

Complaint

90 F.T.C.

IN THE MATTER OF

FLAGG INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2903. Complaint, Sept. 27, 1977 — Decision, Sept. 27, 1977*

This consent order, among other things, requires a Los Angeles, Calif. land sales company to cease misrepresenting the size and extent of their business and assets; the resale opportunities, potential profits and soundness of land investments; and the advent of industry and the availability of employment. Respondents are prohibited from using deceptive sales plans, and required to make affirmative disclosures, including risks involved in land purchase, and the buyers' rights to cancellation and refunds. Further, the provisions of the order require respondents to provide the three primary subdivisions, Cordes Lakes, Verde Village, and Valle Vista, with the improvements, amenities and facilities described in the HUD Property Reports, and for a period of five years, to properly distribute \$20,000 into three separate trust funds, for use by the three respective property owners' associations.

*Appearances*For the Commission: *Howard Manning, Jr.*For the respondents: *W. Reece Bader, Orrick, Herrington, Rowley & Sutcliffe*, San Francisco, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Flagg Industries, Inc., a corporation, and Queen Creek Land and Cattle Company, a corporation, (hereinafter sometimes referred to as "respondents") have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Flagg Industries, Inc. (hereinafter sometimes referred to as "Flagg") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 10960 Wilshire Boulevard, Los Angeles, California.

PAR. 2. Respondent Queen Creek Land and Cattle Company (hereinafter sometimes referred to as "Queen Creek") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of

business located at 3500 North Central Ave., Financial Center, Phoenix, Arizona.

PAR. 3. Respondent Queen Creek Land and Cattle Company is and for some time past has been a wholly-owned subsidiary of respondent Flagg Industries, Inc. Respondent Flagg dominates or controls the acts and practices of its subsidiary corporation, Queen Creek, and is responsible for the acts and practices of its subsidiary as alleged herein.

PAR. 4. Respondent Queen Creek is now and for some time past has been engaged in the business of acquiring undeveloped land in Arizona, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public in the State of Arizona and in other states. The subdivisions in which lots have been and are being offered for sale by respondent are known as Valle Vista, Verde Village, and Cordes Lakes, each consisting of substantial acreage. Respondent's sales force is divided into regions consisting of the Western Region, which includes the States of Washington, California, Oregon, and Arizona; the Midwest Region, which includes the States of Illinois, Indiana, and other Midwestern States; and the Northwest Region, which includes the States of Colorado, Wyoming, Montana, the Dakotas and Nebraska. For each of the above-listed regions, respondent employs a regional sales manager whose primary function is to make sales to the residents of the respective states through salesmen residing in those states. Respondent employs direct solicitation as well as dinner meetings at which a sales presentation is made by the salesmen using slides, elaborately prepared brochures and other advertising material, and high pressure sales tactics.

PAR. 5. Respondent Queen Creek sells or has sold lots to purchasers by use of standard form contracts, entitled "Purchase and Sale Agreement" (hereinafter sometimes referred to as a "contract") whereby the purchaser obligates himself to pay monthly installments over a period ranging from 5 to 7 years' duration. In return for the purchaser's promise to pay and subsequent payment, respondent holds a purchase money note and executes a warranty deed in favor of the purchasers.

PAR. 6. In the course and conduct of its business as aforesaid, respondent Queen Creek has for some time past caused its advertisements, promotional material, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other States of the United States. Respondent's volume of business is substantial and its acts and practices, as hereinafter set

forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the further course and conduct of the aforesaid business, respondent Queen Creek has made various statements and representations, directly or by implication, concerning the size, diversity, and assets of respondent Flagg, the backing of respondent's land sales business by such assets, and the good reputation and integrity of Flagg.

PAR. 8. In truth and in fact, respondent Flagg's assets, prestige and diversity of holdings, beyond the guarantee of certain loans or making some cash payments, were not committed to its subsidiary's completion of the subdivisions through expenditures for promised improvements and amenities. Therefore, the acts and practices alleged in Paragraph Seven are deceptive and unfair.

PAR. 9. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various statements and representations concerning the supply and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; personal financial security; the stock market; banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited to purchasers' rights to cancel the contract within six months, should they visit the property. By and through such statements and representations and others not set forth herein, respondent has represented directly or by implication that lots which respondent is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 10. In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are poor investments involving a substantial amount of risk to purchasers. Therefore, the acts and practices alleged in Paragraph Nine are deceptive and unfair.

PAR. 11. In the further course and conduct of its aforesaid business, respondent Queen Creek has offered for sale lots in its subdivisions without disclosing to prospective purchasers that the lots being offered are, at the price respondent is offering them, a risky investment in that, *inter alia*, the future value of lots being offered is uncertain and the purchasers probably will be unable to sell their lots, or their interests in them under the contract, at or above the

purchase price. Respondent has therefore failed to disclose material facts which, if known to prospective purchasers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. The failure to disclose such information is a deceptive and unfair act or practice.

PAR. 12. In the further course and conduct of its aforesaid business, respondent Queen Creek, through statements in advertisements, booklets, pamphlets, letters, slides, and oral presentations has represented directly, or by implication, that the resale of a lot purchased from respondent is not difficult.

PAR. 13. In truth and in fact, there is virtually no resale market for lots purchased at respondent's subdivisions. Therefore, the representations, acts, or practices alleged in Paragraph Twelve are deceptive and unfair.

PAR. 14. In the further course and conduct of the aforesaid business, respondent Queen Creek, through oral statements and periodic increases in prices of lots, has represented, directly or by implication, that the market value of the lots at its subdivisions is rising.

PAR. 15. In truth and in fact, the market value of the land has not been rising. Therefore, the acts and practices alleged in Paragraph Fourteen herein are deceptive and unfair.

PAR. 16. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various oral and written statements and representations to prospective purchasers, including purchasers under contract with respondent, by which respondent has represented and is representing, directly or by implication, that the value of lots has increased significantly, or will increase in value, and that purchase of said lots is a way of achieving financial security.

PAR. 17. In truth and in fact, the value of lots has not increased significantly since the purchase from respondent. Therefore, the acts and practices alleged in Paragraph Sixteen herein are deceptive and unfair.

PAR. 18. In the further course and conduct of its aforesaid business, respondent Queen Creek has, with respect to its various subdivisions, made representations through advertising, promotional materials and oral statements that the growth of land values at its subdivisions has corresponded and still corresponds to the growth of land values in certain other geographical areas. Through the use of such advertisements and oral statements, respondent has represented and is representing, directly or by implication, that lot values at its subdivisions increase at a rate comparable to those of certain other geographical areas. In truth and in fact, lot values at respondent's

subdivisions do not bear any significant relation to land values in these other geographical areas and do not increase at a rate similar thereto. Therefore the acts and practices described herein are deceptive and unfair.

PAR. 19. In the further course and conduct of its aforesaid business, respondent Queen Creek has represented directly or by implication, that land being offered for sale in its subdivisions would soon be unavailable, and therefore that prospective purchasers must purchase lots immediately or risk being unable to do so.

PAR. 20. In truth and in fact, respondent Queen Creek's land holdings at the subdivisions were and are so substantial that prospective purchasers could wait a substantial period of time and still be able to obtain land in respondent's subdivision. Therefore, the acts and practices alleged in Paragraph Nineteen herein are deceptive and unfair.

PAR. 21. In the further course and conduct of its aforesaid business, respondent Queen Creek has made oral statements concerning the location of the lots offered for sale. By and through such statements, respondent has represented and is representing, directly or by implication, that prospective purchasers must purchase immediately to ensure that they can obtain what respondent's employees refer to as "desirable locations."

PAR. 22. In truth and in fact, purchasers could wait a substantial amount of time and still have a substantial choice of lots with locations as "desirable" as those offered at the time the representations alleged in Paragraph Twenty-One are made. Therefore, the acts and practices alleged in Paragraph Twenty-One herein are deceptive and unfair.

PAR. 23. In the further course and conduct of its aforesaid business, respondent Queen Creek, with regard to the Valle Vista subdivision, has used advertisements, pamphlets, oral statements, and slides to give prospective purchasers the impression that Valle Vista will provide all the comforts of suburban living because it is near the city of Kingman, Arizona, that employment opportunities exist in the area, that industry is expected to relocate in the area, and that Valle Vista will prosper by virtue of the fact that it abuts U.S. Highway 66.

PAR. 24. In truth and in fact, Valle Vista does not offer the comforts of suburban living as that term is commonly used, the Kingman area does not offer sufficient employment opportunities to absorb an influx of significant numbers, industry is not expected to relocate, and prosperity could not reasonably be expected to follow because Valle Vista abuts U.S. Highway 66. Therefore, the acts and practices

set forth in Paragraph Twenty-Three herein are deceptive and unfair.

PAR. 25. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various oral statements in sales presentations concerning the import or significance of signing the agreement to purchase respondent's land. By and through such statements, respondent has represented directly or by implication that by signing a contract the purchaser is not entering into a binding obligation to purchase land, thus obscuring the legal or practical significance of signing a contract.

PAR. 26. In truth and in fact, respondent Queen Creek treated the agreement to purchase as a binding legal obligation upon its execution. Therefore, the acts and practices alleged in Paragraph Twenty-Five are deceptive and unfair.

PAR. 27. In the further course and conduct of its aforesaid business, respondent Queen Creek has made reference to stocks, annuities, and other forms of investment. By and through these references respondent has represented that the purchase of its land is a stable and secure investment.

PAR. 28. In truth and in fact the purchase of respondent's land is not a secure and stable investment, and the mere mention of the forms of investment described in Paragraph Twenty-Seven above during the course of a presentation, the purpose of which is to sell land, is an unfair and deceptive act or practice.

PAR. 29. In the further course and conduct of its aforesaid business, respondent Queen Creek has utilized contract provisions which are not understandable to many consumers or cannot be evaluated by many consumers. Respondent has made the contract available to prospective purchasers, solicited and obtained signatures to the contract from purchasers in circumstances where the purchasers did not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondent has discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, and the discouragement of purchasers who wish to seek assistance of counsel before entering into such an agreement, constitute unfair acts or practices.

PAR. 30. In the further course and conduct of its aforesaid business, respondent has utilized artificial and deceptive photographic techniques, including the use of wide-angle lenses, in the production of

brochures and pamphlets in promoting the sale of land in its subdivisions. Typical of brochures produced in this manner was one which distorted the size of lakes at the Cordes Lakes subdivision. The use of such artificial and deceptive photographic techniques is an unfair and deceptive practice.

PAR. 31. Respondent Queen Creek's land sale contracts contain a declaration by the purchaser that the purchaser understands that no agent or representative of the seller shall have any authority whatsoever to make any representation on behalf of the seller aside from what is stated in the written contract. Use by respondent of the aforesaid declaration is an unfair and deceptive act or practice because respondent and its employees make representations, through advertisements and publications of general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from, or which obscure, the rights and obligations of the purchaser and of the respondent.

PAR. 32. Respondent Queen Creek's land sale contracts and promissory notes contain a clause which provides that if the purchaser defaults on installment payments or otherwise fails to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages. Use by respondent of the aforesaid forfeiture provision is an unfair act or practice.

PAR. 33. In the further course and conduct of its aforesaid business, respondent Queen Creek made it known to purchasers and prospective purchasers that they had a right to cancel the contract for sale of land, if upon visiting the site within six months of purchase they were dissatisfied with the lot. Respondent maintained sales personnel at the subdivision sites ostensibly to serve as guides for the visiting owners and as on site salesmen. However, respondent's salesmen actually used these visits by owners to sell more land to the owners and to discourage owners from exercising their cancellation privilege. The use by respondent of the site visits to vitiate the effect of the 6-month refund provision and to promote the sale of additional lots constitutes an unfair act or practice.

PAR. 34. Respondent Queen Creek through its agents and representatives has represented to prospective purchasers that construction financing of single and multi-family dwellings, and engineering design and construction services for dwellings in respondent's subdivisions would be easily obtained.

PAR. 35. In truth and in fact, purchasers have experienced problems in obtaining home construction financing, and respondent

Queen Creek has no single or multi-family dwelling design or construction capability. Therefore, the representations alleged in Paragraph Thirty-Four constitute unfair and deceptive acts or practices.

PAR. 36. In the further course and conduct of its aforesaid business, respondent Queen Creek has, through oral statements and other means, represented that certain facilities or improvements, including an 18-hole golf course, large lakes for boating and fishing, fully paved roads and underground utilities, are presently available, or will be available in the near future at Valle Vista, Cordes Lakes and Verde Village, respectively.

PAR. 37. In truth and in fact, the facilities or improvements referred to in Paragraph Thirty-Six are not now and will not soon be made available, or said facilities were inadequately engineered and constructed at the subdivisions so as to be practically unavailable. Therefore, the acts and practices alleged in Paragraph Thirty-Six herein are deceptive and unfair.

PAR. 38. In the further course and conduct of its aforesaid business, respondent Queen Creek has induced members of the public through deceptive and unfair acts and practices to pay to respondent substantial sums of money towards the purchase of lots in respondent's developments. Respondent has received and is receiving the said sums, and has failed to construct the claimed improvements and amenities in a timely and adequate manner. Respondent's continued failure to construct the represented improvements and amenities without refunding money to purchasers, as alleged in this paragraph, constitutes an unfair act or practice.

PAR. 39. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various written and oral statements to the public concerning the purpose of contacting members of the public and inviting them to dinner parties or other gatherings, or the purpose of offering goods and services free or at low cost. By and through such statements respondent has represented, directly or by implication, that the purpose in inviting members of the public to dinner parties or other gatherings, or in offering goods or services free or at low cost, was to inform people of the land situation in general, or to accomplish some purpose other than attempting to get invitees to sign contracts for the purchase of undeveloped land.

PAR. 40. In truth and in fact, respondent Queen Creek's purpose in contacting members of the public or holding dinner parties or other gatherings, or in offering goods or services free or at low cost, was to induce the signing of contracts for the purchase of respondent's land.

Therefore, the acts and practices alleged in Paragraph Thirty-Nine are deceptive and unfair.

PAR. 41. In the course and conduct of its aforesaid business, respondent Queen Creek has presented purchasers with a contract, a property report required to be provided to the purchaser by federal or state law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers on whether to sign a contract for the purchase of respondent's land. Respondent frequently has made the aforesaid documents available only at dinner parties or other gatherings sponsored by respondent in circumstances where it is likely that many purchasers will not read or fully comprehend the meaning and impact of such documents. In many instances respondent has withheld reports required to be provided to the purchaser by state or federal law until after an agreement is signed, which practice is in violation of federal or state laws. Withholding such crucial information and selling land under such circumstances, involving a substantial financial commitment by the purchaser, is a deceptive and unfair act or practice.

PAR. 42. In the further course and conduct of its aforesaid business, respondent Queen Creek has made oral statements and representations to members of the public concerning the present and future development of its subdivisions. By and through such statements and representations, respondent has represented, directly and by implication, that its subdivisions will, in the near future, be developed at least to the extent that all or most lots will be useable as homesites, with potable water, electricity and telephone service available without extraordinary charges for hook-up to said utilities, and that acceptable subdivision roads and drainage systems and structures would be constructed.

PAR. 43. In truth and in fact, respondent's subdivisions are not and will not in the near future be developed to the extent that all or most lots will be useable as homesites, with potable water, electricity, and telephone service available without extraordinary charges for hook-up to said utilities, and acceptable roads and drainage systems and structures. Therefore, the acts and practices alleged in Paragraph Forty-Two herein are deceptive and unfair.

PAR. 44. In the further course and conduct of its aforesaid business, respondent Queen Creek has represented, directly or by implication, that the particular lot a purchaser buys will, in the near future, or at some specifically stated time, be useable as a homesite, with potable water, electricity, and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 45. In truth and in fact, many purchasers bought lots which were not useable as homesites, because potable water, electricity and telephone service were not made available without extraordinary charges, or were not available within the near future or such specifically stated time. Therefore, the representations alleged in Paragraph Forty-Four constitute deceptive and unfair acts or practices.

PAR. 46. In the further course and conduct of its aforesaid business, respondent Queen Creek has endorsed promissory notes executed by purchasers to other financial institutions, continued to collect payments from purchasers, and, when mortgages had been satisfied, were unable to deliver to purchasers a satisfaction of mortgage and thus clear title. The use by respondent of the aforesaid procedure constitutes an unfair act or practice.

PAR. 47. The use by respondent of the aforementioned unfair and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and to cause the purchase of substantial numbers of respondent's lots because of said mistaken and erroneous belief.

PAR. 48. The above acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter 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 Flagg Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 10960 Wilshire Boulevard, in the City of Los Angeles, State of California.

Respondent Queen Creek Land and Cattle Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business at 3500 North Central Ave. in the City of Phoenix, State of Arizona.

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

It is ordered. That respondents, Flagg Industries, Inc., a corporation, and Queen Creek Land and Cattle Company, a corporation, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the financial strength, size, and diversity or extent of assets of respondents.

2. Representing, either orally or in writing, directly or by implication:

a. That the vacant lots which respondents are offering for sale constitute a good or excellent investment, that significant monetary gain can be achieved, or that there is little or no financial risk involved in the purchase of respondents' lots.

b. That the resale of a vacant lot purchased from respondents is not difficult.

c. That the value of land at respondents' subdivisions is rising or will rise in the future.

d. That the prices of respondents' lots periodically rise or that prices are increasing, have increased, or will increase, without clearly and conspicuously disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases do not in any way relate to the value of land, and that the value of land to purchasers does not appreciate proportionately with the price rises.

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

f. That the value of, or demand for, 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.

g. That the growth in land values or potential growth in land values at respondents' subdivisions corresponds to or will correspond to the growth in land values of any other locality, or in any way comparing land values or potential growth in land values at respondents' subdivisions to land values or potential growth in land values in any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

h. That land in respondents' subdivisions will soon be unavailable or otherwise scarce, or that land in any particular subdivision of respondents will soon be unavailable.

i. That prospective purchasers must purchase a lot immediately to ensure that a particular location will be available.

j. That respondents' subdivisions offer the comforts of suburban living, or that respondents' subdivisions are other than isolated, sparsely populated areas.

k. That jobs for purchasers who decide to move to any of respondents' subdivisions will be obtainable, without specifying exactly which jobs are currently available for people with the prospective purchasers' qualifications and salary requirements.

l. That new industry is moving to any of respondents' subdivisions, unless the industry is actually moving onto the subdivision itself, and unless respondents describe exactly what industry or industries is or are moving to the subdivision or subdivisions, when

such moves are to take place, and the number and types of jobs which will be made available.

m. That new industry is moving near respondents' subdivisions, unless the industry is actually moving and unless respondents describe exactly which subdivision or subdivisions, the mileage from the subdivision or subdivisions, to the site of the industry or industries, when such moves are to take place, and the number and types of jobs which will be made available.

n. That any of respondents' subdivisions will prosper in any way by virtue of its location.

o. That persons being solicited to purchase respondents' property are not entering into a legally binding obligation, merely making a refundable deposit, reserving the property, not making a final decision regarding purchase of property, or in any manner whatsoever obscuring the legal or practical significance of signing a land sale contract, promissory note or any other instrument.

Provided, however, that respondents may make those representations in the sale of land for which there is a documented reasonable basis to believe that such representations are true. Said documentation shall be made available to Commission staff upon request to review during reasonable business hours.

3. Making any statements or representations which in any manner refer to or concern investments in stocks, annuities or any other form of investment.

4. In any way discouraging prospective purchasers from obtaining the assistance of counsel or other professionals in order to understand the provisions of respondents' land sales contracts, promissory notes, or other documents, or make other determinations as to the advisability of purchasing respondents' land.

5. Using any motion pictures, still pictures, or other depictions in any type of sales presentation or promotional material unless such motion pictures, still pictures, or depictions are in fact genuine and accurate representations of the material or location presented therein.

6. From the date this order becomes final, including in any contract for the sale of land, or in any other document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that verbal representations have not been made in connection with the sale, or that no express or implied representations have been made in connection with the sale or offering for sale of land.

7. From the date this order becomes final, 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 to the effect that upon failure of the purchaser to pay an installment due under the contract or otherwise to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages.

8. Using site visits afforded purchasers in connection with a right of cancellation to vitiate in any way that right or attempt to sell additional land.

9. Misrepresenting or obscuring the right of a purchaser under any provision of respondents' contract or of this order, or under any applicable statute or regulation, to cancel a transaction or receive a refund.

10. Misrepresenting that financing for the construction of dwellings on subdivision lots is available or that respondents offer design or construction services.

11. Misrepresenting orally or in writing the present or future extent of development in any of respondents' subdivisions.

12. a. Representing that respondents will provide, or that respondents' subdivisions will have available, any facility or improvement, other than the utilities treated separately in paragraph 2 of Section III of this order, unless respondents' contracts or promissory notes at the time of the representation contain (i) a legal obligation on the part of respondents to provide or make available said facilities and improvements at a date certain, not later than 10 years from the date of purchase, set out clearly and conspicuously in the document, and (ii) a statement as to the cost to the purchaser, if any, for such facilities or improvements.

b. Failing to express the aforesaid contractual obligations set out in subparagraph a. above in the contract or promissory note with the purchaser in the following manner:

(i) A complete description of each improvement or facility to be provided or made available;

(ii) A provision that in the event any of the improvements or facilities specified in the instrument 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 or facilities, and of the purchaser's right to exercise within 30 days of receipt of said notice his option to exchange his lot

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 or facilities specified by the seller in this instrument are not available to the lot which is the subject of this instrument, or are not completed within six months of the time provided in this instrument, the purchaser may elect, at his option, to (1) receive, at no additional expense to the purchaser, an exchange acceptable to the purchaser of other property of at least equal price, equivalent size, and with those improvements contracted for, or (2) cancel this instrument and receive from the seller a full refund of all monies paid hereunder plus the legal rate of interest, compounded annually. To exercise this option, the purchaser 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 or facilities.

(iv) Where Acts of God delay the construction of improvements, a reasonable extension of the six-month time period in the instrument does not violate this order and the purchaser's option does not operate until said reasonable time has elapsed. *Provided, however*, respondents shall notify purchaser of said Act of God in accordance with the above.

Subsections a. and b. above shall apply to all contracts, promissory notes, or other binding documents executed after the date this order becomes final.

c. Failing to make the exchange or refund requested by a purchaser under the terms of this paragraph of the order within seventy-five (75) days of receipt of notification from the purchaser.

d. Soliciting or obtaining the purchaser's assent to a waiver or limitation or otherwise imposing any condition upon the right of a purchaser to an exchange or a refund as set out in this paragraph.

II

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith:

1. Include, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, dinner parties or other gatherings, awards of free or low cost gifts, sightseeing tours, or any other goods or services, which invitation or

other communication is in any manner related to the sale of land, the following statement: "The purpose of [the event or activity] is to persuade you to sign a contract for the purchase of undeveloped land in [name of state in which land is located] at a cost of approximately [average contract price in the subdivision during previous year rounded off to nearest \$500 or, in the case of a new subdivision, average offering price rounded off to nearest \$500]."

If said invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously in the invitation or communication; if the invitation or communication is oral such disclosure shall be made orally during the telephone invitation or communication, and in writing by mail to be received by the prospective purchaser at least three days prior to the event or activity; *provided, however*, that in the case of consumers already within the state within which the subdivision is located, such disclosure may be made one day prior to a tour, or site visit, so long as (a) all written materials given to such consumers make such a disclosure in print as large as the largest print in such materials, and (b) all agents of respondents who promote the tour and all employees of respondents who in any way attempt to influence consumers' decisions orally inform consumers of the purpose of the tour or site visit.

2. a. Include, clearly and conspicuously, in all sales presentations, promotion materials, and advertising, other than TV or radio advertisements, in the same size type as that which is predominantly used in such material, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF OUR LAND TO BE RISKY. THE FUTURE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IT HAS NOT GENERALLY BEEN POSSIBLE FOR PURCHASERS OF LAND FROM [SELLING RESPONDENT] TO RESELL THE LAND AT A PROFIT. PURCHASERS GENERALLY HAVE BEEN UNABLE TO RESELL THE LAND AT ALL. IT IS SUGGESTED THAT YOU DISCUSS ANY POSSIBLE PURCHASE WITH A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

b. Include, clearly and conspicuously, in all TV and radio advertisements, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF ANY OF OUR LAND RISKY.

3. Set forth on the first page of any contract for the sale of land in 24-point type, "CONTRACT FOR THE PURCHASE OF LAND." with no other writing except that required by the following paragraph and paragraph 2. of Section III of this order.

4. Print the following in 12-point boldface type as the only writing

Decision and Order

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in addition to that required by paragraph 3. of Section II and paragraph 2. of Section III of this order, on the first page of all contracts for the sale of land:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU SHOULD NOT CONSIDER THIS PURCHASE AS AN INVESTMENT. THE FUTURE VALUE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IN FACT, THERE IS GENERALLY NO RESALE MARKET FOR THIS LAND; PREVIOUS PURCHASERS HAVE, FOR THE MOST PART, FOUND IT IMPOSSIBLE TO SELL THE LAND AT ALL, MUCH LESS AT A PROFIT.

IT IS THEREFORE SUGGESTED THAT YOU CONSIDER YOUR NEEDS CAREFULLY, AND HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

WHILE YOU HAVE 10 DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT YOU NOT SIGN UNTIL EXERCISING THE CARE SUGGESTED IN THE PREVIOUS PARAGRAPH.

Signature

Date

No contract or other legally binding instrument for the sale of respondents' land shall be valid unless this statement is signed and dated by the purchaser after he has had a reasonable amount of time to read the whole page.

5. a. Furnish each purchaser, at the time the purchaser signs a contract or other document for the sale of land, with a copy of the contract or other document and two copies of the following form. The title of the form shall be "NOTICE OF RIGHT OF CANCELLATION" printed in 12-point type and the form shall contain in 10-point boldface type the following information and statements.

Date of Transaction

Contract Number

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL

BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE 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 selling 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]

[Signature of purchaser]

b. Complete both copies before furnishing this "Notice of Right of Cancellation" to the purchaser, by entering the name of the selling respondent, the address of the respondent's place of business, the date of the transaction, the contract number, and the date, not earlier than the tenth business day following the date of transaction, by which the purchaser may give notice of cancellation. The term "selling respondent" as required by this order shall mean Queen Creek Land and Cattle Company, its successors or assigns or any other dba used in selling land.

c. Where a timely notice of cancellation is received and said notice is not properly signed, and respondents do not intend to honor the notice, respondents shall immediately 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 the purchaser must be mailed to respondents by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

d. Where the signature of a prospective purchaser is solicited during the course of a sales presentation, inform each person orally, at the time he signs the contract, or other legally binding instrument, of his right to cancel as stated above.

6. Include, clearly and conspicuously, in each contract or other document for the sale of land the following statement in 12-point boldface type.

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

SHOULD PURCHASER CHOOSE TO CANCEL PURSUANT TO THIS PROVISION, ANY PAYMENTS MADE BY PURCHASER UNDER THIS CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY PURCHASER WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, PURCHASER MUST MAIL OR DELIVER A SIGNED COPY OF THE NOTICE OF RIGHT OF CANCELLATION FURNISHED BY SELLER, A TELEGRAM, OR ANY OTHER WRITTEN NOTICE TO [selling respondent] AT [selling respondent's place of business] NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

7. Honor any signed and timely notice of cancellation by a purchaser, and within 10 business days after the receipt of such notice (a) refund all payments made under the instrument, and (b) cancel and return any negotiable instrument executed by the purchaser in connection with the contract.

8. Send to prospective purchasers (1) copies of all reports required by either federal or state law and (2) copies of all materials required by this order, along with any invitation or other communication inviting the prospective purchaser to attend a land sales dinner.

9. If the land is to be sold other than at a land sales dinner, furnish (1) copies of all reports required by federal or state law to be furnished to a purchaser of respondents' land at or before the signing of a legally binding instrument and (2) copies of all materials required to be furnished by this order, with the first written materials or during the first contact which the prospective purchaser has with respondents or any of their agents or employees.

10. Inform orally and in writing all prospective purchasers of vacant land that home financing may not be available, and that a bank located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to build or purchase a house on that land.

11. Whenever respondents offer a refund contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

- a. Provide the purchaser three business days after taking tour or making said inspection within which to request a refund;
- b. Include in any contract, or other legally binding instrument, in immediate proximity to the provision setting forth the availability of a refund upon completion of a company-guided inspection tour or registered inspection of the property, the following statement:

YOU, THE PURCHASER(S), HAVE AN ADDITIONAL RIGHT TO CANCEL THE TRANSACTION IF YOU TAKE THE COMPANY-GUIDED TOUR OR MAKE A REGISTERED INSPECTION OF THE PROPERTY AND NOTIFY THE COMPANY OF YOUR INTENTION TO EXERCISE THE RIGHT TO CANCEL PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF SUCH TOUR OR INSPECTION.

c. Orally inform the purchaser at the time the instrument is signed and at the time the tour is taken or the inspection is registered of this cancellation right.

d. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall contain in boldface type of a minimum size of 10 points the following statements:

NOTICE OF CANCELLATION

*[Date of company-guided
inspection tour of property]*

[Contract number]

YOU MAY CANCEL YOUR CONTRACT OR PROMISSORY NOTE WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE:

TO CANCEL YOUR CONTRACT OR PROMISSORY NOTE, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO: *[Name of selling respondent]*, *[address of selling respondent's place of business]*, NOT LATER THAN MIDNIGHT OF ____.

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

(Date)

(Purchaser's signature)

(Purchaser's signature)

e. Before furnishing the purchaser copies of the "Notice of Cancellation" set forth in subparagraph d. above, complete both copies by entering the name of the selling respondent and the address of its place of business, the date of the company-guided inspection tour or the registered inspection of the property, and the date, not earlier than the third business day following the date of the last contact in connection with said tour or inspection by which the purchaser may give notice of cancellation.

f. If respondents condition the right of cancellation referred to

above upon a tour or registered inspection, respondents shall insure that a representative is on the site during reasonable daylight hours to register inspections.

g. Where a timely notice of cancellation is received from a purchaser purportedly in accordance with the requirements of this paragraph of the order, but where said notice is not properly signed, and respondents do not intend to honor the notice, respondents shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, and a new cancellation form; said notice shall inform the purchaser of his error and state clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

III

It is further ordered. That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising for sale, offering for sale, contracting to sell, or selling any interest in:

1. Any land represented in any manner as being useable now or in the future as a homesite, unless either:

a. At the time of sale all of the conditions set forth below are met, or

b. The selling respondent's contract with the purchaser contains a legal obligation on the part of respondents to meet the conditions set forth below within five years of the date of the sale.

The conditions to be met by respondents are as follows:

(1) The purchaser must have available an adequate sewage system by means of:

(a) A septic tank, or

(b) A central sewage system, the hook-up to which will cost the purchaser only a reasonable and customary branch-line extension fee;

provided, that respondents must include in the contract whether a septic tank will be necessary or whether a central sewage system will be available, and the approximate amount which a septic tank would cost to install or a central sewage system would cost to hook up to,

including an estimate of the amount said fee will increase over the next five years.

(2) The purchaser must be able to obtain potable water by hooking up to a central water system solely by payment of a reasonable and customary branch-line extension fee; *provided*, that respondents must include in the contract the approximate amount of said extension fee, including an estimate of the amount said fee will increase over the next five years.

(3) The purchaser must be able to obtain standard electricity and telephone service from a local utility authorized to do business in the state in which the land is located, which service will cost the lotholder only nominal hook-up and installation fees and customary and usual rates; *provided*, that respondents must include in the contract the approximate amount of said hook-up and installation fee, including an estimate of the amount said fee will increase over the next five years.

If respondents fail for any reason to meet the conditions required by this paragraph, they shall refund to each purchaser to whom the obligations are not fulfilled all monies paid by such purchaser to respondents under the terms of the land sales contract, plus the legal rate of interest, compounded annually.

2. Any lot not covered in paragraph 1. above of this order provision, unless there shall appear as described in paragraph II 4., as additional paragraphs required by paragraph II 4., such of the following statements as are applicable:

a. For contracts for the sale of lots as to which neither respondents nor any other party is legally obligated to make a central sewer system available, add the following, including the 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 APPROVAL BY GOVERNMENTAL AUTHORITIES.

b. (i) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make available a central potable water system, and where water is not available on an aid-in-construction basis, add the following, including the third sentence only where applicable:

A CENTRAL SYSTEM FOR POTABLE WATER WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU.

MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS.

(ii) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make a central water system available, and where water is available on an aid-in-construction basis, add the following, including the fourth sentence only where applicable:

A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER FROM A CENTRAL SYSTEM DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU. MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS.

(iii) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make a central system for potable water available, where water is available on an aid-in-construction basis, and there are legal restrictions on drilling for water, add the following, including the third sentence only where applicable:

A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL IS PROHIBITED IN SOME AREAS.

c. For contracts for the sale of lots to which electricity and telephone service will only be available to the purchaser on an aid-in-construction basis, add the following:

IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN ELECTRICITY AND TELEPHONE SERVICE DUE TO THE HIGH COST OF MAKING THESE SERVICES AVAILABLE TO THIS AREA.

d. For contracts for the sale of lots to which respondents or any other party is legally obligated only to provide unpaved roads with no maintenance obligations, add the following in lieu of all of the above:

THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD "AS IS." ELECTRICITY, WATER, SEWER AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. YOUR LOT WILL BE ACCESSIBLE, IF AT ALL, ONLY BY UNPAVED ROADS WHICH WILL NOT BE MAINTAINED. THE USE OF SUCH ROADS MAY BE IMPOSSIBLE WITHOUT MAINTENANCE. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE.

e. For contracts for the sale of lots to or on which neither respondents nor any other party is legally obligated to provide any improvements, add the following in lieu of all of the above:

THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD "AS IS." ELECTRICITY, WATER, SEWER, AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. NO ROADS ARE PLANNED AND YOUR LOT IS PROBABLY INACCESSIBLE BY CONVENTIONAL TRANSPORTATION. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE.

f. For contracts for the sale of lots in any of respondents' properties in which purchasers are required to join an improvement association which is obligated to spend accumulated funds for improvements to and services for lots such as, but not limited to, central water and sewer systems, telephone and electrical services, road maintenance and paving, add the following:

YOU ARE OBLIGATED BY THIS CONTRACT TO JOIN AND MAKE REGULAR PAYMENTS ESTIMATED TO BE [estimated *annual* cost] TO [name of association]. THE [name of association] IS LEGALLY OBLIGATED TO [name of selling respondent], BUT NOT TO YOU, TO USE SUCH FUNDS TO PROVIDE UTILITIES AND OTHER IMPROVEMENTS TO AND SERVICES FOR YOUR LOT. HOWEVER, YOU MUST MEET CERTAIN ADDITIONAL PAYMENTS, AS SET FORTH IN THE CONTRACT, BEFORE YOU REQUEST THESE UTILITIES, IMPROVEMENTS, AND SERVICES.

g. For purposes of providing additional information to purchasers, respondents may advise purchasers of which governmental approvals have been granted in the past for private wells and septic tanks. This subsection, g., shall be in addition to disclosures required by Sections 2(a) and (b), and not in lieu thereof.

If respondents fail for any reason to make the disclosures required by this paragraph, they shall refund to each purchaser to whom the disclosures were not made all monies paid by such purchaser under the terms of the land sales contract when requested to do so by such purchaser.

IV

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale of land in their three subdivisions, shall provide all improvements, amenities, and facilities described in the HUD Property Reports in effect on the date of sale

and the additional improvements described below. Said requirements shall include both new construction and repair of existing improvements which are in a state of disrepair or were improperly constructed.

Improvements and amenities to be constructed at the respective subdivisions shall include, but not be limited to, the following:

1. Cordes Lakes

a. All subdivision roads, culverts and other drainage structures shall be constructed to minimum Yavapia County specifications, as those specifications required at the time construction began.

b. A low water crossing and an alternative access road for emergency use by residents of Units 5 and 6 to reach the main highway during flood stages of Big Bug Creek. The location of this access road shall be mutually agreed upon by respondents and the property owners' association.

c. All water lines shall be placed underground.

d. Drain, de-weed, and re-fill Crystal Lake. Crystal and Bass Lakes shall be filled and maintained at the highest level attained since their construction. Where modification of the water supply system is required to maintain this level, said modifications shall be accomplished.

e. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-0162-02-27(A) dated September 10, 1973, shall be completed using accepted construction standards for Yavapia County.

f. All construction shall be completed at Cordes Lake not later than April 30, 1977. All amenities constructed or still under construction by respondents shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondents and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than April 30, 1977.

g. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondents until such time as title is accepted by the appropriate Yavapia County or other public entity.

2. Verde Village

a. All roads in the subdivision shall be brought to Yavapia County standards for asphalt paved roads, as those standards existed when the roads were initially constructed.

b. All drainage channels, ditches, culverts and other structures

and facilities shall conform to Yavapia County standards and shall be consistent with accepted engineering and construction standards for the topography of the subdivision.

c. All lots on which the owner indicates to respondents that he intends to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement terminates when the improvements are accepted by the Yavapia County Engineer.

d. The existing water distribution system shall be checked, modified and upgraded where necessary to assure reasonably uniform line pressure and discharge rates to all occupied units and those units in which lots have been offered for sale. All water lines shall be placed underground.

e. Grade and restore recreation areas, and lots along Verde River. The owners of lots adjacent to the Verde River which have been damaged by respondents' employees or agents and which have not been restored within 60 days after this order becomes final shall be offered a full refund plus the legal rate of interest, or the right of exchange, at the owner's option.

f. Respondents shall contact, within 60 days of acceptance of this order by the Commission, the owner of each occupied lot in the subdivision to determine if said owner had to bear the cost of extending water, telephone, or electrical service to his property line. Where owners had to bear the cost, respondents shall reimburse that owner for those costs in a lump sum within ten days of notification and furnishing of proof by the lot owner.

g. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-1024-02-144(G) Amendment No. 1 dated September 10, 1973, shall be completed and accepted by Yavapia County Engineer not later than June 30, 1979.

h. All construction shall be completed at Verde Village not later than June 30, 1979. All amenities constructed or still under construction by respondents shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondents and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than June 30, 1979.

i. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondents until such time as title is accepted by the appropriate Yavapia County or other public entity.

3. Valle Vista

a. All subdivision roads shall be constructed to match existing roads in Unit One and shall meet Mojave County specifications for paved roads, as those specifications are interpreted by the Mojave County Engineer.

b. All culverts, drainage channels and ditches shall be constructed to Mojave County Specifications, or other required governmental flood control standards.

c. All lots on which the owner has indicated to respondents his intent to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement shall terminate on December 31, 1978.

d. Where future lots are approved for sale by the appropriate State of Arizona agency, respondents shall assure that Truxton Canyon Water Company, Inc., or another state approved water company can provide sufficient potable water to satisfy the expected demand.

e. All subdivision water lines shall be underground and shall supply potable water within standards established by the Arizona Health department and Water Commission for Total Dissolved Solids (TDS), fluorides and other impurities.

f. Respondents shall complete the 18-hole golf course, tennis court, swimming pool, shuffle board, park and other amenities as set out in the Property Report—Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, dated December 17, 1974, not later than December 31, 1978.

g. Respondents shall maintain the roads, culverts and other drainage facilities, lakes, golf course, community center, swimming pool, and any other common facilities until such time as these facilities have been accepted by the County of Mojave or the subdivision property owners' association; *provided, however*, that under no circumstances shall respondents convey to the property owners' association any facility prior to those facilities meeting standards mutually agreed upon by respondents and the property owners' association. All roads, culverts and other drainage facilities, and other improvements shall be completed and accepted for maintenance by the Mojave County Engineer not later than December 31, 1978.

4. Funds advanced by respondents to the trust fund established under paragraph V of this order shall under no circumstances be used for maintenance of any common facility included in the

Property Reports referred to in this paragraph prior to acceptance by the association.

5. Failure to complete construction and secure acceptance by the appropriate county engineer within the time limits set out above at each of the subdivisions constitutes a continuing violation of this order.

V

It is further ordered, That respondents, their agents, representatives and employees shall:

1. Place in three separate trusts, for the benefit of each respective subdivision, Twenty Thousand Dollars (\$20,000) per year for five years, to be divided among the three property owners' associations as follows:

a. Cordes Lakes: Eight Thousand Dollars (\$8,000) per year

b. Verde Village: Eight Thousand Dollars (\$8,000) per year

c. Valle Vista: Four Thousand Dollars (\$4,000) per year

Expenditures by the associations shall be limited to physical improvements and maintenance of common facilities for the general benefit of each subdivision as a whole. The trustee of these funds shall be chosen by the respective property owners' association.

2. Within sixty (60) days after this order is final, withdraw from membership in the Cordes Lake and Verde Village property owners' associations. With respect to the Valle Vista property owners' association, respondents, their agents, representatives and employees shall, within sixty (60) days after this order is final, take or cause to be taken, such action as may be necessary, including but not limited to amendments to existing articles and/or by-laws of the association, which will embody the following conditions:

a. Respondents, their agents, representatives and employees shall not control, directly or indirectly, the determination as to the use of funds placed in trust under this order, other than advising the association as to what uses said funds might be put;

b. No present, past or future agent, representative or employee of respondents may serve as a director of the association;

c. Respondents, their agents, representatives and/or employees shall cause to be elected as directors of the association such owners

within the subdivision who are not, nor have ever been, employees, agents, or representatives of respondents, and do not have, nor have had, any relationship with respondents, their agents, representatives and employees which might tend in any way to influence and/or control, directly or indirectly the actions of such elected director, or the independent judgment of such elected directors in carrying out their fiduciary responsibilities, nor shall respondents, their agents, representatives and employees use the articles, by-laws or general corporation law to influence and/or control, directly or indirectly, the actions of such elected directors; and

d. Respondents, their agents, representatives and employees shall withdraw from membership in the association as soon as is practicable and reasonable under the circumstances, and in no event later than one year after the date on which this order becomes final.

VI

It is further ordered. That respondents, their successors and assigns, for purposes of future litigation arising out of their land sale activities, shall forbear from relying upon or asserting as a defense, the clause in the contract or other binding instrument containing language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of respondents' land, other than those set forth in the contract or other instrument. Further, respondents, their successors and assigns, shall cease and desist from enforcing those provisions in their contracts or other binding instruments which operate to cause the purchaser to forfeit sums paid in installments upon default of any one installment payment. This section shall apply to contracts or other binding instruments presently in force and those to be used in future land sales transactions.

VII

It is further ordered. That respondents, their successors and assigns, agents, representatives and employees shall cease and desist from endorsing, discounting, assigning or in any other manner negotiating contracts, promissory notes, or other evidences of indebtedness by purchasers of lots in their subdivisions in such a manner or to such parties as to jeopardize or cloud the title or render the title unmarketable to the purchaser upon satisfaction of the mortgage.

VIII

It is further ordered, That respondents, their successors and assigns, and agents, representatives and employees shall:

1. Deliver a copy of this decision and order to each of their present or future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondents' subdivisions.

2. Provide each person so described in the preceding paragraph with a form, returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.

3. Inform all such present and future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondents' subdivisions that respondents shall not use any person, or the services of any person, to sell or promote the sale of real estate unless such person agrees to and does file notice with the respondents that he will be bound by the provisions contained in this order. If any such person does not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such person, or the services of such person, to sell or promote the sale of real estate.

4. Institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order.

5. Discontinue dealing with the persons revealed by the aforesaid program of surveillance or by any other means who continue on their own the unfair or deceptive acts or practices prohibited by this order.

It is further ordered, That in the event that respondents transfer all or a substantial part of their business or assets to any other corporation, individual, partnership or other entity, including a transfer of all or part of the ownership interest of any or all of respondents' wholly-owned land sale subsidiary, respondents shall require said transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided,* that if respondents wish to present to the Commission any reasons why said order should not apply in its present form to said transferee, they shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said business transfer. Failure to require that such transferee be bound under this order as set out in this paragraph shall be considered a continuing violation of this order.

It is further ordered, That respondents notify the Commission at

least thirty (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 corporations which may affect compliance obligations arising out of this order.

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.

Complaint

IN THE MATTER OF

UNION CARBIDE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECS. 3 AND 7 OF
THE CLAYTON ACT

Docket C-2902. Complaint, Sept. 28, 1977 — Decision, Sept. 28, 1977

This consent order, among other things, requires a New York City producer of industrial gases and gas welding apparatus, for a 20-year period, to cease using any tying arrangement, or employing any exclusive dealing contract that is not for one year or less, or which fails to provide a 90-day or less period for notice of termination. Additionally, the firm is prohibited for a ten-year period from acquiring distributors of industrial gases or gas welding equipment without prior Commission approval, except where any of the prescribed conditions exist. Further, in those instances where prior approval is not required, Union Carbide must furnish the Commission with sufficient data so as to enable it to determine whether such acquisition violates the terms of the order.

Appearances

For the Commission: *Gordon Youngwood, Roger S. Leifer and Geoffrey S. Walker.*

For the respondent: *George A. Avery, Wald, Harkrader & Ross, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Union Carbide Corporation ("Union Carbide"), respondent herein, has violated the provisions of Section 3 of the Clayton Act, as amended (15 U.S.C. 14), and Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and the provisions of 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, issues this complaint, stating its charges as follows:

DEFINITIONS

1. For the purpose of construing this complaint, the following definitions will apply:

(a) "Industrial Gases" shall mean the following gases: Oxygen, Nitrogen, Argon, Acetylene, Hydrogen and Helium.

(b) "Welding Products" shall mean equipment, supplies and consumable items used to fuse or cut metals.