

Complaint

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

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

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

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

Appearances

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

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

COMPLAINT*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I

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

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

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

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

II

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

III

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

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

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

IV

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

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

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

V

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

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

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

28. In truth and in fact:

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

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

VI

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

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

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

VII

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

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

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

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

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

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

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

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

34. In truth and in fact:

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

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

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

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

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

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

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

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

VIII

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

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

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

IX

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

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

X

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

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

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

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

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

d) Respondents will maintain all roads.

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

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

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

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

d) Respondents have not adequately maintained the roads.

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

XI

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

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

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

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

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

43. In truth and in fact:

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

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

c) There are no contractual obligations or development plans to

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

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

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

XII

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

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

XIII

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

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

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

XIV

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

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

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

XV

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

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

(a) The Gulf of Mexico is accessible by boat from marinas and from lots fronting on canals;

(b) All canals will be suitable for recreational uses including but not limited to boating and water skiing.

53. In truth and in fact:

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

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

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

XVI

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

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

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

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

56. In truth and in fact:

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

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

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

XVII

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

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

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

XVIII

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

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

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

XIX

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

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

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

XX

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

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

XXI

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

XXII

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

XXIII

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

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

XXIV

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

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

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

XXV

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

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

75. In truth and in fact:

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

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

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

XXVI

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

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

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

XXVII

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

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

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

XXVIII

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

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

XXIX

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

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

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

XXX

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

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

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

XXXI

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

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

XXXII

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

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

XXXIII

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

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

XXXIV

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

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

XXXIV-A

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

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

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

XXXIV-B

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

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

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

XXXV

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

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

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

XXXVI

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

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

XXXVII

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

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

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

XXXVIII

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

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

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and the complaint should have issued stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

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

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

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

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

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

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

ORDER

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

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

"Respondents' subdivision" refers to a subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Subparagraph 3(b)(i) Disclosure]

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

[Subparagraph 3(b)(vii) Disclosure]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE OF CANCELLATION

[enter date of transaction]

[enter purchaser(s) name(s)]

Decision and Order

93 F.T.C.

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

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

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

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

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

Purchaser's Signature

Date

Purchaser's Signature

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

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

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

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

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

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

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

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

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

NOTICE OF CANCELLATION

[enter date of inspection]

[enter purchaser(s) name(s)]

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

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

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

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

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

Purchaser's Signature

Date

Purchaser's Signature

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

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

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

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

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

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

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

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

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

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

a) For representations of present availability or use:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) a provision stated as follows:

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

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

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

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

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

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

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

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

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

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

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

(ii) such assessments are placed in escrow;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. In connection with the sale of land:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) that the Conservation Association may assess such purchasers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. Representing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II

It is further ordered:

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

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

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

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

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

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

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

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

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

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

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

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

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

III

It is further ordered:

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

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

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

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

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

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

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

IV

It is further ordered:

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

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

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

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

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

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

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

V

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

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

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

Commissioner Pitofsky did not participate.

APPENDIX A

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

BUREAU OF CONSUMER
PROTECTION

IMPORTANT NOTICE TO PALM BEACH HEIGHTS LOT BUYERS

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

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

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

Please read this letter and think about it carefully.

559

Decision and Order

Your Palm Beach Heights lot.

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

It will be difficult to resell your lot.

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

Palm Beach Heights is likely to remain undeveloped.

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

Payment for improvements and taxes.

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

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

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

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

Cavanagh Communities Corporation
444 Brickell Avenue
Miami, Florida

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

Sincerely,
Jeffrey Tureck
Attorney

APPENDIX B

IMPORTANT NOTICE TO ROTONDA LOT BUYERS

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

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

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

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

I. LOT VALUE AND RESALE

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

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

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

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

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

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

II. STATUS OF ROTONDA

A. Changes in Plan of Development

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

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

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

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

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

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

B. Flood Prevention Costs

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

C. Various Improvements, Amenities and Facilities

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

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

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

2. *Don Pedro Island*

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

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

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

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

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

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

D. Environmental Problems

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

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

IV. OPTIONS AVAILABLE TO PURCHASERS

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

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

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

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

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

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

Sincerely,

Jeffrey Tureck
Attorney

Complaint

93 F.T.C.

IN THE MATTER OF
AMWAY CORPORATION, INC., ET AL.

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

Docket 9023. Complaint, March 25, 1975 — Final Order, May 8, 1979

This order, among other things, requires two Michigan corporations engaged in the door-to-door marketing of various household products, and two corporate officers, to cease allocating customers among their distributors; fixing wholesale and retail prices for their products; taking retaliatory action against recalcitrants; and disseminating price-listing data which fail to advise that price adherence is not obligatory. Respondents are additionally prohibited from misrepresenting potential earnings and other relevants to prospective distributors.

Appearances

For the Commission: *Joseph S. Brownman, D. Stuart Cameron, Mary Lou Steptoe, B. Milele Archibald and Michael Goldenberg.*

For the respondents: *Lee Loevinger, Philip C. Larson and Robert J. Kenney, Jr., Hogan & Hartson, Washington, D.C. and John E. Stephen, Ada, Mich.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Amway Corporation, Inc. is a corporation organized on or about September 6, 1949, under the name Ja-Ri Corporation, Inc. Its name was formally changed to Amway Corporation in November 1963. On or about January 1, 1964, Amway Sales Corporation, Amway Services Corporation and Amway Manufacturing Corporation, all of which were Michigan corporations, were merged into Amway Corporation, Inc. Respondent corporation maintains its home office and principal place of business at 7575 East Fulton Rd., Ada, Michigan. [2]

PAR. 2. Respondent Amway Distributors Association of the United