obligated to provide any improvements, add the following in lieu of any of the above:

This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision. Your lot is probably inaccessible by conventional means of transportation, and has no use in the present or in the foreseeable future.

6. Failing to include in any contract for the sale of land a provision whereby the seller agrees not to create during the contract term, without the express written permission of the purchaser, by sale, lease or any other means, any restriction, easement or reservation of any kind which can substantially limit the purchaser's use or enjoyment of his lot after the maturity date of said contract.

7. 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; and

(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 authorized by the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970).

8. Changing a contract in any respect after signature by the purchaser unless such change is made by mutual agreement in writing, and unless it is clearly and conspicuously disclosed to the purchaser that he can refuse to accept such change and in lieu thereof receive a full refund of all moneys paid under the contract.

9. 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.

10. (a) Representing that respondents will provide, or that respondents' subdivisions will have available, any recreational facility, improvement (roads or drainage) or utility (central sewage and water systems, electricity, or telephone service), unless respondents' contracts at the time of the representation contain a legal obligation on the part of respondents to provide or make available (i) said recreational facilities and improvements at a date certain, not later than 12 years from the date of purchase, set out clearly and conspicuously in the contract; (ii) said utilities within 90 days after respondents' receipt of written notification of the issuance of a building permit, provided that, if so represented, the time for installation of central water and sewer systems may be stated in the contract in terms of population density rather than as a specific date or time; and (iii) without, in the case of improvements or utilities, any cost to the purchaser in excess of the purchase price stated in the contract, except hook-up or installation charges for utilities as estimated in the contract on a current cost basis, subject to future local adjustments in accordance with regulations of and tariffs filed with appropriate public authorities.

(b) Failing to express the aforesaid contractual obligation set out in subparagraph (a) above in the contract with the purchaser in the following manner:

(i) An adequate description of each improvement, utility or recreational facility to be provided;

(ii) A provision that in the event any of the improvements, utilities or recreational facilities specified in the contract are not available to the lot which is the subject of the contract or are not completed within six months of the time provided in the contract, respondents will immediately, upon the expiration of said six-month period, provide the purchaser by certified mail, return receipt requested, with notice of such unavailability of or failure to complete the aforesaid improvements, utilities or recreational facilities and of the purchaser's right to exercise within 30 days of receipt of said notice his option to receive an exchange or to cancel and receive a full refund as set out in subparagraph (iii) below;

(iii) An option to the purchaser stated substantially as follows:

In the event that any of the improvements, utilities or recreational facilities specified by the seller in this contract are not available to the lot which is the subject of this contract or are not completed within six months of the time provided in this contract, the buyer may elect, at his option, to (1) receive an exchange acceptable to the buyer of the contracted-for homesite property for another of at least

equal price, equivalent size, with equivalent zoning classification and same promised improvements and utilities, and located in the same general geographic area of the subdivision, or (2) cancel this contract and receive from the seller a full refund of all moneys paid under the contract. To exercise this option, the buyer must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements, utilities or recreational facilities. Where the buyer has received a deed or other evidence of interest in the contracted-for property other than this contract, the buyer must, as a condition of obtaining an exchange or a refund hereunder, reconvey to the seller such evidence of interest in the title to such property by General Warranty Deed in recordable form. In the event only the contract has been recorded in the Public Records, the buyer must quit claim in recordable form his interest to the seller to remove any clouds on the title to said property.

(c) Failing to make the exchange or refund requested by a purchaser under the terms of this paragraph of the order within 60 days of receipt of notification from the purchaser.

(d) Soliciting or obtaining the purchaser's assent to or otherwise imposing any condition, waiver or limitation upon the right of a purchaser to an exchange or a refund as set forth in this paragraph of the order; *provided, however,* that respondents may require purchasers to request an exchange or a refund within a stated time period of not less than 30 days after receipt by the purchaser of the notice required by subparagraph (b)(ii) above.

11. (a) Failing to furnish each purchaser of land, at the time he 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 the following statement:

NOTICE OF CANCELLATION

(date of transaction)

_____

(print Purchasers' names)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH (10th) DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE REFUNDED WITHIN TEN (10) BUSINESS 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 respondent),* AT *(address of respondent's place of business)* NOT LATER THAN MIDNIGHT OF *(date).*

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH PURCHASER MUST SIGN THIS NOTICE).

(Date) _____

(Purchasers' signatures)

(b) Failing, before furnishing copies of the "Notice of Cancellation" to the purchaser, to complete both copies by entering the name of the respondent, the address of the respondent's place of business, the date of the transaction, and the date, not earlier than the tenth day following the date of the transaction, by which the purchaser may give notice of cancellation.

12. Failing, in any instance where a timely notice of cancellation as required by Paragraph 11 above is received, and said notice is not properly signed, and respondents do not intend to honor the notice, immediately to notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error, and stating clearly and conspicuously that a notice signed by each purchaser must be mailed by midnight of the third day following the purchaser's receipt of said mailing if such purchasers are to obtain a refund.

13. Failing or refusing to honor any signed and timely notice of cancellation by a purchaser, including any such notice received in accordance with Paragraph 12 above, and within ten business days after the receipt of such notice, to (i) refund all payments collected under the contract, and/or (ii) cancel and return any negotiable instrument executed by the purchaser and retained by respondents in connection with the contract.

14. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness of a purchaser of land to a finance company or other third party prior to midnight of the fifteenth business day following the day the contract was signed.

15. Whenever the signature of a prospective purchaser of land is solicited during the course of a sales presentation, failing to inform each purchaser orally, prior to or at the time he signs the contract, of his right to cancel as provided for in Paragraph 11 above.

16. Requiring the purchaser to make a personal inspection of his lot, the subdivision in which it is located, or any other property, as a condition precedent to the cancellation of any contract or the refund

of any moneys paid thereunder, unless respondents (a) allow such purchaser two business days following the date of inspection within which to cancel, and (b) provide the purchaser at the time of inspection with a notice which clearly and conspicuously states (i) that the purchaser has two business days within which to cancel, (ii) that, in order to cancel, the purchaser must give respondents written notification by registered or certified mail of his desire to cancel, (iii) the final date by which the purchaser must mail such notice of cancellation, and (iv) the address where such notice must be sent; *provided, however,* that nothing in this paragraph of the order shall permit respondents to condition any other cancellation rights provided for in this order on the purchaser's inspection of any property.

17. Failing to comply with Section 226.9 of Regulation Z, 12 C.F.R. 226.9, or its successor regulation.

18. Failing to disclose, clearly and conspicuously, in all promotional materials and advertisements relating to the sale of land, the following statement: "Since land values are uncertain, you should consult a qualified professional before purchasing." *Provided, however,* that the above statement shall not be required in the following:

(a) billboards;

(b) radio and television advertisements of ten seconds or less;

(c) the following advertisements when limited to soliciting requests for information through the mail:

(i) Magazine advertisements of 1/4 page or less in size;

(ii) Newspaper advertisements of 1/8 page or less in size;

(iii) Radio advertisements of more than ten seconds but not more than 45 seconds in duration.

19. Representing:

(a) That the purchase of a lot in one of respondents' subdivisions is a way to insure financial security or to become wealthy;

(b) That real estate is a good or safe investment, or that the purchase of a lot in one of respondents' subdivisions is a good or safe investment;

(c) That land is becoming scarce; or

(d) That the value of any land, including lots being offered for sale or previously sold by respondents, has increased, or will or may increase, or that purchasers have made, or will or may in the future make, a profit by reason of having purchased respondents' land.

294-972 O - 80 - 31

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

21. Making any representation in connection with the sale of land which in any manner refers to or concerns, directly or by implication, investment in stocks, insurance, banks, or any other form of investment other than respondents' land.

22. (a) Directly stating that airports, Walt Disney World, tourism or industry may or will increase the price or value of any land or other real property sold or being offered for sale by respondents.

(b) Representing data or statistics concerning the growth or development of any geographic area or the business or industry in any geographic area, unless such representations are true and respondents have at the time of making such representations, and maintain for three years thereafter, adequate substantiation for such representations; *provided, however,* that in the event such substantiation consists of data or statistics compiled by any governmental agency which are readily available to respondents, respondents need not retain such substantiation in their possession.

23. (a) Representing in any written promotional or advertising materials relating to the sale of respondents' land, including written materials prepared for use by respondents' salesmen in oral sales presentations, that the population of any geographic area other than respondents' subdivisions has increased, is increasing, or will increase unless respondents have, at the time of making such representation, and maintain for three years thereafter, a valid study or report which demonstrates that respondents' subdivisions within such geographic area or in the general vicinity thereof will materially benefit from said population increase.

(b) Making any representation concerning the population of any geographic area, including the representations referred to in subparagraph (a) above, unless such is the fact and unless respondents have at the time of making such representation, and maintain for three years thereafter, substantiating data which shall consist of a valid census or other valid report or study; *provided, however,* that in the event such substantiation consists of data or statistics complied by any governmental agency which are readily available to respondents, respondents need not retain such substantiation in their possession.

24. Representing that respondents will buy back lots from or resell lots for purchasers, unless such is the fact.

25. Representing that respondents will provide, or that respondents' subdivisions will have available, any recreational facility, without clearly disclosing in immediate conjunction therewith and

with the same conspicuousness as such representation (a) the year by which such recreational facility will be completed, and (b) the current approximate cost to purchasers and to their families of membership in and use of such facilities; or misrepresenting the recreational facilities available at respondents' subdivision generally or from individual lots therein.

26. Representing that waterfront property provides access by boat to the Atlantic Ocean, Gulf of Mexico, or any other body of water, or that canals are navigable or can be used for any recreational activity, unless such is the fact and unless all significant qualifications pertaining to such access, navigability or use are clearly disclosed in immediate conjunction therewith and with the same conspicuousness as such representation.

27. Representing that Golden Gate:

(a) has shopping facilities or stores without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation the nature or extent of these facilities;

(b) has resort facilities without clearly disclosing in immediate conjuction therewith and with the same conspicuousness as such representation that Golden Gate does not have beaches or fishing and boating facilities, unless the contrary is in fact true.

28. Representing:

(a) That River Ranch Acres or Remuda Ranch Grants will be developed in any manner;

(b) That all purchasers of lots in River Ranch Acres or Remuda Ranch Grants can make substantial use of their lots in the present or in the future; or

(c) That purchasers of land have the right to lease to third persons or otherwise have any rights of enjoyment or possession during the contract term in the lots which they have agreed to purchase, unless such is the fact.

29. Assigning similar names to new subdivisions in which the facilities, improvements, and utilities available in such subdivisions are not substantially identical.

30. (a) Making any representation concerning Cape Coral or any other homesite subdivision at a sales presentation at which one or more lots not located in a homesite subdivision are being offered for sale; or

(b) Making any representation concerning any improvement,

utility or recreational facility at one subdivision at a sales presentation for another subdivision at which respondents have not provided and are not obligated to provide similar improvements, utilities, or recreational facilities unless respondents disclose in immediate conjunction therewith and with the same conspicuousness as such representation that similar improvements, utilities, or recreational facilities will not be provided at the subdivision to which the advertisement or sales presentation is directed.

31. Misrepresenting the amount, proportion or magnitude of roads of canals completed or under construction in any subdivision.

32. Misrepresenting the qualities, characteristics, location or state of present or planned development of any subdivision or portion thereof.

33. Making any statement or representation concerning the proximity of any city or place to a subdivision or a part thereof without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation the approximate distance in road miles from the geographic center of the subdivision or part thereof to the other city or place referred to.

34. Making any statement or representation 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 payments, including but not limited to payments for property taxes, which must be made by the purchaser to respondents or to any third party in order to purchase such land.

35. Representing that central sewage and/or water systems will be available in a subdivision when a given level of population density is reached unless it is clearly disclosed in immediate conjunction therewith and with the same conspicuousness as such representation that purchasers will be required to install, at their own expense, wells and septic tanks until said level of population density is reached.

36. (a) Representing that free or low cost transportation to or accommodations at respondents' subdivisions will be provided unless such is the fact and without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation all conditions or limitations applicable thereto.

(b) Failing to provide the aforesaid transportation or accomodations on the date or within the time period stated or agreed upon; *provided, however,* that it shall not be a violation of this paragraph of the order if such transportation or accommodations are not available due to conditions beyond the control of respondents.

(c) In the event the aforesaid transportation or accomodations are not provided on the date or within the time period stated or agreed upon, failing within 30 days to offer to refund and, upon request by the purchaser, to refund all moneys paid (i) under a contract entered into prior to said failure to provide such transportation or accommodations, and (ii) toward such transportation or accommodations; *provided, however,* that respondents shall not be required to make refunds under subpart (i) above if such transportation or accommodations are not available due to conditions beyond the control of respondents.

37. Making any statement concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers unless such is the fact and without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such statement all conditions and limitations applicable to such credit, refund, benefit, or remuneration.

38. Referring to any instrument or document as a "credit check" or otherwise representing that a credit toward a purchaser's account is an actual payment to the purchaser in the form of cash, check, or other negotiable instrument.

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

40. Representing that prospective purchasers must sign a contract immediately in order to assure purchasing property in a choice location, or that property similar to that being offered for sale may not or will not be available or available at the same price in the foreseeable future, unless such is the fact.

41. In connection with the sale of land:

(a) Representing that increasing the amount of the monthly payment will speed up passage of title, unless such is the fact;

(b) Representing that increasing the amount of the monthly payment will speed up completion of improvements; or

(c) Misrepresenting the benefits to be obtained by increasing the amount of the monthly payment or by completing payment of the purchase price prior to the date the final payment is due under the contract.

42. Representing that any document, sales presentation, advertisement or promotional material has been filed with or approved by any State, the Federal Department of Housing and Urban Develop-

ment, the Armed Forces, or any other governmental agency, unless such is the fact; or representing that governmental regulation means that respondents' representations are true, complete, or should be relied upon; or representing that respondents are affiliated in any manner with the Armed Forces of the United States or any government or governmental agency.

43. 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; *provided, however,* that this paragraph shall not be construed as prohibiting respondents from conditioning the purchaser's right to cancel and receive a refund under any provision of this order on the purchaser's relinquishing and, where appropriate, reconveying to respondents his interest in the land which is the subject of the transaction being cancelled.

44. 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.

45. Making any representation or taking any action which is inconsistent with or detracts from the effectiveness of this order.

It is further ordered, That respondents, upon receipt of a complaint from a purchaser alleging facts that indicate this order may have been violated and requesting a refund or cancellation of the purchaser's contract, refund all moneys paid by such purchaser where respondents determine, after a good faith investigation, that one or more of the paragraphs in Section I of this order have been violated in connection with such purchaser's transactions with respondents; *provided, however,* that in the event respondents refund any money pursuant to this paragraph of the order, the sole fact of such refund shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order; and, *further provided,* that this paragraph shall not be applicable to transactions in which the contract was entered into prior to the date this order became final.

II.

It is further ordered, in connection with the refund of moneys forfeited under contracts in default prior to the date this order becomes final:

A. That respondent compile a list of the last known name and address of all persons entering into contracts for the purchase of respondent's land who defaulted on said contracts and forfeited

monies paid in excess of the sum of the downpayment plus an amount equal to 30 standard monthly payments as stated in the contract, said list to contain all such forfeitures from July 1, 1968 to October 11, 1974; *provided, however,* that for contracts which were entered into or amended as a result of an exchange by which land purchased pursuant to a single contract was exchanged for land with a higher total price, the terms of the original contract entered into by the purchaser prior to such exchange shall be used to compute the sum of the downpayment and an amount equal to 30 standard monthly payments.

B. That the refund payments due to purchasers pursuant to this section shall be scheduled by the Co-Trustees and shall be provided for in a confirmed plan of reorganization as general unsecured claims entitled to payment at no less a rate or preference than any other general unsecured claims, including claims of bond and debenture holders. All such purchasers shall be notified of the disposition of their claims in conjunction with the notices and plan materials required to be mailed to creditors under Bankruptcy Rule 10-303(e). Upon the return of any notices undelivered, the purchasers affected shall receive notice as directed by the Bankruptcy Court pursuant to Bankruptcy Rule 10-405, fixing a time not less than five (5) years after the final decree closing the estate within which such purchasers may claim the distribution provided for them under the Plan. Upon the expiration of such period, any distribution unclaimed by such purchasers shall revert to the reorganized company, but the fair market value as of such date shall be added to the accrual Reserve Fund provided for under Section III of the Commission Order of 1974, as herein modified.

C. Respondent shall maintain, for a period of five (5) years after the date of the confirmation of the plan of reorganization all records which disclose respondent's compliance with this section of the order, as modified.

III.

It is further ordered, in connection with lot purchasers or titleholders holding contracts for or title to parcels of land in Golden Gate Estates (for purpose of this section, "titleholders" shall not include persons who acquired such title from Collier County, Florida by tax deed):

A. That respondent shall make available to each lot purchaser or titleholder of parcels of land in Golden Gate Estates which are *South* of Stewart Boulevard the choice of one of the following alternatives:

1. Each lot purchaser or title holder may choose to deed his

property to respondent upon the Co-Trustees' scheduling his or her claim for all principal and interest paid to respondent and the provision for such claims as unsecured claims in a confirmed plan of reorganization. Claims hereunder shall be allowed in full, or in *pro rata* amounts totalling not more than $18,000,000 which is the maximum amount of claims that will be allowed under this paragraph. Claims under this paragraph shall be treated as follows:

a. Payments made by lot purchasers or titleholders subsequent to December 12, 1975 shall be granted priority status and, in the event of a successful reorganization plan, shall be paid in cash;

b. The remainder of claims under this paragraph shall be allowed *pro rata* after deducting the claims paid under subparagraph (a) of this paragraph from the allowable maximum of $18,000,000 as general unsecured claims entitled to payment at no less a rate or preference than any other general unsecured claims including claims of bond and debenture holders.

2. Each lot purchaser or titleholder may choose an exchange into River Ranch Acres, on a two-for-one basis, so that each lot purchaser or titleholder will receive double the acreage in River Ranch Acres as is presently owned in Golden Gate Estates. The selection of this alternative shall be limited to the inventory of land in River Ranch Acres owned by respondent as of May 1, 1978, depleted only by the acreage used by respondent to comply with Section IV of this order. In the event a lot purchaser or titleholder who has elected this alternative is unable to receive the double acreage in River Ranch Acres as provided by this paragraph, respondent shall notify each such lot purchaser or titleholder in writing within thirty (30) days after such fact becomes known to respondent that the lot purchaser or titleholder must select one of the remaining alternatives in this section.

Each lot purchaser or titleholder who chooses this option shall remain obligated for any sums remaining due on an existing contract.

3. Each single parcel lot purchaser or titleholder, such lot comprising approximately 1-1/4 acres, may choose an exchange for a developed homesite lot (which for purposes of this order shall be deemed to include improvements consisting of paved streets and drainage, with central water and sewage service to the property line of such homesite; standard electrical service shall be available, at nominal charge, to each homesite within 180 days of the issuance of a building permit) in the Poinciana subdivision with the lot purchaser or titleholder to pay development costs of $2,300. The development costs to be paid by the lot purchaser or titleholder shall

be in addition to any sums due under any existing contract with respondent. The development costs may be paid, at the option of the lot purchaser or titleholder, either in a lump sum or in deferred payments over not more than seven (7) years at the rate of 7.5% interest per annum. Although development costs may be payable over a seven (7) year period, the homesites shall be developed by respondent over a three (3) year period commencing immediately upon confirmation of a plan of reorganization. If the development costs are paid in a lump sum, respondent shall immediately issue a deed to the homesite and cause to be issued a policy of title insurance, subject only to the respondent's inventory of completed homesites in the Poinciana subdivision at the time the development costs are paid in a lump sum.

4. Each multi-parcel lot purchaser or titleholder may choose an exchange for each 2 1/2 acre lot in Golden Gate Estates to one developed homesite lot in the Poinciana subdivision at no additional cost to the lot purchaser or titleholder except for a charge of $1,150 for water and sewer betterment fees. The water and sewer betterment fees shall be in addition to any sums due under any existing contract with respondent. The betterment fees may be paid, at the option of the lot purchaser or titleholder, either in a lump sum or in deferred payments over not more than seven (7) years at the rate of 7.5% interest per annum. Although such betterment fees may be payable over a seven (7) year period, the homesite shall be developed over a three (3) year period commencing immediately upon confirmation of a plan of reorganization. If such betterment fees are paid in a lump sum, respondent shall immediately issue a deed to the homesite and cause to be issued a policy of title insurance, subject only to the respondent's inventory of completed homesites in the Poinciana subdivision at the time the betterment fees are paid in a lump sum. After selecting this option of one developed homesite lot in the Poinciana subdivision, each multi-parcel lot purchaser or titleholder may choose other alternatives in this section in exchange for any remaining lands in excess of the 2 1/2 acre lot exchanged pursuant to this paragraph.

5. Each lot purchaser or titleholder may choose an exchange toward the land portion only of a "Housing Construction Package" at any on-going development project of the respondent, each lot purchaser or titleholder being entitled to full credit for all paid-in principal and interest, limited, however, to payments made to respondent on not more than one 2 1/2 acre parcel of Golden Gate Estates per exchanging lot purchaser or titleholder. If a lot purchaser or titleholder has two or more Golden Gate Estates parcels, he or

she may choose two or more "Housing Construction Packages" or one or more packages for each 2 1/2 acres and choose other alternatives in this section in exchange for the remaining land. Lot purchasers or titleholders choosing this option shall have five (5) years from the date of confirmation of a plan of reorganization within which to contract for a housing construction package at the terms (including price) and conditions being offered by the respondent at the time such contract is executed.

B. For all lot purchasers or titleholders of parcels of land in Golden Gate Estates *North* of Stewart Boulevard, respondent shall on the date of confirmation of a plan of reorganization estabish an accrual Reserve Fund in the amount of $10,000,000. This Reserve Fund shall be maintained by respondent for a period of five (5) years following confirmation of a plan of reorganization or until the Reserve Fund has been depleted or exhausted, whichever event occurs first. After the fifth year, the funds under Section II which revert to the accrual Reserve Fund shall be immediately available for use under this section to pay any claim filed prior to the expiration of the five (5) year period. All claims payable under this section shall be paid in full on a first come, first served basis.

1. At any time after the date of confirmation of a plan of reorganization of the respondent, and no later than five (5) years after such date, each lot purchaser or titleholder of parcels of land in Golden Gate Estates *North* of Stewart Boulevard may, at his own expense, have a test or tests made to determine the percolation of his lot and/or the availability of an adequate supply of potable water. The lot purchaser or titleholder shall then provide respondent with such test report or reports, prepared by a Registered Professional Engineer or Registered Analytical Laboratory, certifying the failure of the lot to pass a percolation test or the inability to obtain potable water. For purposes of this order, "potable water" shall be defined as drinkable water that poses no threat to health by exceeding the maximum contaminant levels set by regulations of the U.S. Environmental Protection Agency under the Safe Water Drinking Act, as provided in 40 C.F.R. Part 141 as of the date of this order modifying the Commission Order of 1974, for inorganic and organic chemicals and coliform bacteria, and complies with all other applicable Federal, state and local standards for individual water supply systems.

2. With respect to any lot or parcel of land requiring expenditures for remedial work for percolation of less than $2,500, the first $1,000 of the expenditures for remedial work, which amount shall include the cost of having the test or tests made, shall be the

responsibility of the lot purchaser or titleholder. Each lot purchaser or titleholder shall present to respondent a test report or reports certified by a Registered Professional Engineer that the remedial work will exceed $1,000 but not be more than $2,500. Within thirty (30) days after receipt of the certified report or reports from the lot purchaser or titleholder, respondent shall at its option:

a. Pay the excess of $1,000 to the lot purchaser or titleholder and charge such payment to the Reserve Fund; or

b. Request that the lot purchaser or titleholder pay to respondent the actual cost of doing the work, but not more than $1,000, less the cost of the test or tests paid by the lot purchaser or titleholder, and subsequently do the remedial work itself within sixty (60) days and charge the Reserve Fund with the difference, if any, between $1,000 and the actual cost of doing the work. Such charge to the Reserve Fund shall not exceed $1,500.

3. With respect to any lot or parcel of land requiring expenditures for remedial work for percolation in excess of $2,500, each lot purchaser or titleholder shall present to respondent a test report or reports certified by a Registered Professional Engineer that the remedial work will exceed $2,500. Within thirty (30) days after receipt of the certified report or reports from the lot purchaser or titleholder, respondent shall:

a. Exchange the lot purchaser or titleholder into a Golden Gate Estates land parcel *North* of Stewart Boulevard of equal size as the lot purchaser's or titleholder's existing parcel and provide the lot purchaser or titleholder with a Registered Professional Engineer's certificate certifying the percolation of such lot in its existing state without remedial work and the availability of an adequate supply of potable water in a well existing on such parcel as of the date of exchange; or

b. If respondent has no lots with adequate percolation and with an adequate supply of potable water available to offer under subparagraph (a) of this paragraph, respondent may do remedial work for a cost of not more than $3,000 per lot (including well-drilling) on available inventory of land *North* of Stewart Boulevard in order to certify both percolation and the availability of an adequate supply of potable water in an existing well on such parcel. Thereafter, respondent may charge a lot purchaser or titleholder exchanged into such lot the actual cost of the remedial percolation work or $1,000, whichever is less (minus the amount paid by such lot purchaser or titleholder for remedial percolation work on the parcel to be exchanged by such lot purchaser or titleholder) and the actual cost of well-drilling or $500, whichever is less (unless the lot

purchaser or titleholder has previously had a well drilled on his former lot, in which case no charge shall be made for well-drilling). Respondent may thereafter charge one-half (1/2) the cost of remedial work and the full cost of well-drilling up to $500, less the amount received from the lot purchaser or titleholder, to the Reserve Fund; or

c. If no parcels in respondent's inventory remain which qualify for exchange under subparagraphs (a) or (b) above, refund to the lot purchaser or titleholder, in cash, from the Reserve Fund all principal paid in to respondent. In conjunction with the offer of such refund, or if no funds are available for such refund, respondent shall also offer the lot purchaser or titleholder, in lieu thereof, the choices provided in subparagraphs (A) (3)–(5) of this section.

In the event of a lot exchange or cash refund pursuant to this paragraph, the lot purchaser or titleholder shall be required to deed his or her property to respondent.

4. With respect to any lot purchaser or titleholder who provides respondent with certification of the inability to obtain an adequate supply of potable water, respondent shall:

a. Perform such remedial work as is necessary to obtain an adequate supply of potable water, including the deepening or shallowing of the existing well or the drilling of an additional well on the same site. The cost of such work shall be borne by the respondent, but no more than $500 of the cost of such work may be charged to the Reserve Fund;

b. If the remedial work under subparagraph (a) of this paragraph cannot be performed for less than $500 or if an adequate supply of potable water is not produced thereby, exchange the lot purchaser or titleholder into a Golden Gate Estates land parcel *North* of Stewart Boulevard of equal size as that of the lot purchaser or titleholder and provide a certificate of a Registered Professional Engineer that the parcel passes a percolation test in its existing state without remedial work and that an adequate supply of potable water is available in a well existing on such parcel as of the date of the exchange. If the lot purchaser or titleholder has not had a well drilled, respondent may, as part of the exchange, require a payment of not more than $500 from the lot purchaser or titleholder to cover the actual cost of drilling the well.

c. If respondent has no lots with adequate percolation and with an adequate supply of potable water available to offer under subparagraph (b) of this paragraph, it may do remedial work for a total cost of not more than $3,000 per lot (including well-drilling) on available inventory *North* of Stewart Boulevard in order to certify

both the percolation and availability of an adequate supply of potable water in a well existing on such parcel as of the date of exchange. Thereafter, respondent may charge a lot purchaser or titleholder exchanged into such parcel the cost of the remedial percolation work or $1,000, whichever is less (minus the amount paid by such lot purchaser or titleholder for remedial percolation work on the parcel to be exchanged by such lot purchaser or titleholder). Respondent may thereafter charge the Reserve Fund for one-half (1/2) the actual cost of the remedial work and the full cost of well-drilling up to $500, less the payment received from the lot purchaser; or

d. In the event that the remedial work or exchanges required by subparagraphs (a) - (c) of this paragraph cannot be performed as specified therein, refund to the lot purchaser or titleholder, in cash, from the Reserve Fund, all principal paid in to respondent. In conjunction with the offer of such refund, or if no funds are available for such refund, respondent shall also offer the lot purchaser or titleholder, in lieu thereof, the choices provided in subparagraphs (A)(3)-(5) of this section.

C. The appropriate letter, as set forth in Appendices (1) or (2) of this order modifying the Commission Order of 1974, shall be sent by respondent to all persons holding contracts for or title to land in Golden Gate Estates along with the claims bar order to be entered by the Bankruptcy Court fixing the claims deadline for claims relating to Golden Gate Estates. Respondent shall take all reasonable measures to obtain the current mailing address of such persons, including obtaining current addresses from the tax rolls of Collier County, Florida for the Golden Gate Estates subdivision.

D. Respondent shall, on the date the Commission accepts the order provisionally modifying the Commission Order of 1974, immediately establish an accrual fund in the amount of $200,000 to be used, as directed by the Federal Trade Commission or its representative, to notify by any means, including advertising by newspaper, magazine or television, persons holding contracts for or title to land in Golden Gate Estates of the options provided in this section, and persons entitled to refunds under Section II of the Commission Order of 1974, as modified. No charges for mailing letters under paragraph (C) of this section shall be charged to this fund. The amount required to be available under this paragraph shall remain available until five (5) years after the date of confirmation of a plan of reorganization or until exhausted, or until released by the Commission, whichever first occurs. Any funds charged to the fund established by this paragraph shall be subsequently charged to the accrual Reserve

Fund established pursuant to paragraph (B) of this Section. If the accrual Reserve Fund is exhausted before the fund established in this paragraph is exhausted, no further funds will be available under this paragraph.

E. Respondent shall maintain, for a period of seven (7) years after the date of confirmation of a plan of reorganization, all records which disclose respondent's compliance with this section of the order, as modified.

IV.

For purposes of this section of the order, the following definitions shall be applicable:

When used in reference to land at Remuda Ranch Grants or River Ranch Acres, "lot" shall mean a parcel of land approximately 1-1/4 acres in size, and "lots" shall mean a parcel or parcels of land purchased pursuant to a single contract with respondent GAC Properties Inc. or its predecessor Gulf American Corporation, the total acreage of which is a multiple of the approximately 1-1/4 acre parcel comprising a lot.

It is further ordered, in connection with the exchange of land purchased in Remuda Ranch Grants and River Ranch Acres:

A. That respondents compile a list containing the last known name and address of the purchaser and date of purchase for each contract for the purchase of a lot or lots in Remuda Ranch Grants or River Ranch Acres where the purchaser is either deeded or has an outstanding contract not in default, said list to be arranged in chronological order by subdivision and grouped according to the number of lots purchased.

B. That respondents send a letter as set out in Appendix A or B, as applicable, within six (6) months of the date this order becomes final and thereafter in accordance with Paragraph G below, by certified mail, return receipt requested, to the following of the purchasers referred to in Paragraph A above: (1) all purchasers whose date of purchase is January 1, 1969 or later; (2) all purchasers of 3 or more lots whose date of purchase is prior to January 1, 1969; and (3) as many purchasers of 1 or 2 lots whose date of purchase is prior to January 1, 1969 as the inventory of lots set aside for this exchange offer will permit, in accordance with the schedule set out in subparagraph E(6) below.

C. That respondents enclose together with the letter referred to in Paragraph B above the following material:

1. A notice of acceptance form as set out in Appendix C;
2. A document listing (a) the contract number and date of

purchase for the lot or lots in which the purchaser's interest will be relinquished if the exchange offer is accepted, and (b) the legal and/or other adequate description and approximate size concerning both the lot or lots being offered in exchange and the lot or lots in which the purchaser's interest will be relinquished if the exchange offer is accepted;

3. The applicable property report for the lot or lots being offered in exchange; and

4. A map or maps showing the location in the subdivision and, where available, the block or unit of the lot or lots being offered in exchange.

D. That with respect to any letter referred to in Paragraph B above which is returned to respondents undelivered, respondents, within 60 days of receipt of such undelivered letter, shall take measures which are reasonably calculated to obtain the current address of the purchaser and shall deliver said letter to him; *provided, however,* that in the event respondents are unable to deliver such letter within said 60-day period, said offer of exchange shall be deemed rejected by the purchaser for purposes of this order.

E. That respondents, upon receipt of a notice of acceptance of the exchange offer provided for in this section of the Order, shall exchange the lot or lots purchased in Remuda Ranch Grants and/or River Ranch Acres for land in certain of respondents' other subdivisions according to the following schedule:

1. Remuda Ranch Grants - date of purchase January 1, 1969 or later:

(a) A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *provided, however,* that no such purchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(b) A purchaser of 1 or 2 lots may exchange such lots for 1 homesite lot in Golden Gate Estates.

2. River Ranch Acres - date of purchase January 1, 1969 or later:

(a) A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *provided, however,* that no such purchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(b) A purchaser of 1 or 2 lots may exchange such lot or lots for 1 homesite lot in River Ranch Shores.

3. Date of purchase prior to January 1, 1969:

(a) Remuda Ranch Grants - A purchaser of 3 or more lots may exchange such lots for lots in Golden Gate Estates which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *provided, however,* that no such purchaser shall be offered less than 1 Golden Gate Estates lot in exchange for all the lots he has purchased.

(b) River Ranch Acres - A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *provided, however,* that no such purchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(c) Remuda Ranch Grants and River Ranch Acres - A purchaser of 1 or 2 lots may exchange lot or lots for 1 lot to be located in either Golden Gate Estates or River Ranch Shores at the discretion of respondents, subject to the inventory of lots set aside for the exchange offer as provided for in subparagraph 4 below.

4. For purposes of the exchange offer provided for in that section, respondents shall make available 3,429 lots in Golden Gate Estates, 7,058 lots in River Ranch Shores, and enough lots in Cape Coral to meet the demands of subparts 1(a), 2(a), and 3(b) above; *provided, however,* that in the event respondents' inventory of lots in Cape Coral should prove insufficient to meet the demands of the exchange offer provided for in this section, lots in Poinciana shall be substituted; and, *further provided,* that in the event any governmental regulation prevents the use of any portion of Golden Gate Estates as provided for in this section of the order, respondents may offer to the applicable purchasers an alternative exchange, acceptable to the Commission, of a homesite lot in another subdivision.

5. (a) The lots in Golden Gate Estates to be offered in exchange pursuant to this section of the order shall be developed in accordance with Section III above.

(b) The lots in Cape Coral, River Ranch Shores, and Poinciana to be offered in exchange pursuant to this section of the order shall be developed in accordance with the most recent applicable property report on file on the date this order becomes final with the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development; *provided, however,* that in the event no property report is on file with the Office of Interstate Land Sales Registration with respect to any lot in Cape Coral, River Ranch

Shores, or Poinciana which is being offered in exchange pursuant to this section of the order, such lot shall be developed in accordance with the most recent applicable property report or offering statement on file with the State of Florida.

6. For purposes of the exchange offer set out in subpart 3(c) above, such exchanges shall be made until the inventory of lots in Golden Gate Estates and River Ranch Shores set out in subparagraph 4 above is exhausted, subject to the following conditions:

(a) the exchanges shall be offered to all purchasers of 2 lots prior to being offered to purchasers of 1 lot; and

(b) the exchanges shall be offered to purchasers by date of purchase in reverse chronological order (most recent purchase exchanged first).

F. That in the event a purchaser fails to mail a notice of acceptance to respondents within 60 days of his receipt of the letter referred to in Paragraph B above, then for purposes of this order such purchaser shall be deemed to have rejected the exchange offer.

G. That within 120 days of the initial exchange offer set out in Paragraph B above, respondents shall offer all lots referred to in subparagraph E(4) above for which an exchange offer has been rejected to the next purchasers eligible to receive said exchange offer in accordance with subparagraph E(6) above; and respondents shall thereafter continue, at intervals not to exceed 120 days, to offer all lots for which an exchange offer has been rejected to the next eligible purchasers until either all the aforesaid lots have been exchanged or the list of purchasers eligible to receive the exchange offer has been exhausted.

H. That the ten-day right of cancellation provided for in Paragraphs 6 through 10 of Section I of this order shall not be applicable to lots exchanged pursuant to this section of the order.

I. That respondents may condition the exchange offer under this section of the order on the purchaser's execution of a quit-claim deed and/or other documents necessary to release his interest in the lot or lots being given up in exchange, such document or documents to be prepared by respondents.

J. That respondents maintain, for three years after the final exchange is made pursuant to this section of the order, records which are adequate to disclose respondents' compliance with this section of the order, such records to be furnished by respondents to the Federal Trade Commission upon request.

K. That it shall be deemed full compliance with the provisions of this section if respondent (1) sends a letter, as set forth in Appendices (3) or (4), as appropriate, to the order modifying the

Commission Order of 1974, within ninety (90) days after a plan of reorganization has been confirmed by the Bankruptcy Court, by certified mail, return receipt requested, to the lotholders or titleholders who remain entitled to an exchange under Section IV of the Commission Order of 1974, such mailing to continue until 924 Remuda Ranch Grants lot purchasers or titleholders and 3,858 River Ranch Acres lot purchasers or titleholders acknowledge receipt thereof; and (2) provides the lot purchaser or titleholder with the option selected. Each such lot purchaser or titleholder shall be offered the choice of the following options:

(1) For those in River Ranch Acres, additional unimproved land in River Ranch Acres equal to their present acreage in size; for those in Remuda Ranch Grants, an exchange into River Ranch Acres, on a two-for-one basis, so that each lot purchaser or titleholder will receive double the acreage in River Ranch Acres as is presently owned in Remuda Ranch Grants; subject only to the availability of respondent's inventory of such land as of May 1, 1978. For those already holding title to or contracts for land in River Ranch Acres, the additional acreage offered hereunder shall be contiguous to the extent possible. Offers of land under this section shall take priority over exchanges offered under Section III of the Commission Order of 1974, as modified.

(2) An exchange to a homesite lot in the Poinciana subdivision under the conditions as set forth in Section III (A)(3)–(4) of the Commission Order of 1974, as modified.

(3) An exchange to a Housing Construction Package at any ongoing GAC development project under the conditions as set forth in Section III (A)(5) of the Commission Order of 1974, as modified.

In the event any lot purchaser or titleholder who acknowledges receipt of a letter mailed pursuant to this section has not responded within sixty (60) days, such recipient shall be deemed to have rejected the alternatives provided by this section.

L. Respondent shall maintain, for a period of five (5) years after the date of confirmation of the plan of reorganization, all records which disclose respondent's compliance with this section of the order, as modified.

V.

For purposes of this section of the order, the following definition shall be applicable:

"Residential property" shall mean land located in a subdivision in which the majority of lots are sold or offered for sale for use as homesites.

It is further ordered:

A. (1) That respondents shall include the following language, or words of similar import and meaning, in all installment contracts for the sale of residential property to consumers which are entered into after the date this order becomes final, and shall make refunds in accordance therewith:

In the event of Buyer's default, Seller shall refund to Buyer within 180 days of the date of default principal payments (not interest, finance charges or taxes) made pursuant to this contract in accordance with the following schedule of refunds:

a. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.

b. If Buyer's total principal payments exceed 30% but are less than 66-2/3% of the cash price, Buyer shall receive a refund of two-thirds of all principal payments made in excess of 30% of the cash price.

c. If Buyer's total principal payments are in excess of 66-2/3% of the cash price, Buyer shall receive a refund of one-half of all principal payments made in excess of 66-2/3% of the cash price, together with and in addition to all sums refundable to Buyer under subpart b above.

(2) That in the event the rate of default for all contracts for the sale of respondents' land to consumers in which the amount of principal paid exceeds 30% of the cash price due thereunder, which are entered into during the ten-year period after the date this order becomes final, does not exceed by more than ten percent the rate of default, computed in the same manner, for all such contracts for the three-year period immediately preceding the date this order becomes final, the following schedule of refunds shall be included by respondents in all installment contracts for the sale of residential property to consumers which are entered into more than 90 days after the expiration of said ten-year period, in lieu of the schedule of refunds set out in subparagraph A(1) above:

a. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.

b. If Buyer's total principal payments exceed 30% of the cash price, Buyer shall receive a refund of 75% of all principal payments made in excess of 30% of the cash price.

(3) That respondents submit to the Federal Trade Commission, within 90 days after the date this order becomes final, data disclosing

the rate of default referred to in subparagraph A(2) above for the three-year period immediately preceding the date this order becomes final, and documentation in support thereof.

B. That respondents shall include the following language, or words of similar import and meaning, in all installment contracts for the sale of land other than residential property to consumers which are entered into after the date this order becomes final, and shall make refunds in accordance therewith:

In the event of Buyer's default, Seller shall refund to Buyer within 180 days of the date of default principal payments (not interest, finance charges or taxes) made pursuant to this contract in accordance with the following schedule of refunds:

1. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.
2. If Buyer's total principal payments exceed 30% of the cash price, Buyer shall receive a refund of 75% of all principal payments made in excess of 30% of the cash price.

C. That respondents may condition their payment of refunds under this section of the order on the purchaser's execution of a quit-claim deed and/or other documents necessary to release his interest in the land purchased from respondents pursuant to the contract in default, such document or documents to be prepared by respondents.

D. That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondents' sale of land to consumers which regulates 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 this section of the order shall be deemed modified by said Trade Regulation Rule; *provided, however,* that this paragraph shall not be construed as waiving or in any way limiting respondents' legal rights or standing to challenge or otherwise contest such a Trade Regulation Rule.

VI.

It is further ordered:

(a) That in the event respondents fail to correct any default under a contract entered into prior to the effective date of this order within six months after receiving notice in writing from the purchaser of said default, respondents shall, within ten days after completion of said six-month period, notify the purchaser that, at his option, he may receive a refund of all moneys paid under the contract or an exchange acceptable to him of the contracted-for property for

another of at least equal price, equivalent size, with equivalent zoning classification and same promised improvements and utilities, and located in the same general geographic area of the subdivision. *Provided, however,* that respondent shall not be considered in default of any contract hereunder if all contractual obligations covered by this section are assumed by the company in a plan of reorganization confirmed by the Bankruptcy Court and such obligations are performed within the dates provided in the confirmed plan of reorganization but no later than 1985.

(b) That respondents shall make the exchange or refund requested by the purchaser under the terms of Paragraph (a) above within 60 days of receipt of the purchaser's acceptance of said exchange or refund; *provided, however,* that in the event the purchaser has received a deed or other evidence of interest in the contracted-for property other than the contract, the purchaser must, as a condition of obtaining such refund or exchange, reconvey to the seller such evidence of interest by General Warranty Deed in recordable form; and, *further provided,* that in the event only the contract has been recorded in the Public Records, the purchaser must quit-claim in recordable form his interest to the seller to remove any clouds on the title to such property.

VII.

It is further ordered:

(a) That respondents herein deliver, by hand or by certified mail, a copy of Sections I and VI through X of this order to each of their present or future salesmen, independent brokers, and employees who sell or promote the sale of land or other real property to consumers, and all others so engaged;

(b) That respondents provide each person so described in Paragraph (a) above with a form, returnable to respondents, clearly stating his intention to be bound by and to conform his sales 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 party, or the services of any such party, unless such party agrees to and does file notice with respondents that it will be bound by the provisions contained in this order;

(d) That in the event such party will not agree to so file notice with respondents and to be bound by the provisions of this order, respondents shall not use such party, or the services of such party;

(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 engages on his own in the acts or practices prohibited by this order; *provided, however,* that violation of any provision of this order by present or future employees of independent brokers shall not be deemed a violation of this order by respondents unless respondents, upon knowledge of such violation, fail to take, within a reasonable time, corrective action to insure that such act or practice is terminated; and *further provided,* 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.

VIII.

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.

IX.

It is further ordered, That this order shall become effective in accordance with standard 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 Federal Trade Commission monthly reports detailing respondents' progress toward obtaining the aforementioned acceptance for dissemination by the applicable state or federal agencies.

X.

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 land or other real property to consumers.

It is further ordered, That respondents herein shall, within six months after the date of confirmation of a plan of reorganization, and annually for five (5) years thereafter, 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 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.

APPENDIX 1

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

Dear Golden Gate Estates Customer:

As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of five choices. GAC's records indicate your land is located southof Stewart Boulevard in Golden Gate Estates. Stewart Boulevard is five (5) miles south of Alligator Alley (Florida State Road 858) and is one of the main east-west roads in Golden Gate Estates.

In deciding which choice you should make, you should be aware that most of the land south of Stewart Boulevard in Golden Gate Estates is subject to excessive flooding during Florida's "wet season" and brush fires during the "dry season." Furthermore, Golden Gate Estates will not be developed beyond the limited improvements (roads and canals)that have already been made. Note that there is no central water and sewer system. Telephone and electrical hookups may be very expensive.

The new agreement gives you the right to select one of the following choices:

Choice No. 1: You can deed back your property in Golden Gate Estates to GAC and the GAC Trustees will have a claim scheduled for you in the Bankruptcy Court for all of the principal and interest you have paid to GAC on your contract. If you made payments to GAC after December 12, 1975, these payments will be refunded to you in cash. The balance of your payments will be scheduled as unsecured claims to be shared on a pro rata basis with other purchasers of property south of Stewart Boulevard from a maximum amount of $18 million dollars in claims, less the cash payments refunded. The unsecured claims may not be paid in cash but could be paid by the delivery of stock in the reorganized company.

Choice No. 2: You can deed back your property in Golden Gate Estates to GAC and the company will deed to you twice as much land in River Ranch Acres. The parcels deeded to you in River Ranch Acres might not be next to one another. The land in River Ranch Acres will not be developed in any way and in most areas there are no roads. If you are still paying for your property in Golden Gate Estates and you select this choice, you will still have to make the payments due on your existing contract.

There is no sure way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is not suitable for homesite use in its present condition.

PLEASE NOTE: There is limited land available in River Ranch Acres. If you select this choice and there is no land available, you will be notified and given a chance to select one of the other choices in this letter.

Choice No. 3: You can exchange each 1 1/4 acres of your property in Golden Gate Estates for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $671.92 on the $2,300 amount financed, and your total of payments will be $2,971.92. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange each 2 1/2 acres of your property in Golden Gate Estates for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 5: You can exchange your land for a GAC "Housing Construction Package." All of the principal and interest you have paid to GAC, limited to payments made on no more than 2 1/2 acres, will be credited to the land portion only of your "Housing Construction Package." A brochure describing GAC's present "Housing Construction Package" has been sent to you by GAC. If you select this choice, you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

--- You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or ....

--- You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.

To accept one of the choices listed as 1 through 5 above, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE to be received no later than July 1, 1979.

Each of these choices is more fully explained in Section III of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you. You should read this carefully.

RIGHT TO FILE A CLAIM

If you don't want to make any of the above choices, you may file a claim for whatever rights you think you have against GAC. The Trustees will still have a right to object to your claim. If such objection is filed, a hearing on the objection would be held before the Bankruptcy Court in Miami and you, or your lawyer, would then be required to prove your claim. As stated in the CLAIMS BAR ORDER which is also being mailed to you, your claim will have to be filed with the Bankruptcy Court, P.O. Box 010230, Miami Florida 33101 to be received no later than July 1. 1979. If you are unable to obtain Official Bankruptcy Form No. 15 (Proof of Claim) from a bankruptcy court, an office supply or a stationery store in your area, you may call GAC at its toll free number given below, and request a form which they will send to you.

If you have any doubts concerning this matter, the FTC recommends that you speak to an attorney to help you decide what to do. The FTC makes no recommendation whatsoever as to whether you should accept one of the choices offered under the FTC Order or whether you should file a claim instead. You, and only you, can decide whether you are better off filing a claim or accepting one of the choices under the FTC Order.

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800-327-8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

NOTICE OF ACCEPTANCE

_____
Contract Number

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

CHECK ONE

Choice No. 1:	Trustees may schedule my claim and I will deed my property to GAC	_____
Choice No. 2:	I will deed my Golden Gate Estates property to GAC in exchange for double acreage in River Ranch Acres	_____
Choice No. 3:	I will pay the $2,300 extra costs for a developed homesite in Poinciana	_____
Choice No. 4:	I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana	_____
Choice No. 5:	Within five (5) years, I have a right to contract for a GAC "Housing Construction Package "	_____

_____ _____
Date Purchaser's Signature

_____
Purchaser's Signature

REMEMBER: This NOTICE OF ACCEPTANCE must be received no later than July 1, 1979 by:

GAC Corporation
201 Alhambra Circle
Coral Gables, Florida 33134

APPENDIX 2

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

Dear Golden Gate Estates Customer:

As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC. GAC's records indicate your land is located north of Stewart Boulevard in Golden Gate Estates. Stewart Boulevard is five (5) miles south of Alligator Alley (Florida State Road 858) and is one of the main east-west roads in Golden Gate Estates.

You should be aware that Golden Gate Estates will not be developed beyond the limited improvements (roads and canals) that have already been made by GAC. Collier County is now responsible for the maintenance of all roads and canals in Golden Gate Estates. Note there is no central water and sewer system. Telephone and electrical hookups may be very expensive in some isolated areas.

For lot purchasers north of Stewart Boulevard, GAC has agreed to establish an accrual Reserve Fund in the amount of $10 million dollars to be used over a period of five (5) years. All claims payable from this Reserve Fund shall be paid on a first come basis.

The purpose of this Reserve Fund is to help make sure that your property in Golden Gate Estates is suitable for homesite building. This means you should be able to install an adequate system for the disposal of sewage and have an adequate supply of potable water. The costs for obtaining electrical service to the property must be paid by the lot owner.

Under this agreement, after reorganization, you may, at your expense, have a test or tests made to determine the percolation of your land (suitability for installation of a septic tank system) and the availability of an adequate supply of potable water. The test or tests should be certified by a Registered Professional Engineer or Registered Analytical Laboratory. If the results of the test or tests indicate that the land failed to pass a percolation test or that there is no adequate supply of potable water available, these certified reports should be submitted to GAC.

PERCOLATION TEST

If your land fails to pass a percolation test, your certified report should disclose the reason for the failure, the remedial work suggested, and the estimated costs to perform the remedial work. You will be required to pay for the first $1,000 of remedial work which includes the amount you have paid for the test or tests.

If the remedial work is more than $1,000, but not more than $2,500, GAC, at its option, may: (1) pay you the excess of $1,000 or (2) request that you pay to GAC the actual cost of doing the work, up to, but not to exceed $1,000, and thereafter do the remedial work itself within sixty (60) days.

If the remedial work is more than $2,500, GAC must, within thirty (30) days after receiving such certified report or reports, exchange you into another parcel of land of equal size to your existing parcel of land and provide you with a certificate certifying the percolation of such land in its existing state without remedial work and the adequate availability of potable water as of the date of the exchange.

If GAC has no lots in its inventory which can percolate without remedial work, it may do the remedial work in order to certify both the percolation and availability of potable water and charge you for the remedial work for percolation up to $1,000 and charge you up to $500 for well drilling, less any amounts you have paid for remedial work and well drilling on your former land.

If GAC has no lots in its inventory with which to make an exchange, you will be offered a cash refund of all principal paid to GAC. When GAC makes this offer, you will also be given the choice of exchanging for land in various other GAC subdivisions with full credit for the principal and interest you have paid the company. GAC will give you full details of these various options at the time you qualify for a cash refund.

In the event of a lot exchange or refund, you will be required to deed back your land to GAC.

POTABLE WATER TEST

If you have drilled a well and your test report certifies that there is no adequate supply of potable water (as defined in the new agreement) available, GAC will have to perform such remedial work, including deeping

or shallowing an existing well or drilling an additional well on the same land, and such costs shall be paid by GAC. However, if the cost of remedial work exceeds $500, GAC may exchange you into another parcel of land of equal size to your existing parcel of land and provide you with a certificate certifying the percolation of such land in its existing state without remedial work and certifying that there is an adequate supply of potable water available as of the date of the exchange.

If GAC has no lots in its inventory which can percolate with an adequate supply of potable water available without remedial work, GAC may do the remedial work in order to certify both the percolation and availability of an adequate supply of potable water and charge you for the remedial percolation work up to $1,000 and $500 for well drilling, less any amounts you have paid for such remedial percolation work and well drilling on your former land.

If GAC, has no lots in its inventory with which to make an exchange, you will be offered a cash refund of all principal paid to GAC. When GAC makes this offer, you will also be given the choice of exchanging for land in various other GAC subdivisions with full credit for the principal and interest you have paid the company. GAC will give you full details of these various options at the time you qualify for a cash refund.

In the event of a lot exchange or cash refund, you will be required to deed back your land to GAC.

RIGHT TO FILE A CLAIM

If you don't want to make any of the above choices, you may file a claim for whatever rights you think you have against GAC. The Trustees will still have a right to object to your claim. If such objection is filed, a hearing on the objection would be held before the Bankruptcy Court in Miami and you, or your lawyer, would then be required to prove your claim. As is stated in the CLAIMS BAR ORDER which is also being mailed to you, your claim will have to be filed with the Bankruptcy Court, P.O. Box 010230, Miami, Florida 33101 to be received no later than July 1, 1979. If you are unable to obtain Official Bankruptcy Form No. 15 (Proof of Claim) from a bankruptcy court, an office supply or a stationery store in your area, you may call GAC at its toll free number given below, and request a form which they will send to you.

If you have any doubts concerning this matter, the FTC recommends that you speak to an attorney to help you decide what to do. The FTC makes no recommendation whatsoever as to whether you should accept one of the

294-972 O - 80 - 33

choices offered under the FTC Order or whether you should file a claim instead. You, and only you, can decide whether you are better off filing a claim or accepting one of the choices under the FTC Order.

You should also be aware that the government of Collier County is opposed to uncontrolled development in Golden Gate Estates. In comments filed with the FTC, the county says that the roads and canals are deteriorating. The county also says that it may not spend the money necessary to maintain these structures.

If the county does decide to perform necessary maintenance the county says it may try to put the tax burden for maintenance in Golden Gate Estates on lotowners there. If the county can legally do this, taxes in Golden Gate Estates might rise.

The county is also concerned about pollution from septic tanks. The county says that if too many people try to put septic tanks in Golden Gate Estates, the county may find it necessary to make it harder to get a building permit.

The FTC cannot be sure what the county will or will not do to provide maintenance for Golden Gate Estates or to control its development.

If you have any questions regarding this letter, you may direct such questions to GAC by calling this toll free number (800-327-8776) or by writing to the Federal Trade Commission/FC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

APPENDIX 3

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

Dear Remuda Ranch Grants Customer:

As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of three choices.

In deciding which choice you should make, you should be aware that Remuda Ranch Grants will not be developed in any way. Most of the land in Remuda Ranch Grants is under water. In most areas there are no roads.

Choice No. 1: You can deed back your land in Remuda Ranch Grants to GAC and the company will deed to you twice as much land in River Ranch Acres. The land in River Ranch Acres will not be developed in any way and in most areas in River Ranch Acres there are no roads. The parcels deeded to you might not be next to one another. If you are still paying for your property in Remuda Ranch Grants and you select this choice, you will still be required to make payments due on your existing contract.

There is no way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is not suitable for homesite use in its present condition.

Choice No. 2: You can exchange each 1 1/4 acres of your property in Remuda Ranch Grants for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $671.92 on the $2,300 amount

financed, and your total of payments will be $2,971.92. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 3: You can exchange each 2 1/2 acres of your property in Remuda Ranch Grants for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange your land for a GAC "Housing Construction Package". All of the principal and interest you have paid to GAC, limited to payments made on no more than 2 1/2 acres, will be credited to the land portion only of your "Housing Construction Package". A brochure describing GAC's present "Housing Construction Package" has been sent to you to by GAC. If you select this choice you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

--- You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or ....

--- You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.

To accept one of the choices listed in this letter, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE no later than sixty (60) days after you have received this letter. If you do not answer in sixty (60) days, you will be deemed to have rejected the choices offered to you by this letter.

Each of these choices is more fully explained in Section IV of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you along with this letter. You should read this carefully.

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800-327-8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

NOTICE OF ACCEPTANCE

_____
Contract Number

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

CHECK ONE

Choice No. 1: I will deed my Remuda Ranch Grants property to GAC in exchange for double acreage in River Ranch Acres _____

Choice No. 2: I will pay the $2,300 extra costs for a developed homesite in Poinciana _____

Choice No. 3: I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana _____

Choice No. 4: Within five (5) years, I have a right to contract for a GAC "Housing Construction Package" _____

_____ _____
Date Purchaser's Signature

_____
Purchaser's Signature

REMEMBER:

This NOTICE OF ACCEPTANCE must be returned within sixty (60) days after receipt of this letter to:

GAC Corporation
201 Alhambra Circle
Coral Gables, Florida 33134

APPENDIX 4

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

Dear River Ranch Acres Customer:

As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of three choices.

In deciding which choice you should make, you should be aware that River Ranch Acres will not be developed in any way. In most areas in River Ranch Acres there are no roads.

Choice No. 1: You can get added unimproved land in River Ranch Acres which will double your holdings. Whereever possible, the additional acreage will be next to your present land. If you are still paying for your property in River Ranch Acres and you select this choice, you will still be required to make the payments due on your existing contract.

There is no sure way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is not suitable for homesite use in its present condition.

Choice No. 2: You can exchange each 1 1/4 acres of your property in River Ranch Acres for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $671.92 on the $2,300 amount financed, and your total of payments will be $2,971.92. In addition, regardless of

whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 3: You can exchange each 2 1/2 acres of your property in River Ranch Acres for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7 1/2% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently

$10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange your land for a GAC "Housing Construction Package". All of the principal and interest you have paid to GAC, limited to payments made on no more than 2 1/2 acres, will be credited to the land portion only of your "Housing Construction Package". A brochure describing GAC's present "Housing Construction Package" has been sent to you to by GAC. If you select this choice, you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

--- You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or ....

--- You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.

To accept one of the choices listed in this letter, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE no later than sixty (60) days after you have received this letter. If you do not answer in sixty (60) days, you will be deemed to have rejected the choices offered to you by this letter.

Each of these choices is more fully explained in Section IV of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you along with this letter. You should read this carefully.

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800-327-8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

NOTICE OF ACCEPTANCE

_____
Contract Number

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

CHECK ONE

Choice No. 1: I choose to have my River Ranch Acres holdings doubled in acreage _____

Choice No. 2: I will pay the $2,300 extra costs for a developed homesite in Poinciana _____

Choice No. 3: I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana _____

Choice No. 4: Within five (5) years, I have a right to contract for a GAC "Housing Construction Package" _____

_____ _____
Date Purchaser's Signature

_____
Purchaser's Signature

REMEMBER:

This NOTICE OF ACCEPTANCE must be returned within sixty (60) days after receipt of this letter to:

GAC Corporation
201 Alhambra Circle
Coral Gables, Florida 33134