

IN THE MATTER OF

FLAGG INDUSTRIES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2903. Consent Order, Sept. 27, 1977—Modifying Order, Sept. 29, 1983

This order modifies the Commission's order issued on Sept. 27, 1977 (90 F.T.C. 226), by eliminating Flagg Industries, Inc. as a respondent in this proceeding at such time as it contributes \$3,500,000 to the capital of Queen Creek Land and Cattle Corp., who would then be responsible for compliance with the terms of the 1977 order.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On June 3, 1983, Flagg Industries, Inc. and Queen Creek Land and Cattle Corporation, respondents in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the Consent Order that was issued on September 27, 1977. By letter, dated August 25, 1983, petitioners agreed to modify their original proposal.

The petition asked that the Commission reopen the proceeding in this matter and modify the Consent Order that was issued in 1977 so that Flagg Industries, Inc. (Flagg) would no longer be a respondent under that Order. The purpose of this change would be to permit a sale of those portions of the business of Flagg that are not related to the land sales operation of its subsidiary Queen Creek Land and Cattle Corporation (Queen Creek). In return for releasing Flagg from further obligations under the 1977 Order, Flagg would make a contribution of \$3,500,000 to the capital of Queen Creek and certain obligations would be placed on Queen Creek to assure compliance with the essential terms of the 1977 Order. The petition was on the public record for thirty (30) days and no comments were received.

After reviewing the petition, the Commission has concluded that the public interest warrants reopening and modifying the Order in the manner requested by the petitioners.

The modification shall take effect at such time as Flagg makes its contribution of \$3,500,000 to the capital of Queen Creek. The Commission's approval is expressly conditioned on the petitioners' representations that the sum received by Queen Creek will be invested promptly in government securities, qualified corporate securities, certificates of deposit, and savings and other bank accounts, so as to

assure Queen Creek's ability to comply with the terms of this modified Order.

In view of the contribution that Flagg will make to the capital of Queen Creek, and the manner in which Queen Creek will invest that capital, there is no longer any need to retain Flagg as a respondent under the Order. Accordingly,

It is ordered, That:

At such time as Flagg Industries, Inc., contributes \$3,500,000 to the capital of Queen Creek Land and Cattle Corporation pursuant to an agreement between the companies conforming to the terms of Exhibit B-2 of the petition presented to the Commission, and so long as the contribution is made on or before December 31, 1983,

(1) Flagg Industries, Inc., shall be deemed to have fulfilled the obligations imposed by the Commission's Order of September 27, 1977;

(2) the Order of September 27, 1977, shall be deemed to be modified to eliminate Flagg Industries, Inc., as a respondent in this proceeding; and

(3) as modified, the Order shall read as follows:

ORDER

I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

l. That new industry is moving to any of respondent's subdivisions, unless the industry is actually moving onto the subdivision itself, and unless respondent describes exactly what industry or industries is or are moving to the subdivision or subdivisions, when such moves are to take place, and the number and types of jobs which will be made available.

m. That new industry is moving near respondent's subdivisions, unless the industry is actually moving and unless respondent de-

scribes exactly which subdivision or subdivisions, the mileage from the subdivision or subdivisions, to the site of the industry or industries, when such moves are to take place, and the number and types of jobs which will be made available.

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

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

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

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

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

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

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

7. From the date this order becomes final, including in any contract for sale of the land, or in any document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that upon failure of the purchaser to pay an installment due under the contract or otherwise to perform any obligation under the contract,

the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages.

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

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

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

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

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

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

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

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

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

In the event that any of the improvements or facilities specified by the seller in this instrument are not available to the lot which is the subject of this instrument, or are not completed within six months of the time provided in this instrument, the purchaser may elect, at his option, to (1) receive, at no additional expense to the purchaser, an

exchange acceptable to the purchaser of other property of at least equal price, equivalent size, and with those improvements contracted for, or (2) cancel this instrument and receive from the seller a full refund of all monies paid hereunder plus the legal rate of interest, compounded annually. To exercise this option, the purchaser must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements or facilities.

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

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

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

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

II

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

1. Include, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, dinner parties or other gatherings, awards of free or low cost gifts, sightseeing tours, or any other goods or services, which invitation or other communication is in any manner related to the sale of land, the following statement: "The purpose of [the event or activity] is to persuade you to sign a contract for the purchase of undeveloped land in [name of state in which land is located] at a cost of approximately [average contract price in the subdivision during previous year rounded off to nearest \$500 or, in the case of a new subdivision, average offering price rounded off to nearest \$500]."

If said invitation or communication is in writing, such disclosure

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

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

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

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

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

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

4. Print the following in 12-point boldface type as the only writing in addition to that required by paragraph 3 of Section II and paragraph 2 of Section III of this order, on the first page of all contracts for the sale of land:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU SHOULD NOT CONSIDER THIS PURCHASE AS AN INVESTMENT. THE FUTURE VALUE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IN FACT, THERE IS GENERALLY NO RESALE MARKET FOR THIS

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LAND; PREVIOUS PURCHASERS HAVE, FOR THE MOST PART, FOUND IT IMPOSSIBLE TO SELL THE LAND AT ALL, MUCH LESS AT A PROFIT.

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

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

Signature

Date

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

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

()

Date of Transaction

()

Contract Number

NOTICE OF CANCELLATION

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

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [*name of selling respondent*] AT [*address of respondent's place of business*] NOT LATER THAN MIDNIGHT OF

[Date]

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

[Date] [Signature of Purchaser]

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

c. Where a timely notice of cancellation is received and said notice is not properly signed and respondent does not intend to honor the notice, respondent shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error, and stating clearly and conspicuously that a notice signed by the purchaser must be mailed to respondent by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

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

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

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

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

TO CANCEL THE TRANSACTION, PURCHASER MUST MAIL OR DELIVER A SIGNED COPY OF THE NOTICE OF RIGHT OF CANCELLATION FURNISHED BY SELLER, A TELEGRAM, OR ANY OTHER WRITTEN NOTICE TO [selling re-

spondent] AT [*selling respondent's place of business*] NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

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

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

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

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

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

a. Provide the purchaser three business days after taking tour or making said inspection within which to request a refund;

b. Include in any contract, or other legally binding instrument, in immediate proximity to the provision setting forth the availability of a refund upon completion of a company-guided inspection tour or registered inspection of the property, the following statement:

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

c. Orally inform the purchaser at the time the instrument is signed

and at the time the tour is taken or the inspection is registered of this cancellation right.

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

NOTICE OF CANCELLATION

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

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

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

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

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

(Date)

(Purchaser's signature)

(Purchaser's signature)

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

f. If respondent conditions the right of cancellation referred to above upon a tour or registered inspection, respondent shall insure

that a representative is on site during reasonable daylight hours to register inspections.

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

III

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

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

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

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

The conditions to be met by respondent are as follows:

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

(a) A septic tank, or

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

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

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

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

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

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

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

a. For contracts for the sale of lots as to which neither respondent nor any other party is legally obligated to make a central sewer system available, add the following, including the third sentence only where applicable:

A CENTRAL SEWER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A SEPTIC TANK WOULD BE AT YOUR EXPENSE. HOWEVER, THE USE OF A SEPTIC TANK ON YOUR LOT IS CONTINGENT ON APPROVAL BY GOVERNMENTAL AUTHORITIES.

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

A CENTRAL SYSTEM FOR POTABLE WATER WILL NOT BE AVAILABLE WHEN

YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU. MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS.

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

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

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

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

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

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

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

THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD "AS IS." ELECTRICI-

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

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

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

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

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

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

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

IV

It is further ordered, That respondent, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale of land in its three subdivisions, shall provide all improvements, amenities, and facilities described in the HUD Property Reports in effect on the date of sale and the additional improvements described below. Said requirements shall include both new construction and repair of existing improvements which are in a state of disrepair or were improperly constructed.

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

1. Cordes Lake

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

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

c. All water lines shall be placed underground.

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

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

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

g. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondent until such time

as title is accepted by the appropriate Yavapai County or other public entity.

2. Verde Village

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

b. All drainage channels, ditches, culverts and other structures and facilities shall conform to Yavapai County standards and shall be consistent with accepted engineering and construction standards for the topography of the subdivision.

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

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

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

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

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

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

agreed to by respondent and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than June 30, 1979.

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

3. Valle Vista

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

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

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

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

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

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

g. Respondent shall maintain the roads, culverts and other drainage facilities, lakes, golf course, community center, swimming pool, and any other common facilities until such time as these facilities have been accepted by the County of Mojave or the subdivision property owners' association: *provided, however*, that under no circumstances shall respondent convey to the property owners' association any facility prior to those facilities meeting standards mutually agreed upon by respondent and the property owners' association. All roads, culverts and other drainage facilities, and other improvements

shall be completed and accepted for maintenance by the Mojave County Engineer not later than December 31, 1978.

4. Funds advanced by respondent to the trust fund established under paragraph V of this order shall under no circumstances be used for maintenance of any common facility included in the Property Reports referred to in this paragraph prior to acceptance by the association.

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

V

It is further ordered, That respondent, its agents, representatives and employees shall:

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

- a. Cordes Lake: Eight Thousand Dollars (\$8,000) per year.
- b. Verde Village: Eight Thousand Dollars (\$8,000) per year.
- c. Valle Vista: Four Thousand Dollars (\$4,000) per year.

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

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

- a. Respondent, its agents, representatives and employees shall not control, directly or indirectly, the determination as to the use of funds placed in trust under this order, other than advising the association as to what uses said funds might be put;
- b. No present, past or future agent, representative or employee of respondent may serve as a director of the association;
- c. Respondent, its agents, representatives and/or employees shall

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

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

VI

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

VII

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

VIII

It is further ordered, That respondent, its successors and assigns, and agents, representatives and employees shall:

1. Deliver a copy of this decision and order to each of their present or future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondent's subdivisions.
2. Provide each person so described in the preceding paragraph with a form, returnable to the respondent clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.
3. Inform all such present and future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondent's subdivisions that respondent shall not use any person, or the services of any person, to sell or promote the sale of real estate unless such person agrees to and does file notice with the respondent that he will be bound by the provisions contained in this order. If any such person does not agree to so file notice with the respondent and be bound by the provisions of the order, the respondent shall not use such person, or the services of such person, to sell or promote the sale of real estate.
4. Institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order.
5. Discontinue dealing with the persons revealed by the aforesaid program of surveillance or by any other means who continue on their own the unfair or deceptive acts or practices prohibited by this order.

It is further ordered, That in the event that respondent transfers all or a substantial part of its business or assets to any other corporation, individual, partnership or other entity, respondent shall require said transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided,* that if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said business transfer. Failure to require that such transferee be bound under this order as set out in this paragraph shall be considered a continuing violation of this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of

subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this order.

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

IX

It is further ordered, That

1. For the purposes of this section, the following terms shall be defined as stated:

a. *Liquid Assets* means cash, cash equivalents, government securities, other marketable securities, dividends and interest earned, and the land owned by respondent at Lake Forest, Placer County, California, including improvements thereon.

b. *Contingent Utility Liability* means the present value of the cost of installing utilities for property in respondent's subdivisions in Arizona, taking into account both the increased costs of future installations caused by inflation, and the discount rate that should be applied to future costs because of the time value of money.

c. *Qualified Corporate Securities* means corporate bonds which at the time of acquisition are rated not less than AA by Standard & Poor's Corporation, or not less than AA by Moody's Investors Service, Inc., and which provide a yield not less than that obtainable through obligations of the United States of America with comparable maturities.

2. Respondent shall invest the sum of \$3,500,000 in government securities, qualified corporate securities, certificates of deposit, and savings and other bank accounts in such a reasonable and prudent manner so as to satisfy the contingent utility liability.

3. For a period of five (5) years from the date on which this modified Order is issued:

a. Respondent shall pay no cash dividends to its shareholders.

b. Respondent shall not cause or permit the dissipation of any of its assets in any manner that impairs respondent's ability to comply with the terms of this Order; *provided, however*, that deterioration in the ordinary course of operation and normal wear is not a violation of this subsection.

c. Respondent shall not acquire the assets or stock of any company.

d. Respondent shall not purchase any of its outstanding stock.

e. Respondent shall not sell any additional lots at Valle Vista or

Verde Village and shall not sell any additional lots at retail at Cordes Lake.

4. Respondent shall, for five (5) years from the date on which this modified Order is issued, maintain in liquid assets as a contingent utility liability account an amount equal to \$2,800,000 reduced by the appropriate present value of the cost of utility installations made during the five year period. At any time after five (5) years from the date on which this modified Order is issued, respondent may recompute the contingent utility liability, if such recomputation is done by qualified personnel in accordance with all applicable professional standards.

Any such recomputation may take into account changes or new information regarding any factor used to calculate the present value of the future liabilities, including but not limited to the rate of installation of utilities, estimates of costs, inflation rates, or the appropriate discount rate. Any change in the rate of installation of utilities used in such recomputation shall be based upon actual historical experience over a period of not less than four (4) years immediately preceding the year of recomputation, or upon other stated factors that indicate that the previous assumptions regarding installation rates should be adjusted.

5. Before reducing the liquid assets in the contingent utility liability account, respondent shall submit such recomputation to the Commission for approval. The Commission shall treat such recomputation as if it were a request for modification pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Rule 2.51 of the Commission's Rules of Practice.

6. Notwithstanding the foregoing, respondent is under no obligation to make or utilize any recomputation of its contingent utility liability, *provided*, that in the absence of any recomputation the last approved recomputation or, if none, the computations contained in respondent's submission to the Commission in conjunction with these modification proceedings, shall remain applicable.

7. Respondent shall report annually to the Commission on the anniversary of this modification, for a period of seven (7) years, on its compliance with Paragraph IX of this modified Order.

Complaint

102 F.T.C.

IN THE MATTER OF

AMANA REFRIGERATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9162. Complaint, Oct. 7, 1982—Decision, Sept. 30, 1983*

This consent order requires an Amana, Iowa manufacturer and seller of household appliances, among other things, to cease representing that only Amana microwave ovens passed independent laboratory testing conducted in 1980, and that Amana microwave ovens were rated "best quality" in a 1980 consumer survey. The order prohibits misrepresentations concerning the purpose, content, or conclusion of any test or survey, and requires the company to maintain accurate records which substantiate and/or contradict any claim made for products covered by this order. Further, respondent must have a reasonable basis for all future quality, safety, or comparative performance representations made for microwave ovens.

Appearances

For the Commission: *Andrew Sacks* and *Joel Winston*.

For the respondent: *Steven R. Gustafson*, in-house counsel, Amana, Iowa and *Arthur L. Herold*, *Webster, Chamberlain & Bean*, 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 Amana Refrigeration, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Amana Refrigeration, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located in Amana, Iowa.

PAR. 2. Respondent is now and at all times relevant to this complaint has been engaged in the manufacture and sale of microwave ovens, combination microwave and convection ovens, (hereafter "microwave ovens") and other products for personal or household use by members of the general public (hereafter "consumer products").