

IN THE MATTER OF
KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Jan. 29, 1979

Order denying motion to dismiss the complaint, or in the alternative, to withdraw the proceedings from adjudication and to hold an evidentiary hearing.

ORDER

On November 29, 1978, General Mills filed a motion and supporting memorandum seeking dismissal of the complaint, or alternative relief including withdrawal of the proceedings from adjudication and an evidentiary hearing on the negotiations with Judge Hinkes. Complaint counsel responded on December 12, 1978. The Commission has reviewed these submissions as well as the Order, separate statement of Chairman Pertschuk, and accompanying materials issued on December 8, 1978, and has determined that the relief requested by General Mills should be, and hereby is denied.

I

With respect to General Mills' assertion that the complaint must be dismissed because any continuation of the proceedings will violate General Mills' statutory and constitutional rights, the Commission has concluded that the grounds stated do not warrant the relief requested. In the first place, members of the Commission other than Chairman Pertschuk were unaware of the negotiations with Judge Hinkes at the time that they occurred. Hence, no basis exists in support of a claim that the Commission as a body violated General Mills' rights. Second, Chairman Pertschuk's conduct with respect to the Hinkes contract neither demonstrates a lack of impartiality nor creates an appearance thereof. On the contrary, his conduct was motivated solely by considerations of sound administration and a desire to accommodate the interests of all the parties in bringing these proceedings to an expeditious conclusion. Clearly, the circumstances surrounding his actions would not lead a reasonable person to conclude otherwise.

To the extent that General Mills' motion is based upon contacts between Chairman Pertschuk and Judge Hinkes, it is important to note that Chairman Pertschuk was not acting as an interested party or on behalf of an interested party, but as the "administrative head of the agency." Rules of Practice Section 0.8(a); Reorganization Plan No. 8 of 1950, Section 1(a), 64 Stat. 1264, *reprinted in* 15 U.S.C. 41 App. Further, the Chairman's actions were not related to the merits

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of the proceeding in any way, nor did he discuss the merits with Judge Hinkes. In light of these facts, the Commission has concluded that there is no actual or apparent lack of impartiality on the part of the Chairman or of any other Commissioner, and that the course of negotiations did not prejudice General Mills' rights in any manner.

II

While General Mills argues that the Commission has an "affirmative duty" to hold an evidentiary hearing, the authorities cited do not warrant such a conclusion. The facts here are clearly distinguishable from the circumstances involved in *United Air Lines, Inc. v. CAB*, 281 F.2d 53 (D.C. Cir. 1960), and *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959). Moreover, to the extent that the motion otherwise seeks the information contained in or appended to the Commission's order of December 8, it is dismissed as moot. To the extent that it seeks to probe beyond the explanation already offered, it is denied. General Mills seeks in effect, to probe the predecisional "mental processess" of an agency. Such probing of the mental processes is disfavored, especially where, as here, the reasons for an agency decision are stated. *United States v. Morgan*, 313 U.S. 409, 422 (1941); *National Nutritional Foods Ass'n v. FDA*, 491 F.2d 1141, 1144-46 (2d Cir.), cert. denied, 419 U.S. 874 (1974). In this case, the Chairman has given an ample statement concerning his actions, and related memoranda have been released. See Order of December 8, 1978. Nor has there been any showing of bad faith or improper behavior. On the contrary, the Commission believes that the documents in the record demonstrate the absence of improper behavior or bad faith.

III

Finally, the Commission declines to entertain General Mills' request to withdraw this matter from adjudication and to consider the possibility of settlement. General Mills is entirely free to follow the procedures set forth in Rules of Practice Section 3.25, should it choose to do so.

IV

It is ordered, That (1) General Mills' motion of November 29, 1978, is dismissed as moot to the extent it seeks relief already granted; and (2) To the extent it seeks relief not previously granted, it is denied in all respects.

Commissioner Pitofsky did not participate.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Jan. 29, 1979

Order denying motion to disqualify FTC Chairman and each other Commissioner advised in advance of proposal to retain ALJ on contract basis.

ORDER

On December 7, 1978, General Foods Corporation filed a motion to disqualify Chairman Pertschuk and each other Commissioner advised in advance of the proposal to retain Judge Hinkes on a contract basis. On January 11, 1979, the Chairman responded to General Foods' motion and refused to disqualify himself. That response was placed on the public docket and served on the parties.

In responding to General Foods' alternative motion that the Commission itself determine whether the Chairman should be disqualified from participating in these proceedings,¹ we see no reason to differ from the result reached by the Chairman. The Chairman's actions were undertaken pursuant to his administrative authority under Reorganization Plan No. 8 of 1950, 64 Stat. 1264. The documents which have been released, and the Chairman's statement of December 8, clearly indicate that his actions in this matter were taken without reference to the merits of the case. Under the circumstances we do not believe that any bias, prejudice or apparent unfairness has been demonstrated. *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970); *Amos Treat & Co. v. SEC*, 306 F.2d 260, 267 (D.C. Cir. 1962).

As to General Foods' motion to disqualify each of the Commissioners who had advance knowledge of the Hinkes contract, the record is clear that no such Commissioner was so advised. Accordingly,

It is ordered, That the motion of General Foods Corporation to disqualify FTC Chairman Michael Pertschuk and each other Commissioner advised in advance of the proposal to retain Judge Hinkes on a contract basis be, and the same hereby is, denied.

Chairman Pertschuk and Commissioner Pitofsky did not participate.

¹ General Foods argues that the Chairman should be disqualified not only from participating in any decision with respect to the Hinkes contract, but also from participating in any future deliberations in this case.

IN THE MATTER OF

HARPER SALES, INC., ET AL.

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

Docket 9070. Complaint, Dec. 19, 1975 — Decision, Feb. 1, 1979

This consent order, among other things, requires a Rush, N.Y. mobile home dealer and its affiliates to cease conditioning the leasing or renting of space in their trailer parks to the purchase of mobile homes and accessories from Harper Sales, Inc. or other designated sources.

Appearances

For the Commission: *Henry R. Whitlock* and *Herbert S. Forsmith*.
For the respondents: *John Stuart Smith, Nixon, Hargrave, Devans & Doyle*, Rochester, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

I. DEFINITIONS

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

(a) "Mobile home" means a transportable unit or units designed to be placed without a permanent foundation, connected to utilities, and used or capable of being used for year-round living.

(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes and in which utility connections and various communal services are commonly provided.

II. RESPONDENTS

PAR. 2. Respondent Harper Sales, Inc. is a corporation organized under the laws of the State of New York with its principal office located at 7500 West Henrietta Road, Rush, New York.

PAR. 3. Respondent Edgewood Park Estates, Inc. is a corporation

organized under the laws of the State of New York with its principal place of business located at 4000 Brick Schoolhouse Road, Hamlin, New York.

PAR. 4. Respondent Harper Park-Avon is a partnership organized under the laws of the State of New York with its principal office located at 6150 East Avon-Lima Road, Avon, New York.

PAR. 5. Respondents Ralph R. Harper and John R. Harper are officers of corporate respondent Harper Sales, Inc. They formulate, direct, approve, authorize and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Said individual respondents also are partners in the partnership respondent, Harper Park-Avon. They formulate, direct, approve, authorize and control the acts and practices of the partnership respondent including the acts and practices hereinafter set forth. Their business address is the same as that of corporate respondent Harper Sales, Inc.

PAR. 6. Respondent Harper Sales, Inc. has been, and is now, engaged in the advertising, offering for sale, sale and distribution of mobile homes and mobile home accessories.

In fiscal year 1972, sales of mobile homes by respondent Harper Sales, Inc. were approximately \$1,600,000.

PAR. 7. Respondent Edgewood Park Estates, Inc. has been, and is now, engaged in the development and operation of a mobile home park known as Harper Park-Hamlin located at the same address as that of said corporate respondent.

PAR. 8. Respondent Harper Park-Avon has been and is now, engaged in the development and operation of a mobile home park located at 6150 East Avon-Lima Road, Avon, New York.

III. JURISDICTION

PAR. 9. (a) In the course and conduct of its business as aforesaid, respondent Harper Sales, Inc. now causes, and for some time last past has caused, mobile homes and other products to be shipped to purchasers located in states other than New York.

(b) In the course and conduct of its business as aforesaid, respondent Harper Sales, Inc. has purchased and continues to regularly purchase mobile homes and other products from suppliers in states other than New York for the purpose of offering said products for sale, to maintain an available inventory for sale and to fill special purchase orders received from their customers.

(c) In the course and conduct of their business, respondents Edgewood Park Estates, Inc. and Harper Park-Avon have entered into agreements with respondent Harper Sales, Inc. which are

essential to make effective the restraints on interstate commerce alleged in Paragraph Eleven hereof.

(d) Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the sale of mobile homes and mobile home accessories and with persons or firms engaged in the operation and maintenance of mobile home parks.

IV. VIOLATIONS

PAR. 11. In the course and conduct of their business as aforesaid, respondents have refused to rent sites under the control of Edgewood Park Estates, Inc. and Harper Park-Avon for the accommodation of mobile homes which have not been purchased from Harper Sales, Inc. thereby making the rental of said sites conditional and dependent upon the purchase of mobile homes from Harper Sales, Inc.

V. EFFECTS

PAR. 12. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have or tend to have the effect of:

- (a) reducing competition in the sale of mobile homes;
- (b) foreclosing potential competitors in the sale of mobile homes by raising entry barriers;
- (c) foreclosing substantial sales by dealers of mobile homes to actual or prospective tenants of sites in respondents' mobile home parks;
- (d) inflating the prices of mobile homes purchased from respondents;
- (e) depriving consumers of the benefits of competition.

PAR. 13. The aforesaid acts, practices and methods of competition, constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended, and constitute unfair acts and practices in or affecting commerce in

violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having issued its complaint on December 19, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45); and

Respondents and complaint counsel, by joint motion filed December 16, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued January 11, 1977, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed an agreement containing a consent order, which includes 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 the complaint, and waivers as required by the Commission's 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 one hundred and eighty (180) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Harper Sales, Inc. is a corporation organized under the laws of the State of New York, with its principal office located at 7500 West Henrietta Road, Rush, New York.

Respondent Edgewood Park Estates, Inc. is a corporation organized under the laws of the State of New York, with its principal place of business located at 4000 Brick Schoolhouse Road, Hamlin, New York.

Respondent Harper Park-Avon is a partnership organized under the laws of the State of New York with its principal office located at 6150 East Avon-Lima Road, Avon, New York.

Respondents Ralph R. Harper and John R. Harper are officers of corporate respondents Harper Sales, Inc. and Edgewood Park

Estates, Inc. They formulate, direct, approve, authorize and control the acts and practices of Harper Sales, Inc. Said individual respondents are also partners in the partnership respondent, Harper Park-Avon. They formulate, direct, approve, authorize and control the acts and practices of the partnership respondent. Their business address is the same as that of corporate respondent Harper Sales, Inc.

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

ORDER

It is ordered, That Harper Sales, Inc. and Edgewood Park Estates, Inc., corporations, and Harper Park-Avon, a partnership, their successors and assigns, and their officers and partners and Ralph R. Harper and John R. Harper, individually and as officers of said corporations and as partners in said partnership, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, partnership, division or other device, in connection with the sale of mobile homes or the rental or lease of mobile home sites, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement which, directly or indirectly, conditions the lease or rental of a mobile home site upon the purchase of a mobile home from a respondent, or a source designated by a respondent. For the purposes of the foregoing sentence a transfer or conveyance of a mobile home site by any respondent to anyone not a respondent which grants any respondent the option or right to purchase such site, shall be deemed to be a lease; and the lease or rental of a mobile home under which the lessor has the option or right to require the lessee to purchase such mobile home as a condition for the continued use of such mobile home, shall be deemed to be a purchase.

Provided, however, that respondents may freely exercise their rights as businessmen, including the right to set reasonable rules, regulations and standards concerning the appearance of mobile homes and acceptance of tenants in respondents' mobile home parks and the operation, maintenance and appearance of mobile homes, mobile home parks and mobile home sites, except insofar as limited by the provisions of this order; and

Provided further, that nothing in this order shall exempt any

person or firm from the duty to comply with all applicable laws or regulations which are consistent with the provisions of this order.

It is further ordered, That respondents shall, within thirty (30) days of service of this order, distribute, and obtain a signed receipt therefor, a copy of this order to each of their operating divisions and respondents' employees engaged in the sale or rental of mobile homes or mobile home sites.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, each individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale of mobile homes or the rental or lease of mobile home sites or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale of mobile homes or the rental or lease of mobile home sites. Such notice shall include this respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

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

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IN THE MATTER OF

THE KROGER COMPANY

*Docket 9102. Interlocutory Order, Feb. 1, 1979*ORDER AFFIRMING ORDER RULING ON RESPONDENT'S MOTION
FOR PRODUCTION OF DOCUMENTS PURSUANT TO § 3.36

Administrative Law Judge Montgomery K. Hyun (the "ALJ") has *sua sponte* certified to the Commission for discretionary review certain of his rulings in connection with respondent's motion for *in camera* production of documents in the files of the Commission. We decline to disturb the ALJ's discovery rulings and, accordingly, we affirm. Our disposition of this matter also moots respondent's application for a stay of further proceedings before the ALJ and for oral argument before the Commission.

The ALJ certified his rulings only because of suggestions by respondent that his continued participation in this matter might be inappropriate in light of the Commission's refusal to grant clearance to one of respondent's attorneys, Mr. Mark Tuller, notwithstanding that both previously served at different times as attorney-advisors to former Chairman Engman.

The standards governing the appearance of former agency employees in Commission proceedings address issues different from those concerning the propriety of participation by administrative law judges. The clearance rules concern impropriety resulting from access to inside information whereas the principal question involving an ALJ's participation is one of bias or prejudice. Thus, application of these standards may lead to differing results concerning the continued participation of Mr. Tuller and Judge Hyun in this proceeding, notwithstanding that each avers that during his tenure with Chairman Engman he did not participate in any matter pertaining to the respondent.

Here, no question of possible bias or prejudice by the ALJ has been raised by the respondent and we can perceive none. Certainly mere access to information in the possession of the Commission casts no shadow on Judge Hyun's ability to render an impartial decision in this matter. Indeed, to suggest otherwise would call into question a judge's ability to review assertedly privileged information *in camera* for the purpose of determining whether the attorney requesting the information is entitled to see it. For these reasons, we find nothing inconsistent about the fact that Mr. Tuller

has been denied clearance in this proceeding while Judge Hyun may continue to serve in his altogether different role.

It is ordered, That the ALJ's rulings of January 15, 1979 be, and they hereby are, affirmed; and

It is further ordered, That respondent's motions for a stay and for oral argument, dated January 30, 1979, be, and they hereby are, denied.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
FEDERAL SIGNAL CORPORATION

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

Docket C-2953. Complaint, Feb. 1, 1979 — Decision, Feb. 1, 1979

This consent order, among other things, requires a Chicago, Ill. manufacturer and seller of public safety and communication equipment to cease, in connection with the sale of such products to governmental entities, from exchanging bidding information with its distributors prior to submission of competitive bids, submitting or soliciting the submission of collusive bids, or employing any other business practice that may hinder or prevent competitors from bidding successfully. The firm is also required to cease furnishing governmental bodies seeking to purchase civil defense warning systems with advertisements or specifications that might induce such bodies to limit distribution of invitations to bid; incorporate the name or model number of firm's products into advertisements for bids or specifications; or draft specifications that would restrain, lessen, or prevent the sale of such devices by others.

Appearances

For the Commission: *John T. Hankins* and *David J. Richman*.

For the respondent: *Gary L. Mowder, Schiff, Hardin & Waiter*,
Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Federal Signal Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

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

A. "Signal Division products" means any products, or component or accessory thereof, presently or in the future sold by the Signal Division of Federal Signal Corporation, including but not limited to radio equipment, vehicle lights and sirens, speed detecting devices, helmets, visual and audible warning and signaling devices such as lights, sirens, horns and bells, and civil defense warning systems.

B. "Civil defense warning systems" means outdoor warning sirens and components and accessories thereof, which are designed to warn the public of impending enemy attack, storms or other emergency situations. The term includes sirens, activating devices,

timers, telephone relays, and other equipment customarily used in connection with the operation of the sirens.

C. "Distributor" shall mean any person, company or other entity purchasing Signal Division products for resale.

D. "Competitive bidding" means the process by which any bid or quotation is made concerning or in response to any solicitation, announcement, advertisement or request by a public body.

E. "Public body" means any unit of federal, state, county or municipal government, or any other organization funded primarily from tax revenues. The term shall include, but not be limited to police departments, fire departments, highway departments and civil defense organizations.

PAR. 2. Federal Signal Corporation, hereinafter referred to as Federal or respondent, is a corporation organized and doing business under the laws of the State of Delaware with its principal office at 120 S. Riverside Plaza, Chicago, Illinois. Federal's sales in 1975 were in excess of \$68,000,000.

PAR. 3. Federal, through its Signal Division, is engaged in the manufacture, distribution and sale of public safety and communications equipment for commercial and governmental markets. Federal's sales of Signal Division products were in excess of \$29,000,000 in 1975.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused its Signal Division products to be shipped from the state in which they are manufactured to distributors and other customers located in other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in such products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered or restrained by the acts and practices alleged herein, respondent has been and is now in substantial competition, in or affecting commerce, with its own distributors in the offering for sale and sale of Signal Division products and with other manufacturers and distributors in their offering for sale and sale of similar products.

PAR. 6. Federal sells its Signal Division products to distributors located throughout the United States. Federal also sells such products directly to the using customers. Customers of Federal and its distributors include fire departments, police departments, civil defense and disaster warning agencies, and commercial enterprises. In many instances customers purchasing from Federal and its distributors utilize competitive bidding procedures in the purchase of

Signal Division products. In some instances the process of inviting competitive bids is required by law.

PAR. 7. In the course and conduct of its business as aforesaid, respondent, in combination with its distributors, has engaged in the following unfair methods of competition, in or affecting commerce, in connection with the offering for sale, sale and distribution of Signal Division products on a competitive bidding basis:

A) Respondent has exchanged information with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) the intent to submit or not to submit a bid;
- (2) the prices that will be bid.

B) Respondent has entered into agreements with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) whether a bid will be submitted;
- (2) which type of equipment will be bid;
- (3) what prices will be bid; and
- (4) which party will submit the low bid.

C) Respondent has submitted and solicited the submission of collusive bids on particular projects; and

D) Respondent has entered into agreements with its distributors allocating customers among respondent and its distributors.

PAR. 8. The manufacture, distribution and sale of civil defense warning systems constitutes a separate and distinct market. The market for civil defense warning systems is highly concentrated. Federal is the dominant manufacturer in this market and produced more than 70 percent of the civil defense warning systems installed during 1975. Federal has used its dominant position, size and economic power to hinder and frustrate the ability of smaller manufacturers to compete in this market, and to hinder, prevent or lessen competition in the manufacturing and sale of civil defense warning systems. Thus, Federal has been and is now engaged in various monopolistic or other unfair acts, practices, or methods of competition in maintaining a monopoly in the manufacture and sale of civil defense warning systems.

More particularly, Federal has, since at least 1972, adopted and maintained various business practices to restrain, lessen or prevent the sale of civil defense warning systems by others engaged in the

manufacture and sale of such products. Respondent has engaged in the following monopolistic acts and practices:

A) Respondent, individually and in combination with its distributors, has participated in the preparation of advertisements soliciting bids and specifications used to obtain and evaluate bids for civil defense warning systems. In the course of this action, respondent has engaged in manipulating the terms contained in such advertisements and specifications with the purpose and effect of hindering or preventing the sellers of other brands of civil defense warning systems from bidding effectively on civil defense warning systems;

B) Respondent has submitted bids, and solicited its distributors to submit bids, which are not intended to secure business, but are intended to hinder or prevent competitors from bidding successfully;

C) In response to requests from public bodies for the names of firms which can bid on civil defense warning systems, respondent generally provides only the names of sellers of its products.

PAR. 9. The aforesaid conduct of respondent in the sale and distribution of Signal Division products, including civil defense warning systems, both individually and in combination with its distributors, has the capacity, tendency, and effect of:

a) restricting, restraining, or eliminating competition among respondent, its distributors, and manufacturers and distributors of competitive products;

b) undermining and subverting the competitive bidding procedures utilized by public bodies and others in the purchase of such products;

c) raising, fixing, stabilizing, and maintaining the prices paid by public bodies for such products;

d) depriving purchasers of such products of the benefits of free and open competition;

e) monopolizing the market for civil defense warning systems;

f) creating, preserving, and increasing barriers to entry into the market for civil defense warning systems.

PAR. 10. The acts and practices of respondent in combination with its distributors, as set out in Paragraph Seven herein, constitute an agreement, combination, or conspiracy to restrict or eliminate competition in the sale and distribution of Signal Division products; are all to the prejudice of actual and potential competitors and buyers of respondent's products, and the public; have a dangerous tendency to and have actually restrained and prevented competition in the sale of Signal Division products and therefore constitute

unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. The acts and practices of respondent, as set out in Paragraph Eight herein, both individually and in combination with its distributors, have a tendency to and have actually restrained and prevented competition in the sale of civil defense warning systems; and have created and maintained in respondent a monopolistic control over the terms and conditions of the sale of such products and therefore constitute unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Federal Signal Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1415 West 22nd St., Oak Brook, Illinois.

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

ORDER

I

It is ordered, That respondent, Federal Signal Corporation, its subsidiaries, successors, assigns, officers and directors, and respondent's agents, representatives and employees, individually or in concert with others, directly or indirectly, or through any corporate or other device, in connection with the distribution, offering for sale, or sale of Signal Division products by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Exchanging information with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid; or
- b) the price(s) that will be bid;

2. Entering into any agreement or understanding with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid;
- b) the type of equipment that will be bid;
- c) the price(s) that will be bid; or
- d) the party which will submit the low bid;

3. Submitting or soliciting the submission of any collusive bid;

4. Allocating or attempting to allocate customers among respondent and its distributors, provided that respondent may furnish the name of one or more of its distributors to any buyer or prospective buyer of respondent's products.

II

It is further ordered, That respondent, in connection with the distribution, offering for sale, or sale of civil defense warning systems by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Furnishing, directly or indirectly, prior to the submission of any written bid, any written specification to such public body (other than specifications established by any department of the federal government) to be substantially incorporated into materials used to obtain or evaluate bids;
2. Influencing or attempting to influence any such public body to:
 - a) limit the distribution of invitations to bid to respondent and/or its distributors;
 - b) incorporate the name or model number of any of respondent's products into advertisements for bids or specifications used to obtain or evaluate bids;
 - c) draft specifications which disqualify sellers of competitive products from bidding effectively;
3. Preparing any part of any advertisement for bids or specification used by a public body to obtain or evaluate bids.

Nothing contained in Part II of the order shall prohibit respondent from conducting surveys of civil defense warning system needs for public bodies and providing quotations containing descriptions of civil defense warning systems and estimated costs. All such quotations shall contain the following statement in close proximity to the product description:

Civil defense warning systems produced by other manufacturers may provide adequate coverage for the area surveyed even though such systems may contain differing numbers of sirens having different decibel ratings or functioning in a different manner. The names and addresses of other recognized manufacturers of civil defense warning systems will be provided upon request.

It is further ordered, That respondent, upon request by a public body, provide the names and addresses of all other manufacturers of civil defense warning systems known to respondent.

III

It is further ordered, That respondent, for a period of five years from the date of service of this order:

1. Institute a continuing surveillance program to insure that its distributors of civil defense warning systems are not engaging in any act or practice which, if engaged in by respondent, would violate Paragraphs 1, 2, or 3 of Part II of this order;
2. Upon receiving information indicating that any of its distributors of civil defense warning systems has engaged in any such act or practice, respondent shall obtain the written assurance of such

distributor that such conduct shall not again occur. If the distributor fails to provide such written assurance, respondent shall forthwith cease and desist from supplying civil defense warning systems to such distributor;

3. Upon ascertaining that a distributor, after having given such written assurance, has again engaged in any such act or practice, forthwith cease and desist from supplying civil defense warning systems to such distributor.

IV

It is further ordered. That respondent, for a period of three years from the date of service of this order, in connection with each bid on civil defense warning systems submitted to a public body:

- 1) include a copy of the letter set forth in Appendix A hereto and a copy of this order with each such bid; and
- 2) maintain a file concerning each such bid, such file to include a copy of the bid and accompanying letter, all work papers used in computing the bid, and a copy of each document furnished to the public body involved.

The files described herein shall be made available for Commission inspection upon reasonable notice.

V

It is further ordered. That respondent shall within thirty days after service upon it of this order, distribute a copy of the order to each of the respondent's operating divisions, to each of its present corporate officers and to each domestic sales representative in the Signal Division, and to its future corporate officers and Signal Division domestic sales representatives within five days of their assumption of office or employment with respondent corporation.

VI

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

It is further ordered. That the respondent shall within sixty 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.

APPENDIX A

(Official Stationery of Federal Signal Corporation)

Dear _____:

Federal Signal Corporation has entered into a consent agreement with the Federal Trade Commission concerning the company's competitive bidding practices. The agreement is for settlement purposes only and does not constitute an admission of any law violations. Part I of the Order issued pursuant to the agreement applies to the sale of all Signal Division products. Parts II, III, and IV apply to sales of civil defense warning systems.

A copy of the order issued by the Commission is enclosed. If, in connection with this bid or at any time in the future, you believe that Federal has engaged in any of the practices prohibited by the Order, report the details in writing to:

Federal Trade Commission
Washington, D. C. 20580

You are also requested, at your option, to send a copy of any such letter to:

Federal Signal Corporation
Attention: President
Very truly yours,

(Name)
President
Federal Signal Corporation

IN THE MATTER OF
INDIANA FEDERATION OF DENTISTS

Docket 9118. Interlocutory Order, Feb. 5, 1979

ORDER DENYING PETITION OF STATE OF INDIANA TO
INTERVENE

The State of Indiana, by its Attorney General, has appealed from a decision of Administrative Law Judge Paul R. Teetor (the "ALJ") denying its application to intervene in this proceeding. Because we do not believe that there has been a sufficient showing of the necessity for intervention, we cannot grant the petition.¹ The State of Indiana, however, is granted leave to appear in the proceeding as *amicus curiae* and to submit such briefs as it deems necessary to adequately represent the interests of the State on its own behalf and as *parens patriae* for its citizens.

The complaint in this matter was issued in October, 1978, and charges the respondent Indiana Federation of Dentists with, *inter alia*, illegally conspiring to frustrate cost control programs administered by a number of insurance companies. In essence, the respondent and its members, a small group of Indiana dentists, are alleged to have agreed among themselves to refuse to submit X-rays and other diagnostic tests to insurers, who seek such information in order to assure that a dentist's proposed treatment is the least expensive treatment adequate to remedy a patient's dental ills.

Respondent has raised as an affirmative defense the assertion that its members are proscribed by Indiana law from submitting diagnostic materials, such as X-rays, to third party insurance payers, because such companies may employ non-dentists to review the X-rays. Respondent notes that Indiana law forbids the practice of dentistry by non-dentists, and contends that review of X-rays constitutes the practice of dentistry. Under this so-called "state action" defense, respondent in effect asserts that it is acting as a private attorney general to enforce Indiana law.

The State of Indiana apparently agrees with respondent about what constitutes the "practice of dentistry,"² and seeks permission

¹ Unlike the ALJ, we do not believe that the proposed intervenor's status as a state bars its application here. Section 5(b) of the Federal Trade Commission Act provides: "Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person." The term "person" as used in the antitrust laws may encompass a state. *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978). A consistent interpretation should be given to the implementing provision of the Commission's Rules of Practice, Section 3.14, albeit slightly different phraseology is used there. Indeed, the Commission has previously permitted intervention by sovereign states, see e.g., *Florida Citrus Mutual*, Dkt. 6074 (February 12, 1953).

² See Unofficial Advisory Letter, dated March 14, 1974, from Curtis Plopper, Deputy Attorney General of the

(Continued)

to intervene both to press this point and, as *parens patriae*, to protect its citizens from the unauthorized practice of dentistry in Indiana. While we appreciate the State's concerns, we are not convinced that Indiana must be made a party to this proceeding in order for that State to present effectively its views on the proper interpretation of Indiana law. No witnesses need be examined, nor any documentary evidence introduced, to establish Indiana's point of statutory construction, and as the State itself recognizes in its Memorandum in Support of Application for Review (p. 4), "*amicus curiae* . . . is the traditional role accorded to those concerned with the precedential impact of adjudicative decisions." Where, as here, Indiana's arguments are wholly legal in nature and will relate more to such concerns as legislative history than to respondent's challenged practices, *amicus curiae* status should satisfactorily protect the State's interest.

Even assuming *arguendo* that some evidentiary inquiry or undertaking is necessary to properly present the "state action" defense, the State of Indiana has advanced no reason why that defense cannot adequately be presented by counsel for respondent. Were the State intending to raise different or even supplemental concerns, our response might be otherwise, but the Deputy Attorney General candidly concedes that "[t]he State does not contemplate raising issues distinct from those raised in the Complaint and the Answer." Memorandum in Support of Application for Review, p. 8. As we said in *Firestone Tire and Rubber Co.*, 77 F.T.C. 1666, 1668 (1970), persons seeking intervention must raise substantial issues "which would not otherwise be properly raised or argued." Given the apparent identity of interest between respondent and the State, and given that the State has not even contended that respondent will not adequately present the "state action" defense, we cannot say that the *Firestone* test has been met.

We are sympathetic to the concerns raised by the State and appreciate its interest in assisting the Commission in reaching a just result in this adjudicative proceeding. We hope that the State will avail itself of the opportunity to file *amicus* briefs as the need arises, so that both the ALJ and the Commission can have the benefit of its views on the proper application of Indiana law to the facts at bar.

It is ordered, That the application for intervention filed by the State of Indiana be, and it hereby is, denied.

State of Indiana, to Dr. Raymond Rothaar, President, Indiana Board of Dental Examiners, in which the author apparently concludes that review of dental X-rays constitutes the "practice of dentistry" under Indiana law. The letter concludes by stating that "[t]he views expressed herein are those of the writer and are not to be considered to be the opinion of the Attorney General of Indiana, nor a precedent of the Attorney General's office."

IN THE MATTER OF
RHINECHEM CORPORATION, ET AL.

Docket 9116. Interlocutory Order, Feb. 12, 1979

ORDER DENYING RESPONDENTS' MOTION FOR DISMISSAL OF
COMPLAINT

Administrative Law Judge Ernest G. Barnes has certified to the Commission, without recommendation, a motion by two respondents, Allegheny Ludlum Industries, Inc. ("ALI"), and Chemetron Corporation, to dismiss the complaint. We deny the motion, believing that the public interest would be better served by allowing this case to proceed.

Respondents' ground for dismissal is that the proposed acquisition by Rhinechem Corporation of the Pigments Division of Chemetron, a subsidiary of ALI, has been terminated. This acquisition, however, was not abandoned until after a United States District Court, upon motion of the Commission, issued an injunction against respondents barring the acquisition during the pendency of a Commission administrative proceeding and any subsequent judicial review. In granting the injunction, the court found that the Commission, which had contended that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, had demonstrated a sufficient likelihood of ultimate success on the merits.

It is conceded, and the Commission has so held, *see, e.g., British Oxygen Co., Ltd.*, 86 F.T.C. 1241, 1334-35 (1975), *rev'd on other grounds*, 557 F.2d 24 (2d Cir.1977), that the prohibitions of Section 7 of the Clayton Act are directed against the acquiring company, rather than the company to be acquired. Nevertheless, it is also clear that the moving respondents may be properly charged with a violation of Section 5 of the Federal Trade Commission Act for entering into a merger agreement which, complaint counsel contend, violates Section 7 of the Clayton Act. *Dean Foods Co.*, 70 F.T.C. 1146, 1288-92 (1966); *British Oxygen Co., Ltd.*, *supra* at 1334. *Cf. Grand Union v. FTC*, 300 F.2d 92 (2d Cir. 1962). Thus, even though the Commission has withdrawn this matter from adjudication with respect to Rhinechem Corporation in order to consider a proffered consent agreement, the complaint nonetheless states a cause of action under Section 5 of the Federal Trade Commission Act against the moving respondents. In Section 5 cases, it is well established that the discontinuance or abandonment of a practice, especially where not entirely voluntary, does not preclude the issuance of an

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appropriate cease and desist order. *E.g., Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). Accordingly,

It is ordered, That respondents' motion for dismissal of the complaint, dated December 19, 1978, be, and it hereby is, denied.

IN THE MATTER OF
KAUFMAN AND BROAD, INC., ET AL.

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

Docket C-2954. Complaint, Feb. 12, 1979 — Decision, Feb. 12, 1979

This consent order, among other things, requires a Los Angeles, Calif. builder and seller of residential housing to cease misrepresentations of fact and using any other unfair or deceptive practices in the advertising, sale and construction of consumer housing. The firm is also required to furnish prospective customers with disclosures regarding construction materials and components; as well as information relating to the land, taxes and community facilities. Further, the company is required to provide home purchasers with warranties patterned on the housing industry's Home Owners Warranty program; and to employ the industry's standards in home construction and repair. Additionally, provisions in the order entitle original owners of company homes purchased from January 1, 1972, to have specified defects repaired, and requires the firm to repurchase the homes at the original price, should it fail to make proper repairs in a timely manner. The order also provides that disputes concerning repairs may be settled through third-party arbitration.

Appearances

For the Commission: *Blanche Stein, Richard A. Palewicz and Jerome S. Lamet.*

For the respondents: *Elroy Wolff, Sidley & Austin, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Kaufman and Broad, Inc., a corporation, Kaufman and Broad Homes, Inc., a corporation, and Kaufman and Broad Home Sales, Inc., a corporation, have violated Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint as follows:

I

For purposes of this complaint, "on-site residential housing" shall mean housing structures, including lots, consisting of single family dwelling units or housing structures consisting of multi-family dwelling units (including condominiums) represented and sold by respondents as completely constructed or partially constructed units.

II

PARAGRAPH 1. Respondent Kaufman and Broad, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal place of business located at 10801 National Boulevard, Los Angeles, California.

Respondent Kaufman and Broad, Inc. has numerous subsidiaries in various States of the United States.

Respondent Kaufman and Broad, Inc. uses the trade styles: Kaufman & Broad, Kaufman and Broad, and Kaufman and Broad homes in the course and conduct of its business.

Respondent Kaufman and Broad Homes, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad, Inc., and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

Respondent Kaufman and Broad Home Sales, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad Homes, Inc., an Illinois corporation, and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

PAR. 2. Respondents are now and for some time last past have been engaged in the production, advertising, offering for sale or sale of on-site residential housing to the public. Gross sales of on-site residential housing by respondent and its subsidiaries in 1973 was approximately \$306,763,000, in 1974 approximately \$256,567,000, in 1975 approximately \$250,482,000, and in 1976 approximately \$283,183,000.

III

PAR. 3. In the course and conduct of its business, as aforesaid, respondent Kaufman and Broad, Inc. has formulated and established uniform and standardized methods, practices and procedures for the regulation, supervision and monitoring by respondent of the book-keeping, accounting, financial, purchasing, sales, personnel, customer relations and management operations of its subsidiaries located in various States of the United States.

In the course and conduct of its business, as aforesaid, respondent Kaufman and Broad Homes, Inc., an Illinois corporation, has caused to be published in newspapers of interstate circulation advertisements which are designed and intended to induce the public to purchase respondent's on-site residential housing.

In the course and conduct of its business, as aforesaid, respondent

Kaufman and Broad Homes Sales, Inc., an Illinois corporation, has entered into contracts for the purchase of respondent's on-site residential housing with members of the public residing outside the State of Illinois.

Therefore, each of the corporate respondents is engaged in or affects "commerce," as "commerce" is defined in the Federal Trade Commission Act and has been continuously so engaged for several years.

IV

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents have made statements and representations in advertising brochures and in advertising inserted in newspapers of interstate circulation.

Typical and illustrative of such statements and advertising representations, but not all inclusive thereof, are the following:

We're America's largest publicly held company whose primary business is on-site housing. We know the housing business!

* * * * *

Because Kaufman and Broad is Chicago's largest home builder, we can build fine homes. . .our size enables us to use good workmen, quality materials and money-saving tools and techniques.

* * * * *

Ask your Kaufman and Broad salesman about our exclusive Buy Back Plan. It is an extra assurance to you made possible by Kaufman and Broad's full confidence in the value and quality construction of the homes they build. After one year, if you are not completely satisfied with your home, Kaufman and Broad will give you your money back. . .

* * * * *

Because of our size, we are able to give you a bigger better home for your money. . .

* * * * *

You can have confidence in Kaufman and Broad. Most homeowners do.

* * * * *

Kaufman and Broad's years of experience also insure sound planning and design in all community developments. The added value of this experience will be appreciated by the home owner in his day-to-day living as he realizes the thought and care that has gone into the development of his home and community.

* * * * *

Kaufman & Broad provides a kind of quality control that only can be offered because of its huge size.

* * * * *

. . . the best locations—there are Kaufman and Broad communities in many of the most popular Chicago suburbs. Because we're first, we get first choice of all the prime land that's available.

* * * * *

Immediate occupancy No closing costs

* * * * *

F.H.A. loans available. . .

* * * * *

. . . Homes with garages, basements, family rooms, patio kitchens, glamour vanity baths and much more - all the room your family needs

* * * * *

. . . with a garage and basement, . . .

* * * * *

3 & 4 bedroom homes from \$20,990.

* * * * *

. . . 2, 3 and 4 bedroom homes from \$19,990 . . . These low prices available for a limited time only.

* * * * *

You needn't stray far from your home in Appletree to reach all the things you need.

1. Rich Central High
2. Marion High (Parochial)
3. Southwood Jr. High
4. Willowview Elementary
5. Baker Avenue Kindergarten
6. Loretto Lane Kindergarten
7. St. Emeric's Elementary (Parochial)
8. St. John Lutheran School
9. Hillcrest High

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication that:

1. Housing sold by respondents is built in accordance with good construction practices in the housing industry.
2. Housing sold by respondents is of top quality workmanship.
3. Housing sold by respondents is constructed in accordance with the Minimum Property Standards for such housing as required by the U.S. Department of Housing and Urban Development.
4. Housing sold by respondents is constructed in accordance with plans and specifications approved by the U.S. Department of Housing and Urban Development.
5. By and through the use of the words "quality materials," "quality construction," "quality control," and other words of similar import and meaning not specifically set out herein, respondents' housing is free from structural or other defects that could impair such housing for ordinary use as homes or habitations.
6. Respondents have a unique quality control program that provides for the inspection of their housing at various stages in construction to insure that such housing is of quality workmanship and is free from structural and other defects.
7. By and through the use of the words "best locations" and "first choice of all the prime land that's available," and other words of similar import and meaning not specifically set out herein, land used by respondents for building sites is not subject to any severe limitations that may affect the use of such land for the construction of on-site residential housing sold by respondents.
8. Respondents' advertised homes are available for immediate occupancy.
9. All homes offered for sale by respondents include a family room and a garage or a basement and a garage in the advertised price.
10. All rooms advertised as bedrooms in respondents' 4-bedroom homes are suitable for sleeping purposes.
11. Respondents' advertised prices for homes are for a limited time only.
12. Respondents' housing is sold to purchasers free of all closing costs.
13. Schools listed in respondents' advertising are in school districts where respondents' housing is located.

PAR. 6. In truth and in fact:

1. All housing sold by respondents was not built in accordance with good construction practices in the housing industry. In some houses, fire walls were improperly anchored, foundation walls were not covered with membrane waterproofing to prevent water seepage

into habitable spaces, or weep holes were absent in brick veneer walls for the escape of water.

2. All housing sold by respondents was not top quality in workmanship. In some houses, siding was not properly anchored, roof sheathing did not meet with roof edges, spaces between foundation walls and sill plates were not sealed to prevent the entry of air and moisture, or piping and bathroom fixtures were not properly installed.

3. All housing sold by respondents was not constructed in accordance with the Minimum Property Standards for such housing as required by the U.S. Department of Housing and Urban Development. In some houses, front stoops were improperly supported and/or anchored to foundation walls, sill plates were not properly matched to foundation walls to prevent seepage of water and/or air into the interior of the house, or paint used on kitchen and bathroom walls was not washable as required by such standards.

4. All housing sold by respondents was not constructed in accordance with the plans and specifications approved by the Department of Housing and Urban Development. In some houses, there were deviations and omissions from such plans and specifications that affected the quality of a component part in the house.

5. All housing sold by respondents was not free from structural or other defects that could impair such housing for ordinary use as homes or habitations. In some houses, walls were not properly supported by foundations, floor girders were not properly supported to prevent sagging floors, or foundations contained cracks due to structural failures.

6. Respondents did not have a unique quality control program that provides for the inspection of their housing at various stages in construction to insure that such housing is of quality workmanship and is free from structural and other defects. In many cases, housing constructed and delivered by respondents to purchasers has been characterized by defects that could have been avoided through proper inspections by supervisory personnel.

7. All land used by respondents for building sites was not free from severe limitations that may affect the use of such land for the construction of on-site residential housing sold by respondents. In some cases, such land was subject to frequent or continuous water saturation, slow run-off of surface water, ponding of water in various places or poor drainage that could result in frost-heave and shrink-swell.

8. Homes advertised by respondents as available for "immediate occupancy" were in many cases unavailable for occupancy by

purchasers until many months after the purchase agreement had been signed.

9. Homes advertised by respondents as including a family room and a garage or a basement and a garage did not in many cases include such features in the advertised price. Such features were optional rather than standard and available only upon the payment of an additional charge. In some cases, certain optional features were unavailable even for the payment of an additional charge.

10. All rooms advertised as bedrooms in respondents' 4-bedroom homes were not suitable for sleeping purposes. Rooms represented as bedrooms were unsuitable for such use because they were constructed with insufficient insulation, inadequate waterproofing or other construction defects.

11. Sales prices of homes advertised as being for "a limited time only" were offered by respondents over a substantial period of time.

12. Respondents' housing was not sold to purchasers free of all closing costs. In many cases, charges and fees incident to the sale of respondents' housing were actually imposed upon purchasers.

13. Schools represented as being located in certain school districts were not located in such school districts and were, therefore, unavailable to the purchasers of respondents' homes located in such school districts.

Therefore, the statements and representations as set forth in Paragraph Five above were false, misleading and deceptive.

V

PAR. 7. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents have made oral representations through their sales representatives and agents concerning the residential housing which respondents offer for sale.

Among the oral statements and representations made, but neither verbatim nor all-inclusive thereof, are the following:

1. That parks, playgrounds or schools will be built or developed in the near future in certain communities where respondents' residential housing is located.

2. That public transportation facilities will be available within certain communities where respondents' residential housing is located.

3. That landscaping in certain of respondents' housing developments would include four inches of topsoil in each purchaser's lot that would be suitable to support plant growth.

4. That the tax credit furnished at "closing" by respondents to certain purchasers of their on-site residential housing represented the estimated assessed valuation of the property for tax purposes.

PAR. 8. In truth and in fact:

1. No park, playground or school has been built or developed in certain designated communities, and have not been anticipated or authorized for such building and development in the near future, as represented by respondents to purchasers and prospective purchasers of respondents' residential housing.

2. No public transportation facilities have been made available within certain designated communities, and have not been anticipated or authorized for such availability in the near future, as represented by respondents, to purchasers and prospective purchasers of respondents' residential housing.

3. Landscaping in certain of respondents' housing developments where four inches of topsoil was to be included did not include four inches suitable for plant growth. The soil furnished was clay or a mixture of clay with gravel or debris.

4. The tax credit furnished at "closing" by respondents to certain purchasers of their on-site residential housing did not represent the actual assessed valuation of the property for tax purposes. At the time such tax credit was furnished by respondents, respondents knew or should have known that the actual assessed valuation of the property was significantly higher.

Therefore, the statements and representations as set forth in Paragraph Seven above were and are false, misleading and deceptive.

VI

PAR. 9. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents have made representations through model home samples and other devices concerning certain features in connection with the sale and delivery of such housing.

Illustrative of such model home representations, but not all inclusive thereof, are the following:

1. That a kitchen displayed in respondents' one-story model ranch home, Style R-24, would be identical to that delivered to purchasers of that particular style house.

2. That an open staircase with wrought iron railing displayed in respondents' Style S-2 McIntosh model home would be identical to that delivered to purchasers of that style house.

3. That mattresses displayed in bedrooms of certain of respondents' model homes were 74-1/2 inches in length.

PAR. 10. In truth and in fact:

1. Kitchens delivered to many purchasers of respondents' one-story ranch house, Style R-24, included a walled-off storage area that was not present in the model home displayed to purchasers and which had the effect of reducing the size of the kitchen by approximately four feet by eight feet.

2. An open staircase was not delivered to many purchasers of respondents' Style S-2 McIntosh house. Instead, such purchasers received a walled-in staircase.

3. Mattresses and beds used as display in bedrooms of certain of respondents' model homes were less than 74-1/2 inches in length thereby causing said rooms to appear larger than their actual dimensions.

Therefore, the representations as set forth in Paragraph Nine above were and are false, misleading and deceptive.

VII

PAR. 11. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents have included written statements in their advertising brochures, sales documents, and advertising inserted in newspapers of interstate circulation and in oral representations made by their sales representatives and agents concerning warranties against defects in housing that respondents offer for sale.

Typical and illustrative of said statements and representations are the following:

Satisfaction Guaranteed by Kaufman and Broad

In addition to an unprecedented five-year new home warranty Kaufman and Broad provides 24-hour customer service

* * * * *

Kaufman and Broad explains why you should buy a home NOW. . .exclusive 5-year structural warranty. . .

* * * * *

. . .every house built by Kaufman and Broad carries our exclusive New Home Structural Warranty. This unique assurance of quality, unheard of in the entire building industry, guarantees the lasting value of a Kaufman and Broad Home.

* * * * *

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The Home. . .has been constructed with the greatest care and workmanship. . .in substantial conformity with the plans and specifications on file in its office.

Should any major structural defect exist which, at any time within five (5) years from the date hereof, would directly result in the loss or impairment of such Home as a single family residence, Kaufman and Broad Homes, Inc. hereby binds itself to remedy such defect at no cost or obligation to such Purchaser; provided that notice of such defect is delivered to Kaufman and Broad Homes, Inc. . . .

* * * * *

Everything guaranteed for one year

* * * * *

Covers everything

* * * * *

Anything wrong would be repaired or replaced

PAR. 12. By and through the use of the statements and representations quoted in Paragraph Eleven hereinabove, and others of similar import and meaning not expressly set out therein, respondents represent and imply and have represented and implied:

1. That respondents' five-year warranty represents an unqualified obligation on the part of respondents to remedy all structural defects in their on-site residential housing of the kind that would result in the loss or impairment of such housing as a residence.

2. That under their five-year warranty respondents will remedy any structural defects provided that proper notice is given to respondents.

3. That respondents will repair all structural defects in on-site residential housing sold under their five-year warranty.

4. That all of respondents' on-site housing sold under five-year warranties is in substantial conformity with respondents' plans and specifications for such housing.

5. That the one-year warranty offered by respondents in connection with their on-site residential housing is an unqualified obligation on the part of respondents to repair any and all defects and to repair or replace any and all defective materials used in construction arising within one year from date of conveyance of such housing by respondents to the purchaser.

6. That purchasers of respondents' on-site residential housing who invoke respondents' one-year warranty may reasonably expect that respondents will repair any and all defects and will repair or replace any and all defective materials used in construction.

PAR. 13. In truth and in fact:

1. The five-year warranty was not an unqualified obligation on the part of respondents to remedy structural defects in the on-site residential housing sold by respondents.

2. In many cases even after proper notice was given to respondents of structural defects under the five-year warranty, respondents neglected, refused, or ignored making repairs under the warranty.

3. Respondents did not, in all cases, repair structural defects in on-site residential housing sold under their five-year warranty.

4. Not all on-site residential housing sold by respondents under their five-year warranty was in substantial conformity with respondents' plans and specifications for such housing.

5. The one-year warranty offered by respondents in connection with their on-site residential housing did not represent an unqualified obligation on the part of respondents to repair any and all defects and to repair or replace any and all defective materials used in construction arising within one year from the conveyance of such housing to the purchaser.

6. When purchasers of respondents on-site residential housing invoked respondents' one-year warranty, respondents did not, in all cases, repair any and all defects or repair or replace any and all defective materials used in construction. When requests for repairs or replacements were made by purchasers under such warranties, respondents, in many cases, failed to make such requested repairs or replacements.

Therefore, the statements and representations as set forth in Paragraphs Eleven and Twelve above were and are false, misleading and deceptive.

VIII

PAR. 14. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents made statements and representations in advertising brochures and in advertising inserted into newspapers of interstate circulation concerning warranties and guarantees.

In connection with such advertised warranties and guarantees, respondents failed to adequately disclose material terms and conditions of such warranties and guarantees such as (1) the nature and extent of such warranties and guarantees, (2) the conditions and limitations of such warranties and guarantees, and (3) the manner in which respondents will perform under such warranties and guarantees.

Thus, respondents failed to disclose such material facts concerning

warranties and guarantees which, if known to certain prospective purchasers, would be likely to affect their consideration of whether or not to purchase respondents' on-site residential housing.

Therefore, respondents' failure to disclose such material facts was unfair, false, misleading or deceptive acts or practices.

PAR. 15. In the ordinary course of their business, as aforesaid, respondents caused members of the public seeking to purchase homes from respondents to enter into written sales contracts with respondents which contracts contain a provision reserving to respondents the right to designate the mortgagee.

By and through the use of said written provisions contained in respondents' sales contracts as aforesaid, respondents have precluded purchasers from the opportunity of comparing various alternative credit terms that may be available to such purchasers on more favorable terms from other sources.

Therefore, the acts and practices as set forth above hereof were unfair, false, misleading or deceptive.

PAR. 16. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been and are now in substantial competition, in or affecting commerce, with corporations, firms and individuals in the construction and sale of on-site residential housing.

PAR. 17. The use by respondents of the aforesaid unfair, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the purchasing public into the purchase of substantial numbers of respondents' on-site residential housing.

PAR. 18. The aforesaid acts and practices of the respondents as herein alleged were all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereaf-

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kaufman and Broad, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 10801 National Boulevard, Los Angeles, California.

Respondent Kaufman and Broad Homes, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad, Inc. and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

Respondent Kaufman and Broad Home Sales, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad Homes, Inc., and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

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

ORDER

I

DEFINITIONS

"On-site residential housing" shall mean housing structures,

including lots, consisting of single family dwelling units or housing structures, consisting of multi-family dwelling units (including condominiums) represented and sold by respondents in the United States as completely constructed or partially constructed units.

An "express warranty" as used in this order shall mean any written affirmation of fact or written promise made or assigned by respondents to a purchaser as part of the transaction of the sale of a unit of on-site residential housing.

The "HOW warranty" as used in this order shall mean the warranty issued under the Home Owners Warranty Corporation's national home warranty program.

A "major construction defect" as used in this order shall mean a "major construction defect" as defined in the Home Owners Warranty Corporation Home Warranty Agreement attached hereto as Appendix A.

The term "approved standards" as used in this order shall mean "approved standards" as defined in the Home Owners Warranty Corporation Home Warranty Agreement attached hereto as Appendix A.

A "legal holiday" as used in this order shall mean any one of the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day.

"Closing costs" as used in this order shall mean all the charges and fees imposed directly or indirectly upon a purchaser incident to the sale of real property. Specifically excluded herefrom are escrow deposits and impounds.

"Past purchaser" as used in this order shall mean "past purchaser" as that term is defined in Part VII and Part VIII of this order.

"Repurchase price" as used in this order shall mean the price at which the home was purchased by the original purchaser from respondents or from any of respondents' subsidiaries.

"Receipt" as used in this order in connection with the receipt by respondents of written requests for repairs from purchasers and past purchasers of respondents' housing shall mean three (3) days following the date post-marked on any letter sent through the United States mail; *provided*, that the actual date of receipt of any written request may be established by other means regardless of the method of delivery that was, in fact, used.

II

It is ordered, That respondents Kaufman and Broad, Inc., a corporation, Kaufman and Broad Homes, Inc., a corporation, and

Kaufman and Broad Home Sales, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the conduct and operation of their business in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act in the production, advertising, offering for sale or sale of a unit of on-site residential housing, do cease and desist from:

1. Selling and delivering any housing unit for use as on-site residential housing which is not built in accordance with the approved standards or which contains a major construction defect without taking the necessary action to repair, replace, or to pay the cost of repairing or replacing the defect in such housing unit in accordance with the provisions of respondents' express warranty required under Part III B of this order.

2. Failing, in connection with the express warranty required under Part III B of this order to:

(a) Make repairs in a workmanlike manner to a unit of on site residential housing where such repairs are required under respondents' warranty.

(b) Make repairs with materials or components identical to, or of an equal or better grade or quality than, the materials or components used in the original construction of the particular unit of on-site residential housing where such repairs are required under respondents' warranty.

3. Failing to adhere to Minimum Property Standards for the construction of on-site residential housing as required by the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration where such standards are applicable.

4. Making variances, substitutions or omissions in the construction of on-site residential housing from the schedule of specifications made available for inspection purposes in accordance with the requirements of Part V 8 of this order that are not subject to approval by the U.S. Department of Housing and Urban Development or by the U.S. Veterans Administration and which would significantly reduce the quality of the material or component in which the variance, substitution or omission was made.

5. Making variances, substitutions or omissions in the construction of on-site residential housing where such variance, substitution or omission deviates from approved plans and specifications filed with the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration and which have not been ap-

proved by such agencies with respect to such housing and which would significantly reduce the quality of the material or component in which the variance, substitution or omission was made.

6. Failing to repair, replace or to pay the cost of repairing or replacing any major construction defect or any other defect in accordance with the provisions of respondents' express warranty required under Part III B of this order or in the performance of respondents' obligations under Part VIII of this order within a reasonable time after receipt of written notice of such defect from the purchaser or past purchaser of respondents' on-site residential housing; *provided, however, that:*

(a) Where respondents for any reason are unable to complete such requested repairs within thirty (30) calendar days after receipt of written notice of such defect from the purchaser or past purchaser of respondents' on-site residential housing, respondents shall furnish to such purchaser or past purchaser (as defined in Part VIII) a written statement setting forth the reason or reasons why such requested repairs cannot be undertaken or completed within such thirty day period and a scheduled date on which the requested repairs are, in fact, to be completed within the next sixty (60) day period.

(b) Where respondents are or were prevented from completing repairs by the scheduled date referred to in subparagraph 6(a) above due to intervening circumstances beyond their control, such as labor strike, supplier or subcontractor failure to deliver materials or perform work, or unsuitable weather conditions, such repairs will be completed within a reasonable period of time not to exceed sixty (60) days from the date of the termination of the intervening circumstance.

(c) Where respondents for any reason elect not to honor such request for repairs, respondents shall, within twenty-one (21) calendar days of receiving such request for repairs, notify the purchaser or past purchaser in writing why respondents will not honor the request.

7. Failing to take reasonable steps to insure that all inspections required to be made of each unit of respondents' on-site residential housing by appropriate local and other governmental authorities are, in fact, made at the stage of construction at which such inspections are normally required to be made and retaining copies of such inspection reports for each particular unit of such residential housing and, upon request, making such reports available for inspection by purchasers promptly and without charge.

8. Representing through any means, directly or by implication,

that the land upon which respondents' on-site residential housing is constructed is suitable for the construction of housing unless respondents have performed the necessary site preparation and construction techniques in a manner satisfactory to the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration or to state and local planning and zoning authorities to render the land suitable for residential construction.

9. Representing through any means, directly or by implication, that any of respondents' housing is available for immediate use or occupancy by purchasers or prospective purchasers unless such residential housing units are, in fact, available for immediate use or occupancy.

10. Representing through advertising, advertising depictions or similar means, directly or by implication, that the advertised price for respondents' housing includes as standard items certain features, equipment, architectural design, construction or any other item or characteristic for which respondents in fact make an additional charge; *provided, however*, that nothing in this Paragraph 10 shall prohibit respondents from picturing or depicting a housing unit complete with optional items or characteristics so long as there is a clear and conspicuous disclosure in immediate conjunction therewith that such items or characteristics are available for an additional charge.

11. Representing through any means, directly or by implication, that any room in respondents' housing is suitable for use as a habitable area where such room has not been properly insulated or constructed for such purpose.

12. Representing through the use of the words "for a limited time only" or through any other means or device, directly or by implication, that any change in the price of any of respondents' housing is imminent unless, at the same time and in conjunction therewith, respondents clearly and conspicuously disclose the date such limited time offer expires.

13. Representing through any means, directly or by implication, that sales of respondents' housing to purchasers are free of "closing costs" when in fact such sales do include closing costs, as "closing costs" are hereinabove defined.

14. Representing through any means, directly or by implication, that public schools and housing offered for sale by respondents are or will be located in the same school district unless respondents advise purchasers of the title or office, address and telephone number of the responsible school district authority from whom respondents obtained such information.

15. Representing through any means, directly or by implication, that respondents' housing is planned, developed, constructed or located with regard to children's recreational needs without disclosing in immediate conjunction therewith the specific means provided or facilities which respondents have constructed to meet the recreational requirements of children.

16. Representing through any means, directly or by implication, the existence of or plans for any educational, recreational, transportation, medical or other facilities adjacent to or in the vicinity of communities in which respondents have built or propose to build their on-site residential housing unless such facility actually exists or, with regard to planned facilities, respondents advise purchasers of the title or office, address and telephone number of the appropriate authority or public official from whom respondents obtained such information.

17. Misrepresenting through any means, directly or by implication, the amount or quality of the topsoil to be furnished to the purchasers of respondents' on-site residential housing.

18. Representing through any means, directly or by implication, that the on-site residential housing purchased from respondents will be taxed at a rate that is lower than the most recent official tax estimate and rate obtained from the officially responsible tax assessing authority, or making any representation relating to the assessed valuation or tax rate of such housing without disclosing the identity or title, address and telephone number of the officially responsible tax assessing authority.

19. Misrepresenting through any means, directly or by implication, that any feature, item of equipment, architectural design, construction, appurtenance or characteristic present in model homes is a standard inclusion in such model or style that will be duplicated in residential housing sold and delivered by respondents to purchasers of such model or style at the advertised or offered price. *Provided, however,* the following will be deemed to be adequate notice to prospective purchasers that such items and features are not included as standard in respondents' on-site residential housing:

(a) A conspicuous sign or signs in or adjacent to the model homes listing items which are optional or unavailable; or

(b) Labels on specific optional and unavailable items; and

(c) Lists available to each prospective purchaser at the entrance of each model home complex which disclose optional and unavailable items; or

(d) Lists in the brochures which describe the particular model or

models of respondents' on-site housing which disclose optional and unavailable items.

20. Using beds or mattresses of less than 74-1/2 inches in length as display or decoration in rooms presented as bedrooms in respondents' model homes without conspicuously disclosing by means of a sign in such room (a) that the bed or mattress is shorter than standard size, or (b) the dimensions of the room.

III

A. *It is further ordered*, That respondents, in connection with the advertising, offering for sale or sale of on-site residential housing, shall cease and desist from representing through any means, directly or by implication, that respondents' residential housing is warranted by an express warranty without clearly and conspicuously disclosing:

(a) That the warranty is the standard warranty issued pursuant to the Home Owners Warranty Corporation's national home warranty program, or a warranty substantially identical to such warranty including the specific duration of the warranty;

(b) Or, the following:

(i) The nature and extent of the warranty including disclosure of the parts of said housing that are warranted;

(ii) The specific conditions and limitations of such warranty;

(iii) The specific duration of the warranty;

(iv) The steps that anyone claiming under the warranty must take before respondents fulfill their obligations under the warranty; and

(v) The manner and time in which respondents will perform their obligations under the warranty.

B. *It is further ordered*, That respondents shall furnish purchasers of each unit of respondents' on-site residential housing with a warranty that is substantially identical to the insurer's and the warrantor's undertaking in the Home Owners Warranty Corporation's Home Warranty Agreement (hereafter referred to as the "HOW warranty") currently in use and attached hereto as Appendix A and incorporated by reference in this order, including the procedures for the settlement of disputes; *provided*, that respondents' undertaking for major construction defects shall be for a term of at least four years from the commencement date of each such warranty furnished, and *provided further*, that nothing in this order shall relieve respondents from complying with the Magnuson-Moss Warranty Act, Section 101, *et seq.* (15 USC 2301, *et seq.*), the rules

promulgated thereunder, and interpretations issued by the Federal Trade Commission in respect thereto.

C. *It is further ordered*, That in the event disputes arise between respondents and purchasers relating to respondents' liability for defects under Part III B of this order, and such disputes cannot be settled on a mutually agreeable basis within a reasonable period of time not to exceed forty (40) days from the date such dispute arose, then respondents shall notify each such purchaser in writing and at the same time as respondents finally reject the purchaser's claim, that such dispute may be submitted to third-party dispute settlement under the procedures required in Part III B above; *provided*, that purchasers shall not be precluded from exercising rights under the warranty required in Part III B above in respect to making a warranty or insurance claim or filing a demand for dispute settlement at any time prior to the expiration of such forty (40) day period; and, *provided further*, that no later than ten (10) business days excluding Saturdays, Sundays and legal holidays from the receipt of a written request for dispute settlement from purchasers, respondents shall take action to initiate such dispute settlement proceedings.

D. *It is further ordered*, That respondents shall specifically perform in good faith and without unreasonable delay or make payments timely as determined under the dispute settlement procedures required in Part III B above in each instance where the use of such procedures results in a decision in favor of the purchaser subject, however, to such rights under law as either purchaser or respondents may have in connection with the dispute.

IV

It is further ordered, That respondents, directly or indirectly, in connection with the sale of any unit of on-site residential housing, shall not enter into any contracts or employ any other means which prohibit or prevent any purchaser from selecting, within a reasonable length of time, a lending institution of the purchaser's own choice, or that may otherwise have the effect of restricting where the purchaser may seek or secure credit; *provided, however*, nothing contained herein shall prohibit respondents, or any affiliate thereof, from entering into mortgage commitments, mortgages or other similar financing agreements with their purchasers.

V

It is further ordered, That in connection with the advertising,

offering for sale or sale of on-site residential housing, respondents shall make available to each and every prospective purchaser who visits respondents' sales offices or model homes a brochure or a written statement relating to such housing that will include the following disclosures in a clear, conspicuous and affirmative manner:

1. For on-site residential housing not covered by the National Flood Insurance Program administered by the U.S. Department of Housing and Urban Development, the identity, address and telephone number of the individual, business firm and government agency that conducted soil tests on land used in the construction of the residential housing offered for sale. In addition, respondents shall require their contractors to state in non-technical language to each prospective purchaser who contacts such contractors whether the land tested is suitable for residential use;

2. The identity or title, address and telephone number of the responsible public school district authority who will furnish information relating to the identity and location of schools for the particular housing unit;

3. Each room or area of the particular housing unit to be purchased that is not insulated to retain the same degree of warmth as rooms designed for use as principal living areas;

4. Each room or area of the particular housing unit to be purchased that is constructed without waterproofing adequate to render such room or area suitable for use as a habitable living area;

5. The most recent official tax rate and estimate obtained from the officially responsible tax assessing authority and the identity or title, address and telephone number of such tax assessing authority;

6. A list containing each and every architectural design, construction feature, appurtenance, optional item or equipment or other characteristic or feature exhibited to the particular purchaser in connection with a model home sample or style offered for sale to such purchaser which characteristic or feature is not included in the model or style of respondents' housing unit offered for sale to such purchaser at the offered or advertised price;

7. A list containing each and every construction feature, appurtenance, optional item or equipment or other characteristic or feature exhibited to the particular purchaser in connection with a model home sample or style offered for sale to such purchaser which characteristic or feature cannot be included or duplicated in the particular housing unit offered for sale to such purchaser even upon the payment of an additional charge because of the style, size, location or any other reason associated with the land or the design of the particular housing unit offered;

8. A notice that plans and specifications for each home being offered for sale are available for inspection by prospective purchasers at respondents' sales offices during normal business hours; *provided*, that such specifications shall include a full description of the materials and components used by respondents in the construction of their on-site residential housing; and, *provided further*, that such description will be satisfied if it substantially includes the type of information contained in the "Description of Materials" disclosure statements required by the United States Federal Housing Administration (FHA Form 2005, as revised from time to time) or the United States Veterans Administration (VA Form 26-1852, as revised from time to time);

9. A notice that purchasers of respondents' housing may select any lending institution of their choice for the purpose of securing a mortgage and are not limited to the lending institution provided by respondents;

10. A statement setting forth respondents' arrangement for repairs and the satisfaction of warranties or in lieu thereof, a copy of the warranty required by Part III B of this order that will be furnished with the housing being offered for sale and a statement of the procedure for the settlement of disputes under such warranty.

VI

It is further ordered, That respondents shall secure a written acknowledgement from each purchaser of respondents' on-site residential housing which shall state the following information:

1. That the disclosures referred to in Paragraph V of this order were received.
2. The date on which the disclosures referred to in Paragraph V of this order were received.

VII

For the purpose of this Part VII, "past purchaser" shall mean the original purchaser of the unit of respondents' on-site residential housing who purchased such unit as new from respondents or from any of respondents' subsidiaries during the period commencing January 1, 1972 and ending on the day immediately preceding the effective date of this order, and who has continued to retain title to such unit as of the effective date of this order.

A. *It is further ordered*, That respondents, in connection with on-site residential housing units sold to past purchasers shall repair, replace, or pay past purchasers the reasonable cost of repair or

replacement of defects pursuant to all of the terms, conditions, definitions, approved standards, and exclusions contained in the Home Owners Warranty Corporation Limited Home Warranty Agreement (HOW warranty), which is attached hereto as Appendix A and incorporated by reference herein, when the following conditions exist:

1. In units where respondents transferred title to past purchasers on or after January 1, 1972:

Major construction defects;

2. In units where respondents transferred title to past purchasers within two (2) years prior to the effective date of this order (including the day immediately preceding the effective date of this order):

Major construction defects, or

defects in the plumbing, electrical, heating, or cooling systems due to non-compliance with the approved standards, except defects in appliances, fixtures and items of equipment;

provided, that nothing in this Part VII A shall serve to limit or change respondents' undertaking for remedial action for on-site residential housing units sold and warranted by respondents prior to the effective date of this order with a Home Owners Warranty Corporation's Home Warranty Agreement.

B. *It is further ordered*, That respondents, in connection with the remedial action required by Part VII A of this order, shall:

1. Require all claims by past purchasers for remedial action to be made by affidavit and in the form attached hereto as Appendix C and Appendix D, as applicable and incorporated by reference in this order, and addressed to the office of respondents as designated in the letter of notification required by Part VII C;

2. Process all claims made by past purchasers in the priority in which received at respondents' designated office;

provided, that respondents shall not be required to honor any claim from a past purchaser for remedial action made pursuant to subparagraph 1 hereinabove that is postmarked later than fifty (50) days from the date the letter of notification required by Part VII C of this order is mailed by respondents.

C. *It is further ordered*, That respondents shall, within sixty (60) days from the effective date of this order, mail by United States first class mail to the address of each unit of on-site residential housing sold by respondents during the period January 1, 1972 to the day

immediately preceding the effective date of this order, a notification informing past purchasers of respondents' obligations under Part VII of this order, and shall include with such notification affidavit forms for the use of past purchasers in submitting claims for repairs; *provided*, that respondents shall not be required to mail such notification to the address of any unit of on-site residential housing where respondents: 1) prior to the effective date of this order furnished the past purchaser a Home Owners Warranty Corporations' Home Warranty Agreement, or 2) within one year prior to the day immediately preceding the effective date of this order furnished the express warranty attached hereto as Appendix B. Such notification shall also include a clear and conspicuous statement that: Claims from past purchasers for repairs must be postmarked within fifty (50) days from the date of such notification; and disputes concerning respondents' liability for defects may be settled at the past purchaser's option through the procedures described under Part IX 4 of this order. Respondents' notification to past purchasers shall be substantially identical in form and content to the letters of notification attached herewith as Appendix E and Appendix F which are incorporated by reference in this order.

D. *It is further ordered*, That respondents, in connection with claims for repairs received from past purchasers under Part VII A of this order, shall:

1. Respond in writing within forty-five (45) days from the receipt of each past purchaser's affidavit which asserts a claim for repairs. Such response shall include a scheduled date for the completion of the repairs which date shall not be unreasonably distant in the future; or, if any repair is not to be made, a full and complete explanation, including a technical explanation as applicable, of the reason or reasons why respondents will not make the requested repairs; and shall be signed by a responsible official of Kaufman and Broad, Inc.;

2. Complete all repairs which respondents agree to make no later than the scheduled date referred to in subparagraph D1 above; *provided, however*, that in the event respondents are prevented from completing repairs by such date due to intervening circumstances beyond their control such as labor strike, supplier failure to deliver materials or unsuitable weather conditions, such repairs will be completed within a reasonable period of time not to exceed sixty (60) days from the date of the termination of the intervening circumstance and respondents shall notify each such past purchaser, in writing, of the reason or reasons for the delay.

E. *It is further ordered*, That respondents shall:

1. Within sixty (60) days from the effective date of this order, submit to the Chicago Regional Office of the Federal Trade Commission the affidavit of an officer of respondent Kaufman and Broad, Inc. which sets forth the date, manner and form by which past purchasers were notified by respondents as required under Part VII C of this order.

2. At six month intervals for a period of two years following the effective date of this order, submit the certified statement of an independent contractor who is acceptable to the Commission showing the specific manner and form in which respondents are complying and have complied with each provision of Part VII of this order.

VIII

For the purpose of this Part VIII, "past purchaser" shall mean the purchaser of a unit of respondents' on-site residential housing who, as of the effective date of this order, holds title to a unit covered by an unexpired term of respondents' one year express warranty, a copy of which is attached hereto as Appendix B.

It is further ordered, That respondents, in connection with on-site residential housing units sold to past purchasers, shall repair, replace, or pay past purchasers the reasonable cost of repair or replacement of defects covered by respondents' express warranty or when the following conditions exist:

- [a] Major construction defects;
- [b] defects in the plumbing, electrical, heating or cooling systems due to non-compliance with the approved standards;
- [c] other defects due to non-compliance with the approved standards; or
- [d] defects in appliances, fixtures and items of equipment due to non-compliance with the approved standards or for the term of the manufacturer's written warranty, if respondents' have assigned the manufacturer's warranty to past purchasers, but not to exceed one year.

IX

It is further ordered, That respondents, in connection with respondents' obligations under Part VII and Part VIII of this order to take remedial action for defects, shall:

1. Make repairs in accordance with the approved standards;

2. Make repairs in a workmanlike manner, and with materials or components identical to, or of an equal or better grade or quality than, the materials or components used in the original construction of the particular on-site residential housing unit;

3. Offer to purchase each past purchaser's unit at the repurchase price if the defects cannot be remedied within a reasonable time;

4. In each instance where a dispute arises between respondents and a past purchaser relating to respondents' obligations to take remedial action for defects, and such dispute cannot be settled on a mutually agreeable basis within a reasonable period of time not to exceed forty (40) days from the date such dispute arose, then respondents shall offer in writing to each such past purchaser and at the same time as respondents finally reject the past purchaser's claim, to submit such dispute to dispute settlement procedures which are substantially identical to the dispute settlement procedures described on page 6 of the "HOW warranty" attached hereto as Appendix A and shall include with such offer a form such as the "Demand for Dispute Settlement" which appears as page 9 of such "HOW warranty"; *provided*, that no later than ten (10) business days excluding Saturdays, Sundays and legal holidays from the receipt of such written request for dispute settlement from past purchasers, respondents shall take action to initiate such dispute settlement proceedings.

5. Specifically perform in good faith and without unreasonable delay or make payments timely in each instance where the use of the procedures described in subparagraph 4 hereinabove results in a decision in favor of the past purchaser, subject, however to such rights under law as either purchaser or respondents may have in connection with the dispute;

6. Preserve, for a period of no less than three (3) years from the effective date of this order the original document, or copies thereof as appropriate, and upon reasonable notice provide access to the Commission or its representatives for the purpose of inspection and copying, all documents, reports and records including all requests for repairs and correspondence relating to compliance with Part VII and Part VIII of this order.

X

It is further ordered, That the respondents shall maintain and, upon reasonable notice, provide access to the Commission or its representatives for the purpose of inspection and copying, for a period of three (3) years from the date of transfer of title by respondents of each unit of on-site residential housing:

1. All inspection reports made by local and other governmental authorities during the construction of respondents on-site residential housing pursuant to Paragraph II 7 of this order.
2. All complaints and requests for repairs made to respondents by purchasers of such on-site residential housing under the provisions of respondents' express warranties.
3. All correspondence and documents regarding complaints and requests for repairs made to respondents by purchasers of such on-site residential housing under the provisions of respondents' express warranties.
4. All written acknowledgements received from purchasers of respondents' on-site residential housing pursuant to Paragraph VI of this order.

XI

It is further ordered. That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders, rules or building codes or directives of any kind issued or required by any governmental agency, or any federal, state or local laws, or act as a defense to actions instituted by municipal, state or federal regulatory agencies; *provided*, that if federal law hereafter enacted or federal regulation hereafter promulgated requires respondents to furnish a warranty for on-site residential housing and such warranty is less restrictive than the corresponding provisions of the warranty required under Part III B of this order, and respondent files a motion with the Federal Trade Commission to modify this order to correspond to such less restrictive other warranty, the Federal Trade Commission shall rule upon respondents' motion within 120 days after such motion is filed or, if respondents' motion to modify is filed at least 60 days prior to the effective date of such law or regulation, then the Federal Trade Commission shall rule upon respondents' motion within 60 days after the effective date of such law or regulation and; *provided further*, that should the Federal Trade Commission fail to rule upon respondents' motion to modify within such time periods, then such law or regulation shall automatically be deemed to modify and replace the corresponding provision(s) of this order.

XII

It is further ordered. That respondents shall within thirty (30) days of the effective date of this order distribute a copy of this order to:

1. Each of respondents' operating divisions and subsidiaries in the United States.

2. All officers and employees of the respondent corporations and of the operating divisions and subsidiaries of all of respondents' corporations in the United States who are engaged or who may hereafter become engaged in the production, advertising, offering for sale or sale of respondents' on-site residential housing.

3. Each of the advertising agencies, interior designers, consulting firms or other independent contractors in the United States who are engaged or who may hereafter become engaged in the decorating of respondents' model home samples, or in the creation or placement of advertising in connection with the offering for sale of respondents' on-site residential housing.

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

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

LIMITED WARRANTY HOME WARRANTY AGREEMENT

1. Builder's Name and Address: _____

2. Purchaser's Name: _____
3. Address of Home: _____

4. Purchase Price of Home: \$ _____
5. Commencement Date (first occupancy or final settlement, whichever occurs first): _____
6. Common Elements Commencement Date (condominiums only, date the first unit in the structure was occupied or its title transferred, whichever occurred first): _____
7. Local HOW Council (name, address and phone number): _____

8. National HOW Council: Home Owners Warranty Corporation, 15th & M Streets, N.W., Washington, D.C. 20005, and its successors and assigns.
9. Insuror: American Bankers Insurance Company of Florida and its successors and assigns.
10. Check this box if an Addendum is attached to this Home Warranty Agreement listing items of material or work which are excluded from this Agreement because they were not provided by the Builder and they are not included in the purchase price of home.

The Purchaser and Builder have signed this Agreement on this _____ day of _____, 19____.

BUILDER:

PURCHASER(S):

(Insert Name of Builder) _____

By: _____

CONSEQUENTIAL DAMAGES

Consequential damages are excluded. (Some states do not allow the exclusion or limitation of consequential damages so the above limitation or exclusion may not apply to you).

FEDERAL TRADE COMMISSION DECISIONS

Decision and Order

93 F.T.C.

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IMPORTANT NOTICE – PLEASE READ

- The Builder has arranged for insurance coverage, described on page 5 of this agreement. The insurance coverage will be officially extended to you by a "Certificate of Participation" (or insurance policies) which will be sent to you after you sign this agreement. If you do not receive your Certificate of Participation or policies within 6 weeks, contact your Local HOW Council.
- You and the Builder should sign this agreement at final settlement. This agreement should be executed only after substantial completion of the home by the Builder and inspection of the home by the Purchaser.
- Neither this agreement nor the insurance coverage cover failure of the Builder to complete construction.
- At the time you receive this agreement the Builder will give you a set of the Approved Standards which are part of this warranty and which the Builder is obligated to meet under this agreement.

LIMITED WARRANTY

Identity of Warrantor. The Builder named on page 1 is the warrantor under this warranty.

To Whom Given. This warranty is extended to you as Purchaser (the first owner to occupy the home as a residence for yourself or your family) and automatically to any subsequent owners of the home and any mortgage lender who takes possession of the home (see exclusion during non-residential use, page 5).

Coverage During First Year. For one year, beginning on the commencement date filled in on page 1, the Builder warrants that the home will be free from defects due to noncompliance with the Approved Standards and from major construction defects.

A "major construction defect" is actual damage to the load-bearing portion of the home (including damage due to subsidence, expansion or lateral movement of soil from causes other than flood or earthquake) which affects its load-bearing function and which vitally affects (or is imminently likely to produce a vital effect on) the use of the home for residential purposes.

Coverage For Up to One Year. The Builder warrants that all appliances, fixtures and items of equipment will be free from defects due to noncompliance with the Approved Standards for one year or for the term of the manufacturer's written warranty (if a manufacturer's written warranty is assigned to you by the Builder), whichever is less.

Coverage During Second Year. During the second year after the commencement date, the Builder continues to warrant that the home will be free from major construction defects and that the plumbing, electrical, heating, and cooling systems will perform according to the Approved Standards, unless their failure is the result of a defect in an appliance, fixture, or item of equipment. (See the Approved Standards for definitions).

Coverage of Common Elements in Condominiums. Common elements serving condominium units are also covered by this warranty. "Common elements" mean any structural portion of a condominium structure (including, but not limited to, any passageways, rooms or other spaces) which are provided for the common use of the residents of the structure. It also means part of a mechanical, electrical, heating, cooling or plumbing system serving two or more condominium units and outbuildings containing parts of such a system.

Common elements are covered for the same length of time as similar items which are part of an individual unit, but the beginning date of the warranty period on common elements is determined by the common elements commencement date on page 1.

Builder's Performance. If a defect occurs in an item which is covered by this warranty, the Builder will repair, replace, or pay you the reasonable cost of repairing or replacing the defective item. The Builder's total liability under this warranty is limited to the purchase price of the home filled in on page 1. The choice among repair, replacement or payment is the Builder's. Steps taken by the Builder to correct defects shall not act to extend the terms of this warranty.

Other Insurance. In the event the Builder repairs or replaces, or pays the cost of repairing or replacing, any defect covered by this warranty for which you are covered by other insurance, you must, upon request by the Builder, assign the proceeds of such insurance to the Builder to the extent of the cost to the Builder of such repair or replacement.

Other Rights. This warranty gives you specific legal rights. You may also have other legal rights which vary from state to state. This agreement does not affect any rights of you or the Builder under any other express or implied warranty.

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INSURANCE COVERAGE

Assignment of Insurance Coverage. The Builder hereby assigns the insurance coverage to you, but your insurance protection becomes effective only when you receive your Certificate of Participation or policies. Once you receive your Certificate or policies your insurance will cover any defects back to the time of the commencement date(s) filled in on page 1.

Scope of Insurance Coverage. The insuror, subject to a one time \$50.00 deductible, will meet all the Builder's obligations under this warranty as set forth in this agreement if, after completion of arbitration, the Builder for any reason fails to meet them. The insuror will directly insure against major construction defects for an additional eight years (beginning two years after, and ending ten years after, the appropriate commencement date). The total liability of the insuror during the ten years covered by this agreement is limited to the purchase price filled in on page 1.

Expenses. The insurance coverage includes actual, reasonable shelter expenses during repairs.

EXCLUSIONS

The following are not covered by either the warranty or the insurance coverage:

1. Defects in outbuildings (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls which are not necessary for the home's structural stability; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); off-site improvements; or any other improvements not a part of the home itself.
2. Bodily injury, damage to personal property, or damage to real property which is not part of the home which was included in the purchase price filled in on page 1.
3. Any damage to the extent it is caused or made worse by:
 - Negligence, improper maintenance or improper operation by anyone other than the Builder or his employees, agents or subcontractors; or
 - failure of anyone other than the Builder or his employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures; or
 - failure to give notice to the Builder of any defect within a reasonable time; or
 - changes of the grading of the ground by anyone other than the Builder, or his employees, agents or subcontractors.
4. Any defect in, or caused by, materials or work (including, but not limited to, items shown on any attached "Addendum to Home Warranty Agreement") supplied by anyone other than the Builder, or his employees, agents or subcontractors.
5. Normal wear and tear or normal deterioration.
6. Accidental loss or damage from causes such as, but not limited to: fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, wind storm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. However, soil movement (from causes other than flood or earthquake) is not excluded.
7. Insect damage.
8. Any loss or damage which arises while the home is being used primarily for non-residential purposes.
9. Any defect which does not result in actual loss or damage.

HOW TO MAKE A WARRANTY CLAIM

Submission of Claims to Builder. If you have a complaint, you should first send a clear and specific written complaint to the Builder. You may also wish to provide the Local HOW Council with a copy of any such complaint for its information.

Time of Notice of Claim. Written notice of a defect in any item under the warranty must be received by the Builder (or, at your option, the Local HOW Council) within 30 days after the warranty on that item expires.

Demand for Dispute Settlement. If you and the Builder disagree concerning the warranty obligations under this agreement (or he does not respond to your complaint), you may request informal dispute settlement concerning your claim by mailing the "Demand for Dispute Settlement" form (see back page) to the Local HOW Council. You may also request informal dispute settlement by submitting a letter specifically requesting dispute settlement and identifying yourself, the Builder, the home, the defects claimed and the remedies sought.

Conciliation and Arbitration. HOW provides for conciliation and for nonbinding arbitration conducted by the American Arbitration Association under its Expedited Home Construction Arbitration Rules (or by another approved organization). No fee or deposit is required. No arbitration decision may call for performance beyond the scope of the warranty provided in this agreement.

After it receives your "Demand for Dispute Settlement" form, the Local HOW Council will assign a conciliator, who will attempt to work out a voluntary conciliation agreement between you and the Builder as to the settlement of your claim. After you have attempted conciliation, you may demand arbitration of any unresolved warranty dispute between you and the Builder.

You are not required to submit your claim to dispute settlement unless you wish to do so. However, under Public Law 93-637 you may not file suit against the Builder until you have submitted your claim and a decision has been reached. Suit may be permitted under other state or federal laws and you are only required to wait for a decision for 40 days (47 if you do not contact the builder before filing a claim) after which time you may sue. In addition, the insurer is not required to pay you under the insurance coverage unless you complete arbitration.

Acceptance of Decision. If you decide to accept the decision you must sign and return to the Local HOW Council, within 45 days after the date of the decision, an "Acceptance of Decision" form by which you agree to accept the arbitrator's decision in full satisfaction of your claim. The Builder will then be bound to perform as required in the decision. The Builder is not responsible for damage caused or made worse by your delay in accepting the decision.

The time allowed by the decision for the Builder's performance will be measured from the date the Local HOW Council receives your "Acceptance of Decision" form and will be extended automatically if weather, strikes, or other matters not within the Builder's control interfere with his performance.

Rejection of Decision. After you receive the decision, you must decide whether or not to accept it. You may reject the decision in which case it has no legal effect on you.

If you do not accept the decision, the Builder is under no obligation to perform in accordance with the decision.

Condominium Claims. If the claim involves a common element in a condominium, it may be made only by an authorized representative of the condominium association.

Other Claimants. Any other person to whom the warranty is extended should submit and pursue any claims that he may have by the same procedures.

HOW TO MAKE AN INSURANCE CLAIM

If a claim arises under the warranty and the Builder cannot or will not cooperate in HOW dispute settlement procedures, the Local HOW Council will contact the insurer and the insurer will (if it disputes the claim) take the place of the Builder in the dispute settlement procedures and perform as directed by the decision.

If the Builder cooperates in HOW dispute settlement procedures, but fails to perform as directed within the time specified, you should notify your Local HOW Council, which will arrange with the insurer for performance of the warranty obligations under the decision.

If a claim arises with respect to the direct insurance against major construction defects during the third through tenth years after the commencement date(s) of this agreement, you should notify your Local HOW Council, which will arrange with the insurer to investigate the claim. If the insurer disputes the claim, you may request arbitration. The insurer has agreed to be bound by the arbitrator's decision, subject to the following paragraph.

Prerequisite to Payment by Insurer. The insurer will not pay a claim until you have completed arbitration and accepted the decision (unless the insurer chooses not to dispute the claim), and have signed and delivered a release of all rights you may have against the insurer arising out of the specific claim, and, in the case of a claim arising under the first two years' coverage, until you have signed and delivered to your Local HOW Council an assignment to the insurer of your claim against the Builder.

HOW Not a Warrantor or an Insurer. The National HOW Council and the Local HOW Council are not warrantors or insurers. Only the insurer named on page 1 is responsible for paying claims under the insurance coverage.

MISCELLANEOUS

Representations by Builder. The Builder hereby represents to you that he is registered with the Local HOW Council and the home has been initially enrolled with the Local HOW Council; that he is the person, corporation, partnership or other entity which conveys title to the home to you or by contract builds the home on your land or land owned by a third party, and he is, therefore, entitled to sign this agreement; that the home qualifies for the insurance coverage; and that he knows of no reason why the Certificate of Participation (or insurance policies) should not be issued to you.

Assignment of Manufacturers' Warranties. The Builder hereby assigns to you all manufacturers' warranties on items he has provided as part of the home.

Independence from Purchase Contract. This agreement is independent of the contract between you and the Builder for the construction of the home and/or its sale to you. Contract disputes which are not warranty disputes are not eligible for HOW arbitration, for the insurance coverage or for other settlement under this agreement. Nothing contained in that contract or any other contract between you and the Builder can restrict or override the provisions of this agreement. You and the Builder may contract for additional standards or requirements, but only the Approved Standards are applicable under this agreement and the Certificate of Participation (or insurance policies).

Notices. All notices to the Builder, to you, to your Local HOW Council or to the National HOW Council must be sent by mail, postage prepaid, to the recipient at the address shown for the recipient on page 1, or to whatever other address the recipient may designate in writing.

General Provisions. Should any provision of this agreement be deemed by a court of competent jurisdiction to be unenforceable, that determination will not affect the enforceability of the remaining provisions. This agreement is to be binding upon the parties, their heirs, executors, administrators, successors and assigns. Use of one gender in this agreement includes all other genders; and use of the plural includes the singular, all as may be appropriate. This agreement is to be covered by and construed in accordance with the laws of the state in which the home is located.

Amendments. This agreement cannot be changed or altered in any way.

DEMAND FOR DISPUTE SETTLEMENT

TO THE OWNER: Complete the following and mail to the Local HOW Council at the address shown on the front page of your Home Warranty Agreement. If some of the requested information is unknown to you, please indicate.

- 1. Name of Owner(s): _____
- 2. Address: _____
- 3. Home Warranty Agreement Number: _____
- 4. Date of Home Warranty Agreement: _____
- 5. Name of Builder: _____
- 6. Describe Defects: _____

(Use additional sheets, if necessary)

- 7. Remedy Sought: _____

(Use additional sheets, if necessary)

The undersigned owner(s) of the home covered by the Home Warranty Agreement noted above hereby demands that the Local HOW Council undertake to arrange for conciliation of his (their) dispute with the above named Builder. The owner(s) understands that at any time after conciliation has been attempted, he (they) can end conciliation and demand that arbitration be initiated.

Signature

Date

Signature

Date

Do Not Write Below This Line

TO THE BUILDER: You are hereby notified that the above Demand for Dispute Settlement has been filed with Home Owners Warranty Council of _____.
The time and location of the hearing will be arranged by the conciliator appointed by the Local HOW Council.

Approved Standards

ATTACH TO EVERY
HOME WARRANTY AGREEMENT



Introduction

The approved standards are the required standards for construction of all Homes built under the Home Owners Warranty Program. Compliance with these standards is the basis for acceptance of the Home under the Warranty Program and issuance of the Certificate of Participation in the Home Warranty Insurance Policy.

These standards consist of two parts:

- (a) Those standards regulating the structural, mechanical-plumbing, and electrical systems which apply during the applicable Initial Warranty Period, and**
- (b) Quality Standards which establish minimum performance standards relating to specific deficiencies which apply during the applicable Initial Warranty Period.**

If there is any conflict between (a) and (b) above, the higher standard shall govern.

Builder responsibility under these standards does not extend to items which have been subject to owner neglect, modification or abnormal use.

**Structural, Mechanical-Plumbing, and
Electrical Standards**

- I. The structural, mechanical-plumbing, and electrical standards shall be those contained in the Building Code, Mechanical-Plumbing Code and Electrical Code regulating that respective construction in the area. Inspection by the governmental jurisdiction will provide evidence of compliance.
- II. In the case where no Codes exist or where the existing codes are found not completely acceptable, one of the following will apply:
- (A) The Minimum Property Standards of the U.S. Department of Housing and Urban Development with inspection by HUD, VA, or FmHA personnel.
- (B) A combination of the following Model Codes to cover building, mechanical-plumbing, and electrical:

BUILDING CODES

Boca Basic Building Code
Building Official & Code
Administrators International, Inc.

National Building Code
American Insurance Association

Southern Standard Building Code
Southern Building Code Congress

Uniform Building Code
International Conference of Building
Officials

One And Two Family Dwelling Code
Under the National Recognized
Model Codes

MECHANICAL CODES

Uniform Building Code, Volume II,
Mechanical
International Conference of
Building Officials

Boca Basic Mechanical Code
Building Official & Code
Administrators International, Inc.

Southern Standard Mechanical Code
Southern Building Code Congress

PLUMBING CODES

Southern Standard Plumbing Code
Southern Building Code Congress

Uniform Plumbing Code
International Association of
Plumbing & Mechanical Officials

Boca Plumbing Code
Building Official & Code
Administrators International, Inc.

ELECTRICAL CODES

Electrical Code For One And
Two Family Dwellings
National Fire Protection Association
National Electrical Code
National Fire Protection Association

Inspection will be provided by inspectors
under the control of the Local Council.

- (C) The codes of a nearby jurisdiction. Inspection will be made either by persons under the control of the Local Council or by arrangement with the nearby jurisdiction.

**SYSTEMS AND APPLIANCES, FIXTURES
AND EQUIPMENT**

For the purpose of the Home Warranty Agreement, the Certificate of Participation and these Approved Standards, the items below have the following meaning:

- I. Appliances, Fixtures and Equipment.
Appliances, Fixtures and Equipment (including their fittings, attachments, controls and appurtenances) shall include, but not be limited to, furnaces, humidifiers, air purifiers, air handling

equipment, ventilating fans, air conditioning condensers and compressors, water heaters, pumps, stoves, refrigerators, garbage disposals, compactors, dishwashers, automatic garage door openers, washers and dryers, bathtubs, sinks, commodes, faucets and fittings, light fixtures, light switches, convenience outlets, circuit breakers, thermostats and controls.

The Initial Warranty Period for Appliances, Equipment and Fixtures (including their fittings, attachments, controls and appurtenances) for which there is no written manufacturer's warranty, shall be one year.

II. Systems.

Systems (exclusive of Appliances, Fixtures and Equipment) mean the following:

- (A) Plumbing System—all pipes and their fittings, including septic tanks and their pipe fields.
- (B) Electrical System—all wiring and connections, including electrical boxes.
- (C) Heating and Cooling Systems—all duct work, steam and water pipes, refrigerant lines, registers, convectors and dampers.

Quality Standards

The Quality Standards are intended to specify the minimum performance standards for construction of Homes and to set forth the basis for determining the validity of all home buyer complaints related to defective materials and workmanship during the applicable initial Warranty Period under the Home Owners Warranty Program.

Only the most frequent defects of concern to the home buyer have been enumerated in the Quality Standards set forth in the pages that follow. If a specific defect has not been enumerated, this indicates only that a performance standard for such defect has not yet been adopted by the Local Council and approved by the National Council.

To the extent that minimum performance standards for construction have not been enumerated in these Quality Standards, Builders shall construct Homes in accordance with good industry practice which assures quality of materials and workmanship. Likewise, the validity of any home buyer complaints for defects for which a standard has not been enumerated herein shall be determined on the basis of good industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such complaints shall be conducted accordingly.

The following Quality Standards are expressed in terms of performance standards. Non-compliance with the performance standard calls for corrective action by the Builder. The format is designed for easy comprehension by both layman and Builder as follows:

1. *Possible Deficiency*—a brief statement in simple terms of the problems to be considered.
2. *Performance Standard* — a performance standard relating to a specific deficiency.
3. *Builder Responsibility*—a statement of the corrective action required of the Builder to repair the deficiency or any other damage resulting from making the required repair.

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2. SITE WORK**02220 EXCAVATING AND BACKFILLING**

Possible Deficiency: Settling of ground around foundation, utility trenches or other filled areas.

Performance Standard: Settling of ground around utility trenches or other filled areas, maximum allowable 6 inches. Settling of backfill around foundation shall not interfere with water drainage away from the house.

Builder Responsibility: Upon request by the buyer, the builder shall fill excessively settled areas one time only during the first year of warranty. The owner shall be responsible for any grass, shrubs or other landscaping affected by placement of such fill.

02500 SITE DRAINAGE

Possible Deficiency: Improper drainage of the site.

Performance Standard: The necessary grades and swales should be established to insure proper drainage away from the house. No standing water should remain in the yard 24 hours after a rain, except swales which may drain as long as 48 hours after a rain, or sump pump discharge. No grading determination shall be made while there is frost in the ground.

Builder Responsibility: The builder is responsible only for establishing the proper grades and swales. The owner is responsible for maintaining such grades and swales once they have been properly established by the builder.

3. CONCRETE**03300 CAST-IN-PLACE CONCRETE**

(Non-Structural)

Possible Deficiency: Basement or foundation wall cracks.

Performance Standard: Non-Structural cracks are not unusual in concrete foundation walls. Such cracks greater than $\frac{1}{8}$ inch in width are considered excessive.

Builder Responsibility: The Builder shall repair non-structural cracks in excess of $\frac{1}{8}$ inch by surface patching. These repairs should be made toward the end of the first year of ownership to permit normal settling of the home to stabilize.

Possible Deficiency: Cracking of basement floor

Performance Standard: Minor hairline cracks in basement floors are common. Cracks exceeding $\frac{1}{4}$ inch width or $\frac{1}{8}$ inch in vertical displacement are considered excessive.

Builder Responsibility: Builder should repair cracks exceeding maximum tolerances by surface patching or other methods as required.

Possible Deficiency: Cracking of attached garage slab.

Performance Standard: Cracks in garage slabs in excess of $\frac{1}{4}$ inch in width or $\frac{1}{4}$ inch in vertical displacement are considered excessive.

Builder Responsibility: Builder shall repair excessive cracks as required.

Possible Deficiency: Cracking, settling, or heaving of stoops or steps.

Performance Standard: Stoops or steps should not settle or heave in excess of 1 inch in relation to the house structure. No cracks except hairline cracks (less than $\frac{1}{8}$ inch) are acceptable in concrete stoops.

Builder Responsibility: Builder shall take whatever corrective action is required to meet acceptable standards.

Possible Deficiency: Cracks in attached patios.

Performance Standard: Cracks in excess of $\frac{1}{4}$ inch width or in vertical displacement are considered excessive.

Builder Responsibility: Builder to repair as required.

Possible Deficiency: Pitting, scaling or spalling of concrete work.

Performance Standard: Concrete surfaces should not disintegrate to the extent that the aggregate is exposed under normal conditions of weathering and use.

Builder Responsibility: Builder to take whatever corrective action is necessary to repair or replace defective concrete surfaces. The builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond the builder's control.

Possible Deficiency: Excessive powdering or chalking of concrete surface.

Performance Standard: Powdering or chalking of concrete surfaces is not permissible, but should not be confused with surface dust.

Builder Responsibility: The builder shall take whatever corrective action is necessary to repair or resurface defective areas.

Possible Deficiency: Standing water on stoops.

Performance Standard: Water should drain from outdoor stoops and steps.

Builder Responsibility: The builder shall take corrective action to assure proper drainage of stoops and steps.

Possible Deficiency: Cracks in concrete slab-on-grade floors.

Performance Standard: Cracks which significantly impair the appearance or performance of the finish flooring material shall not be acceptable.

Builder Responsibility: The builder shall repair cracks as necessary so as not to be readily apparent when the finish flooring material is in place.

4. MASONRY

04200 UNIT MASONRY (Non-Structural)

Possible Deficiency: Basement or foundations wall cracks.

Performance Standard: Small non-structural cracks are not unusual in mortar joints of masonry foundation walls. Such cracks greater than 1/8 inch in width are considered excessive.

Builder Responsibility: The builder shall repair non-structural cracks in excess of 1/8 inch by surface patching. These repairs should be made toward the end of the first year of ownership to permit normal settling of the home to stabilize.

Possible Deficiency: Cracks in masonry walls or veneer.

Performance Standard: Small cracks are common in mortar joints of masonry construction. Cracks greater than 1/8 inch in width are considered excessive.

Builder Responsibility: Repair cracks in excess of 1/8 inch by surface pointing. These repairs

should be made toward the end of the warranty period to permit normal settling of the home to stabilize.

6. WOOD AND PLASTICS

06100 ROUGH CARPENTRY

Possible Deficiency: Floors squeak.

Performance Standard: Should not be objectionable to the owner within reasonable repair capability.

Builder Responsibility: Locate problem and correct.

Possible Deficiency: Uneven floors.

Performance Standard: Floors should not be more than 1/4 inch out of level within any 32 inch measurement. Floor slope within any room shall not exceed 1/240 of the room width.

Builder Responsibility: Builder to correct or repair to meet the above standard.

06200 FINISH CARPENTRY—INTERIOR

Possible Deficiency: Quality of interior trim workmanship.

Performance Standard: Joints in moldings or joints between moldings and adjacent surfaces should not result in cracks exceeding 1/8 inch in width.

Builder Responsibility: Repair defective joints.

FINISH CARPENTRY—EXTERIOR

Possible Deficiency: Quality of exterior trim workmanship.

Performance Standard: Joints between exterior trim elements, including siding, should not result in open cracks in excess of 1/8 inch. In all cases the exterior trim and siding shall be capable of performing its function to exclude the elements.

Builder Responsibility: Builder to repair open cracks.

7. THERMAL AND MOISTURE PROTECTION

07100 WATERPROOFING

Possible Deficiency: Leaks in basement or foundation.

Performance Standard: No leaks resulting in actual trickling of water are acceptable. However,

leaks caused by improper landscaping installed by owner, or failure of owner to maintain proper grades are not covered by the warranty. Dampness of the walls is often common to new construction and is not considered a deficiency.

Builder Responsibility: The builder shall take such action as necessary to correct base-leaks except where the cause is determined to result from owner negligence.

07300 SHINGLES AND ROOFING TILES

Possible Deficiency: Roof or flashing leaks.

Performance Standard: Roots or flashing should not leak under normally anticipated conditions.

Builder Responsibility: The builder shall correct or repair any verified roof leaks.

07460 CLADDING/SIDING

See 06200.

07500 MEMBRANE ROOFING

See 07300.

07600 FLASHING AND SHEET METAL

See 07300.

07900 SEALANTS

Possible Deficiency: Leaks in exterior walls due to inadequate caulking.

Performance Standard: Joints and cracks in exterior wall surfaces and around openings should be properly caulked to exclude the entry of water. Properly installed caulking will shrink and must be maintained by the homeowner within the life of the home after the first year of warranty.

Builder Responsibility: Builder shall repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiency.

8. DOORS AND WINDOWS

08200 WOOD DOORS

Possible Deficiency: Warpage of interior passage and closet doors.

Performance Standard: Interior doors (full opening) should not warp to exceed National Woodwork Manufacturers Association standards ($\frac{1}{4}$ inch).

Builder Responsibility: Correct or replace and refinish defective doors to match existing doors as nearly as possible.

Possible Deficiency: Warpage of exterior doors.

Performance Standard: Exterior wood doors should not warp to exceed National Woodwork Manufacturers Association Standards ($\frac{1}{4}$ inch).

Builder Responsibility: Correct or replace and refinish inoperable or poorly fitting doors.

08300 GARAGE DOORS

Possible Deficiency: Garage door fails to operate properly.

Performance Standard: Garage doors should operate properly under normal conditions of use.

Builder Responsibility: The builder shall correct or adjust garage doors as required.

08500 METAL WINDOWS

Possible Deficiency: Malfunction of windows.

Performance Standard: Windows should operate with reasonable ease as intended.

Builder Responsibility: Builder to correct or repair as required.

08600 WOOD AND PLASTIC WINDOWS

See 08500.

98730 WEATHER STRIPPING AND SEALS

Possible Deficiency: Drafts around doors and windows.

Performance Standard: Some infiltration is normally noticeable around doors and windows, especially during high winds. Excessive infiltration resulting from open cracks, poorly fitted doors or windows, or poorly fitted weather stripping is not permissible.

Builder Responsibility: The builder shall adjust or correct open cracks, poorly fitted windows or doors, or poorly fitted weather stripping.

9. FINISHES

09100 LATH AND PLASTER

Possible Deficiency: Cracks in stucco wall surfaces.

Performance Standard: Hairline cracks are not unusual in stucco walls surfaces. Cracks greater than $\frac{1}{8}$ inch in width are considered excessive.

Builder Responsibility: The builder shall repair cracks exceeding $\frac{1}{8}$ inch as required

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09100 LATH AND PLASTER and
09250 GYPSUM WALLBOARD

Possible Deficiency: Defects caused by poor workmanship such as blisters in tape, excess compound in joints, cracked corner beads, or trowel marks.

Performance Standard: Slight defects such as nail pops, seam lines and cracks are common in plaster and gypsum wallboard installations. However, obvious defects of poor workmanship resulting in blisters in tape or excess compound in joints, trowel marks and cracked corner beads are not acceptable.

Builder Responsibility: Correct such defects to acceptable tolerance.

09310 CERAMIC TILE

Possible Deficiency: Ceramic tile cracks or becomes loose.

Performance Standard: Ceramic tile should not crack or become loose.

Builder Responsibility: The builder shall replace any cracked tiles and resecure any loose tiles unless the defects were caused by the owner's negligence.

Possible Deficiency: Cracks appear in grouting of ceramic tile joints or at junctions with other material such as a bathtub.

Performance Standard: Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions. Regrouting of these cracks are a maintenance responsibility of the homeowner within the life of the home after the first year of warranty.

Builder Responsibility: Will repair grouting as necessary one time within the first year of warranty.

09650 RESILIENT FLOORING

Possible Deficiency: Nail pops appear on the surface of resilient flooring.

Performance Standard: Readily apparent nail pops should be repaired.

Builder Responsibility: The builder shall repair or replace resilient floor covering with similar ma-

terial. Builder is not responsible for discontinued patterns or color variation in the floor covering.

Possible Deficiency: Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

Performance Standard: Readily apparent depressions or ridges exceeding 1/8 inch should be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straight edge placed over the depression or ridge with three inches on one side of the defect held tightly to the floor.

Builder Responsibility: The builder shall take corrective action, as necessary to bring the defect within acceptable tolerances so that it is not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering.

Possible Deficiency: Resilient flooring loses adhesion.

Performance Standard: Resilient flooring should not lift, bubble, or become unglued.

Builder Responsibility: The builder shall repair or replace resilient flooring as required. The builder shall not be responsible for discontinued patterns or color variation of floor covering.

Possible Deficiency: Seams or shrinkage gaps show at resilient flooring joints.

Performance Standard: Gaps shall not exceed 1/8 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.

Builder Responsibility: The builder shall take action as necessary to correct the problem.

09900 PAINTING

Possible Deficiency: Exterior paint or stain peels or deteriorates.

Performance Standard: Exterior paints or stains should not fail during the first year of ownership.

Builder Responsibility: Builder shall properly prepare and refinish affected areas, matching color as closely as possible. Where finish deterioration affects the majority of the wall or area, the whole area should be refinished. The warranty on the

newly repainted surfaces will not extend beyond the original warranty period.

Possible Deficiency: Painting required as corollary repair because of other work.

Performance Standard: Necessary repairs required under this warranty should be refinished to match surrounding areas as closely as possible.

Builder Responsibility: Refinish repaired areas as indicated.

Possible Deficiency: Deterioration of varnish or lacquer finishes.

Performance Standard: Natural finishes on interior woodwork should not deteriorate during the first year of ownership. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty.

Builder Responsibility: Retouch affected areas of natural finished interior woodwork, matching the color as closely as possible.

Possible Deficiency: Interior paint quality.

Performance Standard: Interior paint shall be applied in a manner sufficient to visually cover wall, ceiling and trim surfaces where specified.

Builder Responsibility: The builder shall retouch wall, ceiling or trim surfaces where inadequate paint has been applied to cover original surfaces.

10. SPECIALTIES

10200 LOUVERS AND VENTS

Possible Deficiency: Inadequate ventilation of attics and crawl spaces.

Performance Standard: Attic spaces shall have a natural ventilation area equal to (a) 1/150 of floor area or (b) 1/300 of floor area when an accepted vapor barrier is installed on the warm side of the ceiling, or when at least 50% of the required ventilation is provided at least 3 feet above the ceiling. Crawl spaces shall have a natural ventilation area equal to (a) 1/150 of floor area or (b) 1/1500 of the floor area when the surface is covered with an accepted vapor barrier.

Builder Responsibility: The builder shall provide for adequate ventilation.

10300 FIREPLACES

Possible Deficiency: Fireplace or chimney does not draw properly.

Performance Standard: A properly designed and constructed fireplace and chimney should draw properly. It is normal to expect that drafts can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney.

Builder Responsibility: Determine the cause of malfunction, and correct as required if the problem is one of design and construction.

11. EQUIPMENT

11900 RESIDENTIAL EQUIPMENT

Possible Deficiency: Kitchen cabinet malfunctions.

Acceptable Tolerance: Kitchen cabinet doors, drawers and other operating parts should function properly.

Builder Responsibility: Repair or replace operating parts as required.

Possible Deficiency: Surface cracks, delaminations and chips in high pressure laminates—Veneer and Kitchen cabinet countertops.

Performance Standard: Countertops fabricated with high pressure laminate coverings should delaminate or have chips or surface cracks.

Builder Responsibility: Repair or replace as condition requires.

15. MECHANICAL

15180 INSULATION (Pipe Covering)

Possible Deficiency: Plumbing pipes freeze.

Performance Standard: Drain, waste and vent water pipes should be adequately insulated to prevent freezing during normally anticipated weather.

Builder Responsibility: The builder shall correct the condition responsible for pipes freezing, repair piping damaged by freezing.

15360 SEPTIC TANK SYSTEMS

Possible Deficiency: Septic system fails to operate properly.

Performance Standard: Septic system should be capable of properly handling normal flow of household effluent.

Builder Responsibility: Builder shall take corrective action as required. Builder shall not be responsible for malfunctions which occur through owner negligence or abuse.

15400 PLUMBING

Possible Deficiency: Leakage from any piping.

Performance Standard: No leaks of any kind should exist in any soil, waste, vent or water pipe. Condensation on piping does not constitute leakage, and is not covered.

Builder Responsibility: Builder shall make necessary repairs to eliminate leakage.

Possible Deficiency: Faucet or valve leak.

Performance Standard: No valve or faucet should leak due to defects in material or workmanship. However, leakage caused by worn or defective washers are considered a homeowner maintenance item.

Builder Responsibility: Builder shall repair or replace the leaking faucet or valve unless leakage is due to a defective washer.

Possible Deficiency: Defective plumbing fixtures, appliances or trim fittings.

Performance Standard: Fixtures, appliances or fittings should be judged according to their manufacturing standards.

Builder Responsibility: The builder shall replace any fixture or fitting which is outside of acceptable standards as defined by the manufacturer.

Possible Deficiency: Stopped up sewers, fixtures, and drains.

Performance Standard: Sewers, fixtures and drains should operate properly.

Builder Responsibility: The builder is not responsible for sewers, fixtures and drains which are clogged through the owner's negligence. If a problem occurs, the owner should consult the builder for a proper course of action. Where defective construction is shown to be the cause, the builder shall assume the cost of the repair; where owner negligence is shown to be the cause, the owner shall assume all repair costs.

15500 POWER OR HEAT GENERATION

Possible Deficiency: Inadequate heat.

Performance Standard: Heating system should be capable of producing an inside temperature of 70° F as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in ASHRAE handbook.

Builder Responsibility: Builder shall correct the heating system as required to provide the required temperatures. However, the owner shall be responsible for balancing dampers, registers and other minor adjustments.

15650 REFRIGERATION

Possible Deficiency: Inadequate cooling.

Performance Standard: Where air-conditioning is provided, the cooling system shall be capable of maintaining a temperature of 78° F as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook.

Builder Responsibility: Correct cooling system to meet the above temperature conditions.

15700 LIQUID HEAT TRANSFER

See 15600.

15800 AIR DISTRIBUTION

See 15600 and 15650.

15900 CONTROLS AND INSTRUMENTATION

See 15600 and 15650.

16. ELECTRICAL

16120 CONDUCTORS

Possible Deficiency: Malfunction of electrical switches, fixtures or outlets.

Performance Standard: All switches, fixtures and outlets should operate as intended.

Builder Responsibility: Repair or replace defective wiring, switches, fixtures and outlets.

16140 SWITCHES AND RECEPTACLES

See 16120.

16500 LIGHTING

See 16120.

△ YOUR NEW HOME WARRANTY

TO: _____

COMMUNITY: _____ LOT NUMBER: _____

STREET ADDRESS: _____

We want to have satisfied customers. It's not only in your best interests, but ours, as well. This Home Warranty is your assurance.

Like any warranty, this one specifies limits for responsibility and conditions under which it is valid or applicable. WE STRONGLY URGE YOU

TO READ THIS WARRANTY since it is the only warranty, express or implied, that Kaufman and Broad makes to you. (No employee, salesman or other agent of Kaufman and Broad is authorized to make any warranty except as herein contained.) To assist you, we have tried to avoid fine print or legalistic language.

GENERAL ONE-YEAR WARRANTY AND LIMITATIONS

KAUFMAN AND BROAD, INC. hereby guarantees THE HOME against defects described below provided that such defects are brought to KAUFMAN AND BROAD's attention, in writing, during the one-year warranty period starting with the date of possession or closing of title of the original purchaser, whichever occurs first, or within such shorter period as may be specified herein. (All warranty periods in the paragraphs below shall commence as indicated above.)

These guarantees, designed to protect THE HOMEOWNER from the possibility of faulty construction or defective materials, do not cover defects caused by normal wear and tear or by acts or natural disasters, beyond the control of KAUFMAN AND BROAD, nor will KAUFMAN AND BROAD assume responsibility for secondary damage caused by any warranted defect.

Nothing contained in this warranty shall be determined to make KAUFMAN AND BROAD an insurer of the personal property of THE HOMEOWNER or of any third party.

The period covered by this warranty can be extended only by a statement in writing signed by an authorized em-

ployee of Kaufman and Broad. No other action on the part of Kaufman and Broad or its employees or agents, including any steps taken to correct defects, shall be deemed an extension of such period.

KAUFMAN AND BROAD also reserves the right to choose materials and methods used to make repairs.

This warranty is applicable to all items mentioned herein — if the noted defects are reported in writing before the end of the one-year warranty period or such shorter period as may apply. KAUFMAN AND BROAD would like to caution THE HOMEOWNER against having any items covered in this warranty altered by any person or persons other than KAUFMAN AND BROAD, its employees or agents. Any items so altered are excluded from warranty coverage, and KAUFMAN AND BROAD will not be liable or responsible for corrective work performed by others nor for its cost.

SERVICE REQUEST ADDRESS

--

PLEASE READ CAREFULLY THE SCOPE AND TER

STRUCTURAL COMPONENTS

ROOFS

Keeping any gutters and downspouts free of leaves and debris which might cause excessive overflow and keeping all roof areas free of excessive accumulations of snow and ice are among THE HOMEOWNER'S maintenance responsibilities. KAUFMAN AND BROAD guarantees the roof to be free from leaks for a period of one year, except where such defects are caused by acts or natural disasters beyond its control or except where the HOMEOWNER has failed to diligently discharge his maintenance responsibilities. However, this guarantee does not cover damage caused by THE HOMEOWNER or his agents using the roof for any activity, or attaching any superstructure or appurtenance to it which results in damage to the roof.

HEATING

KAUFMAN AND BROAD guarantees proper operation of the heating system, in the original finished room areas, for a period of one year as follows: That the heating system has been installed in accordance with good heating practice and has been designed in accordance with appropriate engineering heat-loss factors to maintain a 70 degree temperature inside the home when outside wind speeds and temperatures are at design conditions established by the American Society of Heating, Refrigerating and Air Conditioning Engineers for the location involved. Temperatures are to be measured by readings taken with a verified thermometer in the approximate middle of each room about three feet above the floor. This guarantee does not include the system or any of its parts which become defective through faulty operation, lack of routine maintenance or alteration by THE HOMEOWNER or his agents. Such routine maintenance as lubrication and the replacement of filters will be THE HOMEOWNER'S responsibility.

AIR CONDITIONING

KAUFMAN AND BROAD guarantees the air conditioning system, if included in the sale of the dwelling, for a period of one year as follows: That the air conditioning system has been installed in accordance

with good air conditioning practice and designed in accordance with appropriate engineering heat-gain factors to maintain, in the original finished room areas, at 24 hours continuous operation, a thermostatically controlled environment 15 degrees cooler than the outside temperature; for example, a 78 degree temperature inside with a 93 degree temperature outside. Temperatures are to be read in the approximate middle of each room about three feet above the floor. This guarantee does not include the system or its parts which become defective through faulty operation, lack of routine maintenance or alteration by THE HOMEOWNER or his agents. Normal maintenance functions, such as lubrication and replacement of filters shall be THE HOMEOWNER'S responsibility.

PLUMBING

KAUFMAN AND BROAD guarantees the plumbing system against defective workmanship or materials for a period of one year, provided, however, that normal maintenance items such as toilet adjustments and replacement of faucet washers are limited to a 90-day guarantee. Blockage of bathroom fixtures or sewerage lines will be corrected only if it occurs within the first 30 days of the warranty period.

ELECTRICAL SYSTEM

KAUFMAN AND BROAD guarantees the electrical system, excluding light bulbs, against defective workmanship or materials for a period of one year, except where a failure in the system is caused by improper operation, use or alteration caused by THE HOMEOWNER or his agent.

MASONRY

KAUFMAN AND BROAD guarantees all concrete, brick, stone and other masonry against substantial defects for a period of one year.

House slabs, basement floors and walls, garage slabs, walks and other masonry may develop cracks or flaking with the expansion or contraction of cement or concrete due to changes in temperature. KAUFMAN AND BROAD will repair only those cracks which substantially interrupt the plane of the surface or affect its structural value.

IS OF YOUR WARRANTY AS SET FORTH BELOW:

GRADING AND LANDSCAPING

KAUFMAN AND BROAD guarantees for a period of one year that all slopes on THE HOMEOWNER's lot will drain away from his dwelling for an adequate distance (at least ten feet except in case of unusual terrain). These guarantees do not apply to damage resulting from alterations of grades by persons other than KAUFMAN AND BROAD, or its agents, or resulting from failure of THE HOMEOWNER to assume normal responsibilities for the maintenance of his landscaping and grounds. Minor erosion of the yard areas can be expected with a new home and is the responsibility of THE HOMEOWNER to correct.

Any trees, shrubs, sod or seeding provided are guaranteed to live for one growing season after occupancy, provided regular watering, fertilization and pruning are provided for by THE HOMEOWNER.

DRIVEWAYS

KAUFMAN AND BROAD guarantees for a period of one year the driveway against major settlement. Of course minor indentations, tire marks, oil spots or other surface imperfections inherent to paved surfaces are not included, and THE HOMEOWNER should remember that residential driveways are not designed to handle heavy trucks. Damage resulting from unusually heavy loads will not be corrected by KAUFMAN AND BROAD. THE HOMEOWNER should follow the HOMEOWNER's MANUAL recommendation for proper maintenance of driveways. (See page 13.)

WATER INFILTRATION

HOUSE BUILT WITH SLAB ON GRADE

KAUFMAN AND BROAD guarantees the under-slab air ducts (if any) against penetration by free water for a period of one year. This guarantee does not cover condensation, backing up of sewers, flash floods, hurricanes, leaks through windows which are not properly maintained or other events beyond the control of KAUFMAN AND BROAD. This guarantee shall not apply if a person other than KAUFMAN AND BROAD or its agent has altered or disturbed the air

ducts, or the finished grade adjacent to the house, or elsewhere on the lot, if the result is to change the drainage pattern of the ground adjacent to or near the house.

HOUSE WITH BASEMENT OR CRAWL SPACE

KAUFMAN AND BROAD guarantees for a period of one year basements and crawl spaces against penetration of free flowing water (as distinguished from the dampness which is characteristic of most home basements and crawl spaces). This guarantee does not cover condensation, backing up of sewers, flash floods, hurricanes, leaks through windows which are not properly maintained, or other events beyond the control of KAUFMAN AND BROAD. This guarantee shall not apply if a person other than KAUFMAN AND BROAD or its agent has altered the finished grade adjacent to the house, or elsewhere on the lot, if the result is to change the drainage pattern adjacent to or near the house. In areas where sump pumps are installed by KAUFMAN AND BROAD because of high water tables or other conditions which cause water infiltration to be inevitable, KAUFMAN AND BROAD's guarantee is limited to the proper functioning of the sump pump for a period of one year. It is necessary, however, that the homeowner keep sump pump and sump pump pit clean. Our warranty will not be effective in the event of defects due to dirt or debris.

EXCESSIVE WARPAGE

KAUFMAN AND BROAD guarantees against excessive warpage of structural members, doors, counter-tops, vanities, as well as delamination of plywood for a period of one year. "Excessive" warpage shall mean more than $\frac{3}{8}$ inch in the case of doors; more than $\frac{3}{8}$ inch in a 48-inch span in the case of vanities and countertops; and more than $\frac{3}{4}$ inch in the case of structural members. New exterior doors may temporarily warp during periods of rapid temperature change and later return to shape. Therefore, such warpage is excluded under this guarantee.

Continued on page 4

Decision and Order

GENERAL

Structural components not specifically covered above are warranted by KAUFMAN AND BROAD for a period of one year as defined above against faulty construction and/or defective materials.

ASSIGNMENT OF MANUFACTURERS' WARRANTIES

KAUFMAN AND BROAD assigns to THE HOMEOWNER its interest in any manufacturers' warranties for mechanical equipment, appliances and other manufactured items furnished with the house, and KAUFMAN AND BROAD does not, itself, warrant these items.

NON-WARRANTABLE ITEMS

KAUFMAN AND BROAD delivers your new home cleaned in accordance with normal construction standards. But, in fairness, we cannot take it upon ourselves to make good on move-in damage or other damage caused by persons other than KAUFMAN AND BROAD, its employees or agents.

And, we would like to clear up an issue that causes many new HOMEOWNERS needless alarm and irritation: A new home goes through a settling process. While settling, your home may develop small cracks, visible nailheads, expansion or contraction of materials in walls, floors, ceilings, doors, windows and other locations which is to be expected. While we realize these items might cause momentary concern, they are easily remedied when THE HOMEOWNER does his first repainting. KAUFMAN AND BROAD is not responsible for correcting normal settlement deviations nor for making a perfect color match when touch-up repairs are made on painted surfaces.

Stained woods used in cabinets, paneling, siding, doors and wood

trim all have variations in wood grain and color. These are inherent characteristics which cannot be fully controlled and are therefore excluded from the guarantee.

The following defects will be corrected by KAUFMAN AND BROAD only (1) if they are significant, (2) if they resulted from the acts of KAUFMAN AND BROAD or its agents, and (3) if they are noted in writing at the time of the Walk Through Inspection.

- (a) Defects in the appearance of interior and exterior finished surfaces
- (b) Chipping of porcelain, tile, vitreous china and counter and vanity tops
- (c) Torn or defective screens and/or storm windows
- (d) Broken glass and mirrors
- (e) Defects in siding, trim or lighting fixtures
- (f) Defects in appliance finishes
- (g) Loose screws, nuts and bolts
- (h) Missing items

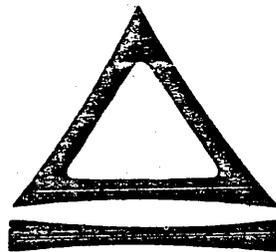
Any such defect not noted in writing at the time of the Walk Through Inspection will be the responsibility of THE HOMEOWNER to correct.

WARRANTY TRANSFERABLE TO SUBSEQUENT PURCHASER

If the original HOMEOWNER sells the premises before the warranty period has expired, the subsequent purchaser shall succeed to the original HOMEOWNER's remaining rights and time under this warranty.

KAUFMAN AND BROAD, INC. makes no warranties other than those described above. KAUFMAN AND BROAD's obligations under this warranty are limited solely to making the necessary repairs in a workmanlike manner.

YOUR
NEW HOME
WARRANTY
FROM



KAUFMAN AND BROAD, INC.

Decision and Order

ACKNOWLEDGMENT

The undersigned on this _____ day
of _____ 19____ acknowledge
receipt of the NEWHOME WARRANTY
given by KAUFMAN AND BROAD,
INC. in the community of _____

I acknowledge that I have read the
attached warranty and understand
its contents. I agree to notify
KAUFMAN AND BROAD in writing
when requesting service. I further
understand that there will be no
reimbursement from KAUFMAN AND
BROAD for work privately contracted
for by me without written permis-
sion from KAUFMAN AND BROAD, in
advance. Finally, I understand that
Kaufman and Broad does not extend
to me any warranty, either express
or implied, other than those con-
tained in the attached NEW HOME
WARRANTY and I acknowledge that
except for the attached NEW HOME
WARRANTY no employee or agent
of Kaufman and Broad has made any
representation or guarantee on
which I am entitled to rely.

SIGNED

SIGNED

Decision and Order

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APPENDIX C

State of _____)
 County/City of _____) SS.

AFFIDAVIT

 (First Name(s)) (Last Name)

being duly sworn, depose(s) and says:

1. I (we) am (are) the original purchaser(s) and purchased the home at the following address _____

 (Street address) (Town)

 (State) (Name of subdivision)

from Kaufman and Broad, Inc. or one of its companies, and the date of settlement/closing was _____, (enter date you took title) and have continuously held title to this home from that date to the date of this affidavit.

2. My (our) request is not for a repair that Kaufman and Broad, Inc. or any of its companies, agents, employees, or subcontractors previously fully completed.

3. I (we) have not signed a release or received payment or other remedial action or made any other settlement with Kaufman and Broad or any of its companies in connection with the request for repair now made.

4. I (we) hereby agree, in consideration of Kaufman and Broad's offer to make repairs under certain conditions, that I (we) shall assign to Kaufman and Broad the proceeds of any insurance I (we) may have that covers the defect described in paragraph 5 of this affidavit, to the extent of the cost to Kaufman and Broad of any repair or replacement it may make pursuant to this request.

5. I (we) request Kaufman and Broad to make the following repair(s) which I (we) believe to be a "major construction defect" under the terms of their letter of notification:

(Use additional sheets if necessary. Describe in detail the nature of the defect. Your description should include: (1) the nature of the damage; (2) the load-bearing part of the home affected; and (3) the manner in which the damage vitally affects or is imminently likely to produce a vital effect on the use of the home for residential purposes).

All of the above information is true and correct to the best of my (our) knowledge.

Subscribed and sworn to me
 before this _____ day of
 _____, 197__.

 Signature

 Notary Public

 Signature

APPENDIX D

State of _____)
County/City of _____) SS.

AFFIDAVIT

(First Name(s)) (Last Name)

being duly sworn, depose(s) and says:

1. I (we) am (are) the original purchaser(s) and purchased the home at the following address _____

(Street address) (Town)

(State) (Name of subdivision) from

Kaufman and Broad, Inc. or one of its companies, and the date of settlement/closing was _____
(enter date of you took title)
and have continuously held title to this home from that date to the date of this affidavit.

2. My (our) request is not for a repair that Kaufman and Broad, Inc. or any of its companies, agents, employees or sub-contractors previously fully completed.

3. I (we) have not signed a release or received payment or other remedial action or made any other settlement with Kaufman and Broad or any of its companies in connection with the request for repair now made.

4. I (we) hereby agree, in consideration of Kaufman and Broad's offer to make repairs under certain conditions that I (we) shall assign to Kaufman and Broad the proceeds of insurance I (we) may have that covers the defect(s) described in paragraph 5 of this affidavit, to the extent of the cost to Kaufman and Broad of any repair or replacement it may make pursuant to this request.

5. I (we) request Kaufman and Broad to make the following repair(s) under the terms of their letter of notification:

(Use additional sheets if necessary. Describe in detail the nature of the defect(s). If you are requesting repair to a major construction defect then, in addition your description should include: (1) the nature of the damage; (2) the load-bearing part of the home affected; and (3) the manner in which the damage vitally affects or is imminently likely to produce a vital effect on the use of the home for residential purposes.)

All of the above information is true and correct to the best of my (our) knowledge.

Subscribed and sworn to before me this _____ day of _____, 197__.

Signature

Notary Public

Signature

(SEAL)

Decision and Order

DEFINITION OF "MAJOR CONSTRUCTION DEFECT"

A "major construction defect" is actual damage to the load-bearing portion of the home (including damage due to subsidence, expansion or lateral movement of soil from causes other than flood or earthquake) which affects its load-bearing function and which vitally affects (or is imminently likely to produce a vital effect on) the use of the home for residential purposes.

EXCLUSIONS

You are not entitled to make a claim for the following:

1. Defects in plumbing, electrical, heating and cooling systems.
2. Defects in appliances, fixtures, and items of equipment.
3. Defects in outbuildings (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls which are not necessary for the home's structural stability; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); offsite improvements; or any other improvements not a part of the home itself.
4. Bodily injury, damage to personal property, or real property which is not part of the home which was included in the purchase price.
5. Any damage to the extent it is caused or made worse by:
 - . Negligence, improper maintenance or improper operation by anyone other than Kaufman and Broad or any of its companies, or its employees, agents or subcontractors; or
 - . Failure of anyone other than Kaufman and Broad or any of its companies or its employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures; or
 - . Changes of the grading of the ground by anyone other than Kaufman and Broad, Inc. or any of its companies, or its employees, agents or subcontractors.
6. Any defect in, or caused by, materials or work supplied by anyone other than Kaufman and Broad or any of its companies or its employees, agents, or subcontractors.

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7. Normal wear and tear or normal deterioration.
8. Accidental loss or damage from causes such as, but not limited to: fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, wind storm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. HOWEVER, SOIL MOVEMENT FROM CAUSES OTHER THAN FLOOD OR EARTHQUAKE IS NOT EXCLUDED.
9. Insect damage.
10. Any loss or damage which arises while the home is being used primarily for non-residential purposes.
11. Any defect which does not result in actual loss or damage.

COMMISSION DECISIONS

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If the defect is a common element in condominium, have the affidavit signed by the Board of Directors but not by any board members who represent the builder.

This is part of our continued effort to make you, the Kaufman and Broad home buyer, a comfortable and satisfied homeowner.

Sincerely,

KAUFMAN AND BROAD, INC

Decision and Order

DEFINITIONS

MAJOR CONSTRUCTION DEFECT

A "major construction defect" is actual damage to the load-bearing portion of the home (including damage due to subsidence, expansion or lateral movement of soil from causes other than flood or earthquake) which affects its load-bearing function and which vitally affects (or is imminently likely to produce a vital effect on) the use of the home for residential purposes.

PLUMBING, ELECTRICAL, HEATING AND COOLING SYSTEMS
SEE ATTACHED APPROVED STANDARDS

also

SEE EXCLUSION #1 BELOW

EXCLUSIONS

You are not entitled to make a claim for the following:

1. Defects in appliances, fixtures, and items of equipment.
2. Defects in outbuildings (except that outbuildings which contain the plumbing, electrical, heating or cooling systems serving the home are covered); swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls which are not necessary for the home's structural stability; fences; landscaping (including sodding, seeding, shrubs, trees and planting); offsite improvements; or any other improvements not a part of the home itself.
3. Bodily injury, damage to personal property, or real property which is not part of the home which was included in the purchase price.
4. Any damage to the extent it is caused or made worse by:
 - . Negligence, improper maintenance or improper operation by anyone other than Kaufman and Broad or any of its companies, or its employees, agents or subcontractors; or
 - . Failure of anyone other than Kaufman and Broad or any of its companies, or its employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures; or

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Changes of the grading of the ground by anyone other than Kaufman and Broad, Inc. or any of its companies, or its employees, agents or subcontractors.

5. Any defect in, or caused by, materials or work supplied by anyone other than Kaufman and Broad or any of its companies or its employees, agents, or subcontractors.
6. Normal wear and tear or normal deterioration.
7. Accidental loss or damage from causes such as, but not limited to: fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, wind storm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. HOWEVER, SOIL MOVEMENT FROM CAUSES OTHER THAN EARTHQUAKE IS NOT EXCLUDED.
8. Insect damage.
9. Any loss or damage which arises while the home is being used primarily for non-residential purposes.
10. Any defect which does not result in actual loss or damage.

IN THE MATTER OF
CPC INTERNATIONAL INC., ET AL.

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

Docket C-2955. Complaint, Feb. 22, 1979 — Decision, Feb. 22, 1979

This order, among other things, requires an Englewood Cliffs, N.J. food products manufacturer and its wholly-owned Danville, Ill. subsidiary, Peterson/Puritan, Inc., to divest, within 18 months from the date of the order, the aerosol packaging facility in Atlanta, Ga. acquired from the Capitol Packaging Company. Additionally, the order prohibits respondents from competing with the facility for two years following divestiture, and bars them from acquiring any contract aerosol packaging concern without prior Commission approval for a five-year period.

Appearances

For the Commission: *Robert W. Doyle, Jr.*

For the respondents: *Robert F. Finkle, Mayer, Brown & Platt,*
Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have acquired the assets, as hereinafter described, of a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. 21), and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint, the following definitions apply:

(a) An "aerosol product" is any personal care product, household product, coating or finish, food product, insect spray, automotive product, or animal product that is packaged in a pressurized aerosol container together with a liquefied or compressed gas propellant necessary to expel the product from the container.

(b) A "contract aerosol packager" is any firm that packages

aerosol products, pursuant to contract or otherwise, for one or more firms to which it is unaffiliated.

II. RESPONDENTS

A. CPC International Inc.

PAR. 2. Respondent CPC International Inc. (hereinafter "CPC") is a corporation chartered and operating under the laws of the State of Delaware, with a principal place of business located at the International Plaza, Englewood Cliffs, New Jersey.

PAR. 3. CPC manufactures and sells to industrial users in the United States products derived principally from the refining of corn, and also manufactures and sells domestically a variety of consumer products, mainly food products.

PAR. 4. In 1976, CPC worldwide had revenues of almost \$2.7 billion, assets of almost \$1.5 billion, and net income in excess of \$120 million. In 1976, CPC ranked 79th on Fortune Magazine's list of the 500 largest industrial corporations.

PAR. 5. CPC achieved entry into contract aerosol packaging in 1966 through the acquisition of Peterson Filling and Packaging Co. (hereinafter "Peterson").

PAR. 6. In 1968, Peterson acquired the Puritan Aerosol Corporation (hereinafter "Puritan"), a corporation chartered and operating under the laws of the Commonwealth of Massachusetts, with a principal place of business located at Martin St., Cumberland, Rhode Island.

PAR. 7. Prior to its acquisition by Peterson, Puritan was a leading contract packager of aerosol products, with aerosol packaging facilities in Cumberland, Rhode Island and Santa Fe Springs, California.

PAR. 8. On or about October 13, 1971, Peterson merged Puritan into Peterson to form Peterson/Puritan, Inc.

PAR. 9. At all times relevant hereto, CPC sold and shipped its products and services throughout the United States, was engaged in commerce within the meaning of the Clayton Act, as amended, and was engaged in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

B. Peterson/Puritan, Inc.

PAR. 10. Respondent Peterson/Puritan, Inc. (hereinafter "P/P"), a wholly-owned domestic subsidiary corporation of respondent CPC, is chartered and operates under the laws of the State of Delaware, with

a principal place of business located at Hegeler Lane, Danville, Illinois.

PAR. 11. P/P is the leading contract aerosol packager in the United States, with aerosol packaging facilities located in Danville, Illinois; Cumberland, Rhode Island; Santa Fe Springs, California; Atlanta, Georgia; and Momence, Illinois.

PAR. 12. P/P packaged 218 million units of aerosol products in 1976, accounting for almost 22 percent of the aerosol units produced by contract aerosol packagers in that year.

PAR. 13. At all times relevant hereto, P/P sold and shipped its products and services throughout the United States, was engaged in commerce within the meaning of the Clayton Act, as amended, and was engaged in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

III. THE ACQUISITION

PAR. 14. On or about April 1, 1977, P/P purchased for approximately \$2.5 million substantially all of the aerosol packaging assets of Capitol Packaging Co. (hereinafter "Capitol"), a corporation chartered and operating under the laws of the State of Illinois as a wholly-owned subsidiary of the Alberto-Culver Co.

PAR. 15. Prior to the aforementioned acquisition, Capitol was a leading contract aerosol packager, having packaged 62 million units of aerosol products in 1976, and accounting for approximately 6 percent of the aerosol units produced by contract aerosol packagers in that year.

PAR. 16. At all times relevant hereto, Capitol sold and shipped its products and services throughout the United States, and was engaged in commerce within the meaning of the Clayton Act, as amended.

IV. TRADE AND COMMERCE

PAR. 17. The relevant geographic market is the United States as a whole.

PAR. 18. The relevant line of commerce is the packaging of aerosol products by contract aerosol packagers (hereinafter "the relevant line of commerce").

PAR. 19. Approximately 2.0 billion aerosol units were packaged in the United States in 1976. Of these, approximately 1.0 billion units were packaged by contract aerosol packagers.

PAR. 20. Concentration in the relevant line of commerce is high.

PAR. 21. Barriers to entry into the relevant line of commerce are substantial.

PAR. 22. Prior to the subject acquisition, as hereinbefore described, P/P and Capitol were substantial actual competitors in the relevant line of commerce.

V. EFFECTS OF THE ACQUISITION

PAR. 23. The effect of the aforesaid acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant line of commerce throughout the United States in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45) in the following ways, among others:

(a) Substantial actual potential competition in the relevant line of commerce between P/P and Capitol, and other firms in the relevant line of commerce has been eliminated;

(b) Concentration in the relevant line of commerce has been and/or may be increased to the detriment of actual and potential competition;

(c) The substantial likelihood of lessening concentration in the relevant line of commerce has been diminished and/or eliminated;

(d) The position of P/P in the relevant line of commerce has been and/or may be further strengthened and entrenched; and

(e) The ability of P/P's competitors to compete in the relevant line of commerce has been and/or may be substantially diminished.

VI. THE VIOLATIONS CHARGED

PAR. 24. The aforesaid acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of an acquisition by the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of the Federal Trade Commission Act and the Clayton Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the

aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent CPC International Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at International Plaza, Englewood Cliffs, New Jersey.

Respondent Peterson/Puritan, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Hegeler Lane, Danville, Illinois.

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

ORDER

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

(a) "Respondents" refers to CPC International Inc., a corporation; Peterson/Puritan, Inc., a corporation; and said corporations' subsidiaries, affiliates, successors and assigns.

(b) "Person" means any individual, corporation, partnership, association, firm, or other business or legal entity.

(c) "Aerosol product" means any personal care product, household product, coating or finish, food product, insect spray, automotive product, or animal product that is packaged in a pressurized aerosol container together with a liquefied or compressed gas propellant necessary to expel the product from the container.

(d) "Aerosol packaging facilities" means any plant, machinery, or equipment used to package aerosol products in the United States, and also includes the whole or any part of the stock, share capital, or

any interest in any person engaged in the packaging of aerosol products in the United States.

I

It is ordered, That, within eighteen (18) months after the date of this order and subject to the prior approval of the Federal Trade Commission, respondents shall divest the aerosol packaging facility in Atlanta, Georgia (hereinafter "the Atlanta facility") acquired from the Capitol Packaging Company, together with any and all additions and improvements thereto, as a viable business concern.

II

It is further ordered, That, for a period of two (2) years after the Atlanta facility is divested, respondents shall not package aerosol products in the U.S. for:

(a) any persons (other than the Alberto-Culver Co.) who, as of March 30, 1977, were customers of the Atlanta facility but were not aerosol packaging customers of respondents;

(b) any persons who, between March 31, 1977 and March 31, 1978, were aerosol packaging customers of respondents at only the Atlanta facility; and

(c) any persons who first became aerosol packaging customers of respondents after March 31, 1978 and for whom respondents packaged a greater number of aerosol units at the Atlanta facility between March 31, 1978 and the date of divestiture than at all of their other facilities combined.

III

It is further ordered, That, for a period ending two (2) years after the Atlanta facility is divested, respondents shall neither directly nor indirectly solicit any persons who have been customers of the Atlanta facility at any time since March 31, 1977 to divert any of their aerosol packaging requirements from the Atlanta facility to one or more of respondents' other facilities.

IV

It is further ordered, That the Atlanta facility shall not be divested to any person who, as of the date of divestiture, is an officer, director, employee or agent of respondents, or who directly or indirectly owns or controls more than one (1) percent of the outstanding stock of respondents.

V

It is further ordered, That, pending divestiture of the Atlanta facility, respondents shall neither make nor permit any deterioration in said facility, other than normal wear and tear, which may impair its market value on the date of this order.

VI

It is further ordered, That, for a period of five (5) years from the date of this order, respondents shall neither directly nor indirectly acquire, without the prior approval of the Federal Trade Commission, any aerosol packaging facilities from any person engaged in the business of packaging aerosol products for one or more persons that are unaffiliated with the owner of said facilities.

VII

It is further ordered, That, within sixty (60) days after the date of this order and every sixty (60) days thereafter until the divestiture ordered by Paragraph I hereof is effected, respondents shall submit to the Federal Trade Commission a detailed written report setting forth the manner and form in which they have complied with this order. All such compliance reports shall include, among other things, that are from time to time required, a summary of all discussions and negotiations with any persons who are potential owners of the assets to be divested, the identity of all such persons, copies of all communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

VIII

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