

Complaint

105 F.T.C.

IN THE MATTER OF

WARD CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9160. Complaint, March 9, 1982—Decision, April 5, 1985*

This Consent Order, among other things, requires five Rockville, Maryland builders and sellers of residential housing, together with a corporation officer, to cease failing to fully honor valid warranty claims within a reasonable period of time; representing that materials are defect-free, unless defects due to faulty material, workmanship or design are corrected or remedied within a reasonable period of time; failing to provide purchasers with building lots substantially conforming to the physical characteristics represented by the sellers; and failing to disclose, prior to the signing of a sales contract, all disclaimers or limitations of the firms' responsibilities with regard to the physical condition of the lot. The text of all written warranties must be clearly and conspicuously displayed in sales offices and model homes, and a copy of such warranties must be provided to prospective buyers if requested. In addition, the firms are required to provide future purchasers with an opportunity to arbitrate warranty disputes; provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order; and, subject to conditions set forth in the order, provide repairs and/or payments to qualified homeowners who had purchased their homes between March 10, 1978 and a date one year prior to the effective date of the order, and who still own these homes.

Appearances

For the Commission: *Miriam Daniels, Louise R. Jung, Karen Egbert, Anne Maher and Richard C. Donahue.*

For the respondents: *Mitchell S. Cutler and Michael E. Kris, Finley, Kumble, Wagner, Heine, Undedberg & Casey, Washington, D.C. and Robert A. Skitol, Steven K. Yablonski and Jane Seigler, Wald, Harkrader & Ross, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents Ward Corporation, R.E. Ward, Inc., Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., corporations, and Richard E. Ward, individually and as an officer of said 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:

I. RESPONDENTS

PARAGRAPH 1. Respondent Ward Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondents R.E. Ward Inc., Ward Development Company, Inc., and Ward Component Systems, Inc., are wholly-owned subsidiaries of respondent Ward Corporation, and are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondents Richlynn Development, Inc. and Richlynn Land Developers, Inc., are wholly-owned subsidiaries of respondent Ward Corporation, and are corporations organized, existing and doing business under and by virtue of the laws of the State of Virginia, with their office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondent Richard E. Ward is an individual and is the principal officer and director of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

II. NATURE OF TRADE AND BUSINESS

PAR. 2. Respondents are now, and for some time past have been, engaged in: the construction of housing; the manufacture of pre-fabricated components and component systems, lumber products and other building materials for use in housing; the development of land on a finished lot basis; the improvement, repair or modification of housing; the advertising, offering for sale and/or sale of the above-mentioned property, goods or services to the public; and other like or similar activities.

III. JURISDICTION

PAR. 3. In the course and conduct of their business, respondents cause, and for some time past have caused, their property, goods and services to be offered for sale and sold in Maryland, Virginia and other States to purchasers and prospective purchasers located in Maryland, Virginia and various other States of the United States and

the District of Columbia by means of advertisements placed in newspapers of interstate circulation.

Respondent Ward Corporation provides, and for some time past has provided, its subsidiary companies incorporated and doing business in Maryland and Virginia with administrative, financial and accounting services, and in-house data processing facilities.

Respondent R.E. Ward, Inc., subcontracts, and for some time past has subcontracted, its housing construction services to its affiliates in Maryland and Virginia.

Respondents Ward Development Company, Inc., and Richlynn Development, Inc., are now, and for some time past have been, engaged in the offering for sale and sale of housing to purchasers and prospective purchasers residing in various States of the United States and the District of Columbia.

Respondent Ward Component Systems, Inc., is now, and for some time past has been, engaged in the manufacture, sale, and distribution of building components and materials from its plants in Maryland, Virginia and Delaware to customers located in various States of the United States and the District of Columbia.

Respondent Richlynn Land Developers, Inc., is now, and for some time past has been, engaged in the development of land in various States in the United States.

In addition, respondents cause, and for some time past have caused, their advertising material, contracts, and various business papers to be transmitted by means of the United States mail from their places of business in Maryland and Virginia to purchasers and potential purchasers in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said property, goods and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

IV. ACTS AND PRACTICES: WARRANTIES

PAR. 4. In the further course and conduct of their aforesaid business, respondents are now and have been, directly or implicitly, granting or disseminating certain warranties to purchasers of their aforesaid homes.

1. Respondents are now and have been disseminating a written warranty to purchasers of their aforesaid homes, under which warranty respondents warrant that they will correct (a) any defects due to faulty construction and/or defective materials, (b) specific defects including roof leaks, basement leaks, inadequate heating or air conditioning systems, excess settlement of finish grade, and (c) any patent

defects noted at the time of final inspection, where such defects are reported to respondents before the end of one year from the date of possession or settlement, whichever occurs first.

2. Respondents are now and have been since approximately July 1, 1976, by force of Maryland State law, warranting for a period of one year to purchasers of their aforesaid homes located in Maryland that at the time the home is completed it is (a) free from faulty materials, (b) constructed according to sound engineering standards and in a workmanlike manner, and (c) fit for habitation, except that these warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

3. Respondents are now and have been since approximately July 1, 1979, by force of Virginia State law, warranting for a period of one year to purchasers of their aforesaid homes located in Virginia that the home, at the time of transfer of record title or the purchaser's taking possession, whichever occurs first, is (a) sufficiently free from structural defects, so as to pass without objection in the trade, (b) constructed in a workmanlike manner, so as to pass without objection in the trade, and (c) fit for habitation.

PAR. 5. By and through the granting and dissemination of such warranties, respondents have represented, directly or implicitly, that:

1. Respondents will correct, in a workmanlike manner, all defects within the scope of the written warranty disseminated to purchasers, and will complete these tasks within a reasonable time after they receive notice of the defects.

2. Respondents will correct, in a workmanlike manner, all defects within the scope of the warranties implied under Maryland State law, and will complete these tasks within a reasonable time after they receive notice of the defects.

3. Respondents will correct, in a workmanlike manner, all defects within the scope of the warranties implied under Virginia State law, and will complete these tasks within a reasonable time after they receive notice of the defects.

PAR. 6. In truth and in fact, respondents have not fully performed their obligations under their written warranty and warranties implied under Maryland and Virginia State law.

1. In numerous instances, respondents have failed to correct, in a workmanlike manner, defects within the scope of their written warranty and/or warranties implied under Maryland or Virginia State law. Typical and illustrative of the uncorrected defects, but not all inclusive thereof, are:

- a. Excessive vibration, sloping and/or sagging of floors, caused in part by the faulty construction of floor support systems;
- b. Uneven and inadequate heating of rooms, caused in part by the use of undersized heat pumps, faulty installation of heating ducts and omission of insulation;
- c. Basement water leakage through walls, window wells and doors, caused in part by the faulty installation of components, poor site grading and inadequate waterproofing;
- d. Roof leaks, caused in part by the lack of building paper underneath the roofing shingles;
- e. Excessive air and water infiltration in window areas, caused in part by the faulty installation, poor fit and/or poor design of windows and window frames;
- f. Excessive cracking and settling of stoops, caused in part by the lack of a proper base under the stoops;
- g. Excessive cracking and settling of driveways, caused in part by the improper application of the asphalt material and/or inadequate preparation of the underlying surface;

2. In numerous instances, where respondents, in a workmanlike manner, have corrected defects within the scope of the written warranty and/or warranties implied under State law, purchasers have encountered delays frequently exceeding six months from the time respondents received notice of the defect to the time respondents corrected the defect.

Therefore, the statements, representations, acts and practices relating to respondents' written warranty, as alleged in Paragraphs Four (1.) and Five (1.) were and are deceptive.

PAR. 7. Furthermore, respondents' failure to perform their obligations fully pursuant to their written warranty and warranties implied under State law has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Four, Five, and Six were and are unfair.

PAR. 8. Furthermore, respondents continued to grant or disseminate said warranties to purchasers of their aforesaid homes even though respondents knew or should have known of their failure to perform warranty obligations fully with respect to past purchasers' homes. Under these circumstances, reasonably prudent businesspersons would have known that the acts and practices as alleged in Paragraphs Four, Five and Six were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 9. In the further course of their business, respondents are now and have been, since October 1, 1970, including a clause in their

"Agreement of Sale" whereby purchasers agree to accept respondents' written warranty "in lieu of all other warranties whatsoever, whether express or implied."

PAR. 10. By and through the inclusion of the aforesaid clause in the "Agreement of Sale," respondents have represented, directly or implicitly, that purchasers have only those warranty rights provided by respondents and no other warranty rights, whether express or implied under State law.

PAR. 11. In truth and in fact, the aforesaid clause is clearly inapplicable, ineffective, invalid and/or unenforceable under Maryland and Virginia State law. Therefore, the inclusion of this clause has the tendency or capacity to deceive or mislead purchasers as to their warranty rights and was and is unfair or deceptive.

V. OTHER ACTS AND PRACTICES

PAR. 12. In the further course and conduct of their aforesaid business, respondents are now and have been providing purchasers with an opportunity to inspect their homes prior to settlement while accompanied by respondents' representative and to have all readily apparent defects or incomplete items listed on an "Orientation Inspection" sheet provided by respondents. In the further course and conduct of their business, respondents have represented, directly or implicitly, orally or in writing, that they will correct or complete, in a workmanlike manner, as many items listed as possible prior to settlement, and/or will correct or complete, in a workmanlike manner, all items listed within a reasonable time after the pre-settlement inspection.

PAR. 13. In truth and in fact, respondents have not fully performed their obligations with respect to items listed by purchasers during the pre-settlement inspection.

1. In numerous instances, respondents have failed to correct, in a workmanlike manner, defects listed. Typical and illustrative of the uncorrected defects, but not all inclusive thereof are the following: floor vibration; basement leaks; erosion of dirt under stoops; deterioration of driveways; damaged siding; poorly fitting storm windows; missing or loose roof shingles.

2. In numerous instances, respondents have failed to complete, in a workmanlike manner, all incomplete items listed. Typical and illustrative of the incomplete items, but not all inclusive thereof, are the following: missing insulation; lack of grass coverage of the lot; presence of rocks and construction debris in the soil; unfinished and inadequate lot grading.

3. In numerous instances, where respondents, in a workmanlike

manner, have corrected or completed items listed, purchasers have encountered long delays frequently exceeding six months from the time of the pre-settlement inspection to the time respondents corrected or completed the item.

Therefore, the statements, representations, acts and practices as alleged in Paragraph Twelve were and are deceptive.

PAR. 14. Furthermore, respondents' failure to perform their obligations fully with respect to items listed by purchasers during the pre-settlement inspection has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Twelve and Thirteen were and are unfair.

PAR. 15. Furthermore, respondents continued to engage in the acts and practices alleged in Paragraph Twelve even though respondents knew or should have known of their failure to perform obligations fully with respect to items listed during the pre-settlement inspection by past purchasers of their aforesaid homes. Under these circumstances, reasonably prudent businesspersons would have known that the acts and practices as alleged in Paragraphs Twelve and Thirteen were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 16. In the further course and conduct of their aforesaid business, and for the purpose of inducing the public to purchase respondents' homes, respondents are now and have been including pictorial representations and written statements in their advertising brochures, sales documents and advertising inserted in newspapers of interstate circulation.

Typical and illustrative of said pictorial representations are Exhibits A, B, C, and D, attached hereto.

Typical and illustrative of said written statements are the following:

STANDARD FEATURES: Attractive Landscaping

STANDARD FEATURES: Landscaping includes seeding and shrubs.

You'll find split level and 2 story homes on beautiful lots all over a full acre.

An inviting community of traditional homes on beautiful ½ acre lots.

The homes are surrounded by beautifully landscaped shade trees . . .

Furthermore, respondents have built model homes which are open to the public. These homes are located on level lots which are fully grass-covered and landscaped.

PAR. 17. By and through the use of model homes and the representa-

tions and statements described in Paragraph Sixteen, and others of similar import and meaning not expressly set out therein, respondents have represented, directly or implicitly, that:

1. Respondents will grade, in a workmanlike manner, the lots sold to purchasers of their homes.

2. Respondents will remove rocks and construction debris from the lots.

3. Respondents will provide sufficient topsoil so that purchasers can reasonably maintain landscaping on the lots.

4. Respondents will adequately protect trees on the lots during the construction process.

PAR. 18. In truth and in fact, respondents have not finished lots as represented.

1. In numerous instances, respondents have failed to grade lots in a workmanlike manner.

- a. In numerous instances, respondents have failed to fill in ruts, depressions and holes created on the lots during the construction process.

- b. In numerous instances, respondents have failed to provide adequate drainage on the lot, resulting in the presence of standing water over long periods of time and large muddy areas on the lots.

- c. In numerous instances, respondents have left steep inclines on the lots.

2. In numerous instances, respondents have failed to remove substantial amounts of rocks and construction debris from the lots.

3. In numerous instances, respondents have failed to provide sufficient topsoil, resulting in the purchasers' inability to reasonably maintain the landscaping on the lots.

4. In numerous instances, respondents have failed to protect adequately trees on the lots during the construction process, resulting in the destruction of the trees.

Therefore, the representations, statements, acts and practices as alleged in Paragraphs Sixteen and Seventeen were and are deceptive.

PAR. 19. Furthermore, respondents' failure to finish lots as represented to purchasers has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Sixteen, Seventeen and Eighteen were and are unfair.

PAR. 20. Furthermore, respondents continued to engage in the acts and practices alleged in Paragraphs Sixteen and Seventeen even though respondents knew or should have known of their failure to finish lots as represented to past purchasers of their aforesaid homes. Under these circumstances, reasonably prudent businesspersons

would have known that the acts and practices as alleged in Paragraphs Sixteen, Seventeen and Eighteen were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 21. 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 engaged in the sale and construction of residential housing.

PAR. 22. The use by respondents of the aforesaid unfair, false, misleading, or deceptive statements, representations, acts, and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, or into the purchase of substantial numbers of respondents' houses by reason of said erroneous and mistaken belief.

PAR. 23. The aforesaid acts and practices of respondents, as herein alleged, were, and, are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Although respondents, in some of their sales contracts, provide for binding arbitration of disputes "arising under and pursuant to this Contract, or in any way related to the house and lot to be conveyed," purchasers could not have reasonably avoided injury resulting from respondents' alleged unfair acts or practices. The availability of arbitration was not referred to in conjunction with respondents' pre-settlement or warranty procedures and was not raised by respondents at the time any dispute arose between respondents and purchasers or at the time any lawsuit was filed by a purchaser against respondents. Furthermore, many other sales contracts used by respondents did not provide for arbitration of disputes. For these and other reasons, the presence of the arbitration provision in some of respondents' sales contracts does not excuse respondents from liability for the unfair acts or practices alleged herein. The acts and practices of respondents, as herein alleged, are continuing, and will continue, in the absence of the relief herein requested.

EXHIBIT A



In Gaithersburg, Ward is the only name you need to know.

Sure there are plenty of builders in Gaithersburg, but there's only one Ward, with 15 years' experience in satisfying Montgomery County homeowners. If you're concerned today about prices and financing, consider that Oakmont Manor offers fine, traditional homes with all the features you want from only \$124,990. And only Ward has special MONEYWISE financing, which enables you to pay less and afford more home than

you thought possible. Oakmont Manor is in the best section of Gaithersburg, close to shopping, entertainment and quick commuting. 1-270. And once you see the homes, you won't want to see anything else.

Ward at
Oakmont
Manor The

glor. of Gaithersburg. Take I-270 North to Exit 101, Shady Grove Rd. Left on Rt. 101, past Walnut Hill Shopping Center.

Ask about our
super below-market

**MONEY
WISE**

VA/FHA, 30-year
fixed rate conventional,
and adjustable rate plans.

Right on Central Ave. to
Oakmont Manor on the
right. Open 12-6 everyday
except Thursdays.
Phone (301)
918-2561

Ward at Oakmont Manor

Brokers Welcome—36 Finders Fee



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EXHIBIT B

**CLOSE-IN
SILVER SPRING, MD.**

Elegant traditional homes fr. \$119,990 with up to 5 bedrooms. Established Silver Spring neighborhood. Beltway Exit 23 North on Colesville Rd. to Randolph Rd., left 1/2 mile to Snowdens Mill on right. Phone 384-0476.

Snowdens Mill

**IN THE WOODS
OF SPRINGFIELD
FROM \$119,700**

Colonial designs with up to 4 bedrooms, loads of extras. Near Springfield Country Club. Beltway Exit 4 South onto I-95 to Springfield interchange. Old Bear Ridge and Rolling Rd. to Kenwood Oaks on right. Phone 451-8398.

**KENWOOD
oaks**

**BUY NOW FOR
IMMEDIATE DELIVERY**

Act fast for great financing on luxury homes with basements & garages included. Located from \$159,990. Exit 197 to I-97 West (left) on Rte. 197 to Montpelier Dr., left one mile to North Point Lane. Right and follow signs to sales office. Phone 553-7025.

**MONTPELIER
MANOR**

**BEST DEAL
IN ANNANDALE**

Priced from just \$122,490 in a prime neighborhood near Fairfax Hospital. 20 minutes from downtown. From the Beltway, Exit Rte. 50 West 1/2 mile to Gallows Rd., left to Woodburn Rd., right to Tobin Rd. to Sales Office. Phone 573-0823.

Prosperity Woods

**MONTGOMERY
COUNTY VALUE**

Just 5 luxury colonial homes left fr. \$115,990. 1/2 acre lots. Take I-270 North to Damascus Exit (Rte. 118). East to Rte. 355. Left to Rte. 27. Right on Rte. 27 (Cedar Ridge Rd.) and continue to Mt. Airy Dr. Left to Rockledge Dr. Left to Sales Office. Phone 265-6055.

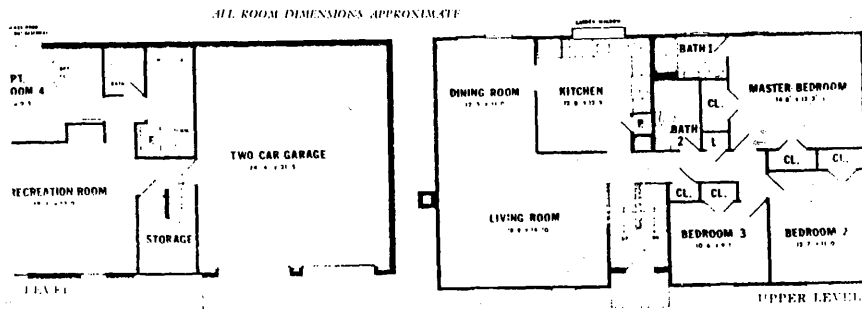
Middleboro Estates

**BROKERS
INVITE**

Ward

CORPORATION

EXHIBIT C



Note: Legal restrictions limit 4th bedroom
usage to homes with walk-out basements only.

The Sycamore

SPLIT FOYER

An exciting flair for good living begins in the dramatic, two-story split-foyer entry.

Upstairs, a large formal living room, separate dining room, an eat-in kitchen boasting the very latest appliances and, over the sink, a sunny garden window with shelving for your plants.

The sleeping wing includes a master suite with its own bath, 2 additional bedrooms and a complete hall bath. On the lower level, a tremendous recreation room with an included fireplace, space for a 4th bedroom and optional bath, ample household storage, and a two-car garage.

Air conditioning and carpeting are included. Energy-conservation package includes heat pump and thermal insulation for year-round fuel savings.



S-2



S-1

EXHIBIT D



Partridge Court

The Hunter 3 Bedroom End-of-Row Townhouse

For maximum privacy, select a superb end-of-the-row townhouse! Private side entrance, extra-large room sizes throughout. The Hunter features a step-down family room with optional fireplace, a full basement to use as you require, and much more besides.

Builder/Developer:
RECHLYNN DEVELOPMENT, INC.

Sold by:

*Town
& Country*
REALTORS



DECISION AND ORDER

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

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to section 3.25 of its Rules, now in conformance 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. Respondents Ward Corporation, Ward Development Company, Inc., and Ward Component Systems, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their principal place of business located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

2. Respondents Richlynn Development, Inc., and Richlynn Land Developers, Inc., are corporations organized, existing and doing business under and by virtue of the State of Virginia, with their principal place of business located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

3. Respondent Richard E. Ward is an officer of each said corporate respondent, and his principal place of business is located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

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

ORDER

I.

It is ordered, That respondents Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., and Richlynn Land Developers, Inc., corporations, and respondent Richard E. Ward, individually and as an officer of the corporations, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any new single-family unit which is a detached structure, an attached or semi-attached townhouse unit or a twin unit (hereinafter referred to as "residential home") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents will correct, repair or otherwise remedy any defect due to faulty materials, workmanship or design unless respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

2. Representing, directly or by implication, that the materials, workmanship or design is defect-free or meets or will meet a specified level of performance, unless the representation is, in fact, true or, in the event of any defect or a failure to meet the specified level of performance, respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

3. Failing to honor fully every valid warranty claim within a reasonable period of time after receipt of a homeowner's request therefor; *provided, however,* that nothing herein shall be construed as precluding respondents from denying or contesting a warranty claim believed in reasonable good faith to be without merit or, in such cases, from invoking any other rights provided by law.

4. Failing, whenever respondents represent, directly or by implication, that the lot offered to a purchaser will have certain physical characteristics including, but not limited to, size, contours, drainage, soil preparation, and seeding, to provide the purchaser with a lot conforming substantially to such representation.

5. Failing, prior to the time a sales contract for a new residential home is signed, to disclose clearly and conspicuously in writing to the

prospective purchaser all disclaimers or limitations of respondents' responsibilities with regard to the physical condition of the lot.

II.

It is further ordered, That respondents, in connection with the sale of any new residential home settled after the home is completed, do forthwith cease and desist from representing, directly or by implication, that respondents will correct or complete items listed on an "Orientation Inspection Sheet" or any similar document reflecting the results of the purchaser's pre-settlement inspection of the home, unless respondents:

(a) prior to settlement, inspect the home with the purchaser and any accompanying person(s), including (if desired) an inspector chosen by the purchaser, and list every readily apparent problem or incomplete item on an Orientation Inspection Sheet or similarly designated document;

(b) correct or complete all such listed problems or items within one hundred and twenty (120) days of the inspection, subject to *force majeure*, labor disruptions, or any other events reasonably beyond respondents' control, in which case respondents shall correct or complete such problems or items within a reasonable period of time; and

(c) disclose to the purchaser clearly and conspicuously on a copy of the Orientation Inspection Sheet or similarly designated document provided to the purchaser that, subject to events reasonably beyond respondents' control, all listed problems or items will be corrected or completed within one hundred and twenty (120) days.

III.

It is further ordered, That, in connection with any offering for sale of any new residential home for which a written warranty is offered, respondents shall:

1. Clearly and conspicuously display in each sales office and in each model home:

(a) The text of the warranty.

(b) A notice, in plain and readily understood language, that copies of the warranty may be obtained free of charge upon request.

2. Provide a copy of the warranty to each prospective purchaser who requests one.

3. Furnish to each purchaser a copy of the warranty prior to or at the time of execution of the sales contract for a new home.

4. Disclose clearly and conspicuously within the warranty any limitations on, disclaimers of, or exclusions from coverage under the written warranty or any implied warranty arising under state law; *provided, however*, that respondents shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

IV.

It is further ordered, That, in connection with each sale of a new residential home for which a written warranty is offered, respondents shall establish and abide by an informal dispute resolution procedure as described in Appendix A. Respondents shall furnish to each purchaser of such a home a copy of Appendix A or a comparable written explanation of said informal dispute resolution procedure prior to, or at the time of, execution of the sales contract for the new home; *provided, however*, that nothing herein shall prohibit respondents from utilizing a form of sales contract which clearly and conspicuously discloses that the homeowner agrees to invoke the aforementioned dispute resolution procedure prior to invoking any other remedy provided by law.

V.

It is further ordered, That, if respondents deny any written request for warranty work under respondents' written warranty, respondents shall, within thirty (30) days after receipt of the request, provide the homeowner with a written statement of reasons for the denial, together with notice of the homeowner's right to submit any such warranty dispute to the informal dispute resolution procedure provided for in Paragraph IV of this Order.

VI.

It is further ordered, That, in connection with any offering for sale of a new residential home for which no written warranty is offered, respondents shall, prior to the time of execution of the sales contract, disclose clearly and conspicuously in writing to the prospective purchaser the fact that no written warranty is offered and any limitations on, disclaimers of, and exclusions from any implied warranty arising under state law; *provided, however*, that respondents shall not make any representation, written or oral, concerning any such limita-

tion, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

VII.

It is further ordered, That, for each homeowner who took title to a home from respondents from March 10, 1978, to one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of that home, respondents shall establish and abide by the redress procedure and dispute resolution mechanism described in Appendix B for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the pre-settlement inspection of the home, *provided that*:

1. In the case of a warranty claim, the homeowner made a claim to respondents during the first year after settlement, and there is credible written evidence in respondents' or the homeowner's possession to establish that such a claim was then made;
2. In the case of a claim relating to the pre-settlement inspection, the homeowner or respondents had at the time listed the problem or item on the Orientation Inspection Sheet;
3. The claim relating to a specific problem or item has a value of \$500 or more, measured by the greater of the homeowner's actual out-of-pocket expenses reasonably incurred or the reasonable estimated cost of repair by a contractor. (All problems or items resulting from the same cause and involving the same component(s) or defect(s) shall be deemed to be a single problem or item for purposes of determining value. For example, a number of leaking windows in a home caused by improper installation of the windows shall be deemed to be a single problem or item.);
4. Respondents refused or otherwise failed adequately to satisfy the homeowner's claim; and
5. In the case of a home in which the homeowner has modified the affected part in a manner that substantially increases the cost of repairing or correcting the alleged problem or item but the homeowner nonetheless establishes that the alleged problem or item existed prior to the modification, respondents shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VIII.

It is further ordered, That, for each homeowner who took title to a home from respondents within one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of the home, respondents shall establish and abide by an informal dispute resolution procedure substantially similar to that described in Appendix A for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the presettlement inspection of the home and that within sixty (60) days after this Order becomes final, respondents shall provide each such homeowner with the notice letter attached hereto as Appendix C, along with a copy of Appendix A, or a comparable written explanation of said informal dispute resolution procedure.

IX.

It is further ordered, That in connection with any sale of a new residential home respondents shall maintain for three years after the date of transfer of title or of delivery of the home to the purchaser, whichever is earlier, and upon reasonable notice make available to the Commission for inspection and copying all non-privileged correspondence, memoranda and other documents regarding complaints or requests for repairs made to respondents by the purchasers, including all documents relating to repairs made by respondents to the home and all documents relating to disputes handled under the informal dispute resolution procedures required by this Order.

X.

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

XI.

It is further ordered, That respondents shall, within thirty (30) days of the date of service of this Order, distribute a copy of this Order to (a) each of respondents' operating subsidiaries and divisions, and (b) each officer and salaried employee of respondents and of said subsidi-

aries and divisions engaged in the construction, advertising, offering for sale, or sale of any new residential home(s).

XII.

It is further ordered, That within six (6) months after the date of service of this Order and within six (6) months after the completion of all of respondents' obligations pursuant to paragraph VII of this Order, respondents shall file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this Order.

XIII.

It is further ordered, That all provisions of this Order except Sub-paragraphs 1, 2, 3 and 4 of Paragraph I shall be vacated ten (10) years after the date of service of this Order.

XIV.

It is further ordered, That no provision of this Order shall apply to any person, partnership, corporation or other entity not named herein unless respondents, individually or collectively, either have (a) a majority equity position in, (b) actual working control over, or (c) management responsibility for such person, partnership, corporation or other entity.

APPENDIX A

The informal dispute resolution procedure required by Paragraph IV of this Order shall be available to homeowners for an initiation fee of no more than \$75.00 during the first three years after the effective date of this Order provision, no more than \$100.00 during the fourth through sixth years after the effective date of this Order provision, and no more than \$125.00 during the remaining years that this Order provision remains in effect. *Provided, however,* That in no event shall the initiation fee constitute more than half of the total cost of the procedure. Respondents shall be ordered to return or reimburse any such fee as part of the decision at the end of the procedure if the homeowner's claim is determined to be meritorious.

Upon invocation of this procedure by a homeowner, respondents shall appoint an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In ruling on claims submitted to him/her for resolution, the arbitrator shall (a) be bound by the provisions of respondents' written warranty and any express or implied warranties arising from state law and (b) use the Home Owners Warranty Program Quality Standards which are applicable to the first year of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret all applicable

warranty provisions. He/she may also consider any applicable Orientation Inspection Sheet or similar document relating to an applicable pre-settlement inspection.

The arbitrator shall render a written decision on all claims submitted for resolution within sixty (60) days of respondents' receipt of the initiation fee, and shall promptly provide a copy of his/her decision to the homeowner and respondents. (If the homeowner is required under the sales contract to pursue this procedure prior to invoking any other legal remedy, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required sixty-day period.) Such decisions shall be limited to determinations of the existence of defects or other problems within the scope of respondents' obligations, the nature of and time within which respondents should make required repairs or corrections, and, if the submitted claim is determined to be meritorious, return or reimbursement of the homeowner's initiation fee. The arbitrator's decision on each submitted claim shall be binding on respondents but not on the homeowner.

APPENDIX B

The procedure for redress under Paragraph VII of the Order shall include the following:

A. Within sixty (60) days after the Order becomes final, respondents shall provide each homeowner covered by paragraph VII with the attached documents and a detailed description of the dispute resolution mechanism and its possible uses.

B. Within sixty (60) days after the mailing date of respondents' notice to the homeowner of his/her right to file claims for redress, the homeowner shall mail his/her claim to respondents or forfeit any right to repairs or reimbursement under this Order.

C. Within sixty (60) days after receipt of any claim for redress, respondents shall respond in writing to the homeowner by either:

1) Offering, within a stated time, to correct or repair the problem or item or to pay the homeowner an amount of money in settlement of the claim, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

a) If a homeowner accepts the offer, he/she has the right to submit any dispute over respondents' performance under the offer to the dispute resolution mechanism; and

b) If a homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute resolution mechanism.

2) Denying the claim and at the same time giving the homeowner a detailed explanation of the reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute resolution mechanism.

D. If a homeowner accepts the offered remedy, respondents shall perform the remedy within the time promised.

E. The dispute resolution mechanism shall:

1) Be available to homeowners for an initiation fee of no more than \$75.00. *Provided, however,* That in no event shall the initiation fee constitute more than half of the total cost of the procedure.

2) Use an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In decisions relating to warranty claims, he/she shall be bound by the provisions of the written warranty and warranties implied under state law. The arbitrator shall use the Home Owners Warranty Program Quality Standards which are applicable to the first year

of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret the warranty provisions.

3) Render a decision in writing within sixty (60) days of respondents' receipt of the initiation fee. The arbitrator shall provide a copy of that decision to the homeowner and respondents within one week of rendering it. The arbitrator's decision shall be binding on respondents but not on the homeowner, who, at the time he/she receives a copy of the arbitrator's decision, shall be provided by the arbitrator or respondents with notice of his/her right to accept or reject the offer, along with notice that:

a) If the homeowner accepts the decision, he/she has the right to submit any dispute over compliance with the decision to the dispute resolution mechanism; and

b) If the homeowner rejects the decision, he/she has the right to pursue any other legal remedies available to him/her.

F. The arbitrator shall include in his/her decision an award of reimbursement of the initiation fee unless the arbitrator determines that the homeowner's claim was not substantially justified.

ATTACHMENT 1 TO APPENDIX B

Dear Ward/Richlynn Homeowner:

This letter is to notify you that you may be entitled to certain repairs made to your home free of charge. You may also be entitled to be reimbursed for money you already spent repairing your home.

Ward Development Company, Inc. ("Ward") and Richlynn Development, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to make certain home repairs without charge or to reimburse homeowners for repairs previously paid for by homeowners. If you purchased (that is, took title to) a home from Ward or Richlynn from March 10, 1978, to [one year prior to date of service of the Order] and still own that home today, you may be entitled to have no-cost repairs made under the written warranty we gave you. A copy of this warranty is attached to this letter as Appendix A. You may also be entitled to have no-cost repairs made to items that were listed during the pre-settlement inspection you made around the time you took title to your home. In addition, you may be entitled to reimbursement for money you spent repairing your home due to Ward or Richlynn's failure to do the repairs covered by the warranty or the pre-settlement inspection list.

Warranty Problems

You are eligible for a repair or reimbursement under the warranty if all of the following are true:

1. During your first year of ownership, you experienced a problem that was covered by the warranty;

2. You, Ward or Richlynn have some credible written evidence that you notified Ward or Richlynn of the problem during your first year of ownership. (If you do not have a letter or any other written record that you made a complaint to Ward or Richlynn, we will check our customer files to see if we have any record of your complaint. Our files may contain a work order, for example. We will consider your claim for a warranty problem *only* if there is some credible written evidence that you notified us of the problem during your first year of ownership.)

3. Ward or Richlynn refused to repair the problem or inadequately repaired the problem; and

4. The claim has a value of \$500 or more, measured by the highest of the following:

- The reasonable estimated cost of repair by a contractor; or
- The homeowner's actual out-of-pocket expenses reasonably spent to repair the problem.

Pre-Settlement Inspection Items

You are eligible for a repair or reimbursement pursuant to the pre-settlement inspection list if all of the following are true:

1. The item was listed on the Orientation Inspection Sheet;
2. Ward or Richlynn refused to repair the item or inadequately repaired the item; and
3. The claim has a value of \$500 or more, measured by the highest of the following:
 - The reasonable estimated cost of repair by a contractor; or
 - The homeowner's actual out-of-pocket expenses reasonably spent to repair the problem.

*Limitation on Repair or Reimbursement Under the Warranty
or Pre-Settlement Inspection List*

Please note, however, that if you have modified the part of your home affected by the claimed problem or item in a manner that substantially increases the cost of repair or correction, you must establish that the problem or item existed prior to the modification. And, even then, we will not bear the increase in cost of repair or correction resulting from the modification. For example, if you finished your basement and thus covered up the problem, we cannot be responsible for the cost of refinishing your basement after our repair work.

What You Must Do

If you think you are eligible for repairs or reimbursement under the warranty or the pre-settlement inspection or both, please fill out the enclosed "Claim Form" and mail it to:

Att: (name of Ward/Richlynn representative)
Ward/Richlynn
1300 Piccard Drive
Rockville, Maryland 20850

You *must* mail this claim form by 60 days from the mailing date of this letter. If you miss the deadline, you will lose your right to repairs or reimbursement under the terms of our agreement with the Federal Trade Commission. Remember to keep a copy of your claim form and a record of the date you mail it, just in case your claim gets lost in the mail.

Ward/Richlynn will notify you within sixty (60) days of receipt of your claim form about whether we will honor your claim. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. If Ward/Richlynn disputes any part of your claim, we will tell you why we are disputing the claim. You will also have the right to take this dispute to an impartial arbitrator. A description of the arbitration procedures is attached to this letter as Appendix B.

If you have any questions about this repair and reimbursement program, call 1-800-

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of Ward/Richlynn representative] at [phone number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

If you have any comments or concerns about how well Ward/Richlynn is responding to your claim, you might wish to send them to the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580. Do *not* send your claim form to that address; if you do so you might lose your right to repairs or reimbursement due to delays in Ward/Richlynn's receipt of the claim form.

Very truly yours,

Ward Development Company, Inc.
Richlynn Development, Inc.

Enclosures

ATTACHMENT 2 TO APPENDIX B

CLAIM FORM

This claim form must be mailed by 60 days from the mailing date of the letter of notification. If you miss this deadline, you will lose your right to repairs or reimbursement under the terms of the agreement between Ward/Richlynn and the Federal Trade Commission.

I.

Name(s) of Homeowner(s) _____
 Telephone (Home) _____
 (Work) _____
 Mailing Address _____
 (Street) _____
 (City) (State) (Zip Code) _____
 Today's date _____

II.

I(we) purchased a home from:

- ☐ Ward Development Company, Inc.
☐ Richlynn Development, Inc.
☐ An affiliate of Ward Development or Richlynn Development

 (Enter name of company)

III.

The date of settlement/closing on my(our) Ward/Richlynn home was (Enter date you took title).

IV.

MARK ONE

- () Yes, I(we) am(are) the current owner of this Ward/Richlynn home.
() No, I(we) do not currently own this Ward/Richlynn home.

NOTE:

To be eligible for repairs or reimbursement by Ward/Richlynn, you must be *both* the purchaser of a new home from Ward/Richlynn from March 10, 1978, to [one year prior to date of service of the Order] *and* the current owner of this Ward/Richlynn home.

V.

The address of my(our) Ward/Richlynn home is

(Street)

(City)

(State)

(Zip Code)

(Name of Subdivision)

VI.

INSTRUCTIONS FOR WARRANTY CLAIMS

- Use additional sheets of paper if necessary.
- List each problem separately.
- Describe in detail the nature of the problem.
- Attach a copy (*not* originals) of any written evidence you have that you notified Ward or Richlynn of the problem during your first year of ownership.
- If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs which were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.

NOTE:

If you do not have any written record that you made a complaint to us about a warranty problem, we will check our customer files to see if we have any written records (such as work orders) that you made a complaint to us. We will consider your claim for repair or reimbursement for a warranty problem *only* if there is some credible written evidence that you notified us about the problem in your first year of ownership. If no one has any written evidence that you made a complaint about the warranty problem, we can deny your claim for that problem.

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Warranty Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) under the warranty:

VII.

INSTRUCTIONS FOR PRE-SETTLEMENT CLAIMS

- Use additional sheets of paper if necessary.
- List each problem separately.
- Describe in detail the nature of the problem.
- Attach a copy (*not* originals) of the pre-settlement inspection list, if you have it.
- If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs that were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.

Pre-Settlement Inspection Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) pursuant to the pre-settlement inspection list:

APPENDIX C

Dear Ward/Richlynn Homeowner:

This letter is to notify you that you may have the right to use arbitration to settle disputes with Ward/Richlynn.

Ward Development Company, Inc. ("Ward") and Richlynn Development, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to set up an arbitration procedure which would be available at a reasonable cost to homeowners. If you purchased (that is, took title to) a new home from Ward or Richlynn from [*364 days prior to date of service of Order to one day prior to date of service of Order*] and still own that home today, you have the right to submit certain disputes to arbitration. Disputes that can go to arbitration include:

- Any disagreements you have with Ward/Richlynn about its performance under the one year written warranty given to you when you purchased the home. (For example, you may disagree with Ward/Richlynn's refusal to repair a problem that you believe is covered by the warranty. Or you may believe that Ward/Richlynn's attempts to repair a problem were inadequate. You can take these kinds of disputes to arbitration.)
- Any disagreements you have with Ward/Richlynn about its handling of problems and items listed during your pre-settlement inspection. (For example, you may believe that Ward/Richlynn has not corrected all of the items listed on the Orientation Inspection Sheet. Or you may dispute the adequacy of Ward/Richlynn's repairs. You can submit these disagreements to arbitration.)

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You may use this arbitration procedure at any time, even after the one year warranty period is over. The expiration of the one year warranty period does *not* affect your right to arbitrate disputes that arise during the warranty period. A copy of the arbitration procedures is attached to this letter. Please read these procedures carefully.

If you have any questions about this arbitration procedure, call [name of Ward/Richlynn representative] at [phone number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

Ward Development Company, Inc.
Richlynn Development, Inc.

Enclosure

IN THE MATTER OF
CALIFORNIA MEDICAL ASSOCIATION

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

Docket C-2967. Consent Order, April 17, 1979—Modifying Order, April 19, 1985

In response to a petition filed by the California Medical Association ("CMA"), this Order reopens the proceeding and modifies the consent order entered in Docket C-2967, 93 F.T.C. 519, by deleting Paragraph II(C), which prohibits the association from advising in favor of or against any relative value scale developed by third parties, and inserting a provision that permits CMA more freedom to discuss issues relating to reimbursement with governmental entities and third-party payers. Such modification is consistent with the Commission's decision in Docket 9219, *Michigan State Medical Society*, 101 F.T.C. 191, and its modified order in Docket C-2855, *American College of Obstetricians and Gynecologists*, 104 F.T.C. 524 (1985). The Commission, however, denied the other modifications requested by CMA, holding that CMA had failed to show that changed circumstances or the public interest warranted further modification of the order.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed October 1, 1984, the California Medical Association ("CMA") asked the Commission to reopen and modify the Commission order in Docket No. C-2967 ("Order") entered with CMA's consent on April 17, 1979 [93 F.T.C. 519]. CMA requested that the Commission modify the Order by a) deleting Paragraph II(C) of the Order, which prohibits CMA from advising in favor of or against any relative value scale developed by third parties (except that CMA is permitted to provide historical data), and b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow CMA more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. CMA also requested that the Commission modify the order so that it would no longer prohibit CMA from developing and disseminating a relative value scale. CMA's petition was placed on the public record for comment, and none of the comments received specifically related to the modification of Paragraph II(C).

Upon consideration of CMA's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(C) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. Modification is consistent with both the Commission's decision in *Michigan State*