

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. *CV 89-62*

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	CONSENT DECREE
)	
PATTEN CORPORATION, a)	
Massachusetts Corporation)	
with a principal office)	
located in North Adams,)	
Massachusetts; PATTEN)	
CORPORATION DOWNEAST, a Maine)	
corporation with a principal)	
office located in Bangor,)	
Maine; PATTEN CORPORATION OF)	
MAINE, a Maine corporation)	
with a principal office)	
located in Portland, Maine;)	
and PATTEN AUCTION AND LAND)	
CORPORATION, a Massachusetts)	
corporation with a principal)	
office located in North)	
Adams, Massachusetts,)	
)	
Defendants)	

Plaintiff, State of Maine, having filed its Complaint on February 8, 1989, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and for purposes of settlement only and without this Decree constituting any evidence against, or an admission by, any party with respect to such issues and with Defendants denying

the allegations in the Complaint; now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

1. ORDERED, ADJUDGED AND DECREED, that this Consent Decree applies to Patten Corporation, Patten Corporation of Maine, Patten Corporation Downeast, and Patten Auction and Land Corporation, their subsidiaries, successors, and assigns, whether acting through their officers, directors, agents, independent contractors, servants, employees, or any other person, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business of marketing and selling real estate. (Patten Corporation, Patten Corporation of Maine, Patten Corporation Downeast, and Patten Auction and Land Corporation are hereafter referred to as "Patten".)

2. It is further ORDERED, ADJUDGED AND DECREED that Patten be permanently enjoined from engaging in any of the following acts or practices in the State of Maine:

a. Advertising real estate for sale without disclosing the corporate name of the seller and, if the seller's name does not include the word "Patten," the fact that the seller is a subsidiary or affiliate of Patten;

b. Advertising real estate for sale by using such terms as "for sale by owner," or "owner must sacrifice" "owner financing", or other terms that imply it is an individual owner, except that Patten may use the term "owner financing" where Patten clearly and conspicuously discloses that Patten is the owner of the advertised real property;

c. Bait advertising, as defined by law, regulation or judicial decision, including but not limited to advertising real estate that is either non-existent or not available for sale at the time the advertisement is placed;

d. Scheduling appointments to show real estate which is not available for sale at the time the appointments are scheduled;

e. Advertising real estate which is not suitable for use as a building site for full-time, year-round residence without disclosing such limitations;

f. Scheduling an appointment to show real estate for sale without disclosing:

- i) Then existing material limitations with respect to access to the property or the fitness of the property for residential use; and
- ii) The presence or absence of water systems, sewage disposal systems and telephone and electric services;

g. Misrepresenting to prospective purchasers of real estate by word or action that:

- i) Arrangements have been made with other prospective purchasers to view the same parcel of real estate;
- .ii) Other prospective purchasers have expressed an interest in the same parcel of real estate; or
- iii) Another prospective purchaser has placed a deposit on the same parcel of land or is about to do so;

h. Misrepresenting to prospective purchasers that unless they place a deposit on the real estate at the time the real estate is viewed, they will be unable to purchase said real estate at a later date; provided, however, that nothing herein shall prohibit Patten from advising purchasers that unless they place a deposit on the real estate, they may be unable to purchase such real estate at a later date;

i. Misrepresenting to prospective purchasers that the purchase price of the real estate shown will increase within a specific period of time;

j. Making material misrepresentations as to the physical features, condition or potential uses of real estate offered for sale which were known or reasonably should have been known to Patten;

k. Making a representation that the real estate offered for sale is "buildable" or is "guaranteed buildable" or can dispose of sewage, or is otherwise suitable for full-time or part-time residential use, unless Patten has in its possession facts which substantiate each such representation;

l. Failing to disclose any physical features of the real estate which Patten knows or reasonably should know may render it impossible or extraordinarily expensive to build on the real estate;

ll. Failing to disclose any physical features which Patten knows or reasonably should know may render it impossible or extraordinarily expensive to build on any particular portion of the real estate which Patten has identified as suitable for a building site.

m. Making representations that real estate is a sound or profitable investment unless accompanied by a clear disclaimer that there is no indication that the value of the particular parcel of real estate offered for sale will appreciate;

n. Making representations that the availability of bank or other financing is any indication of the value of the real estate offered for sale;

o. Misrepresenting to purchasers the binding effect of a purchase and sale agreement;

p. Discouraging purchasers in any manner from obtaining legal representation;

q. Representing to purchasers that:

i) Patten's attorney will represent the purchaser;

or

ii) Patten will secure an attorney to represent the purchaser;

r. Requesting or accepting payment from purchasers for services performed by attorneys who represent Patten in its capacity as the seller of real estate;

s. Requesting or accepting payment from purchasers for services performed by attorneys who represent Patten in its capacity as mortgagee, unless the payment reflects the actual and reasonable cost of the services rendered;

t. Failing to disclose any material fact known to, or which reasonably should be known by, Patten if there is a substantial likelihood that a reasonable purchaser would consider such material fact important in deciding whether to purchase the real estate, including but not limited to those facts required to be disclosed pursuant to paragraph 5;

u. Where prohibited by law, permitting persons who are not regular, salaried employees of Patten to sell property for Patten without having the applicable brokers or salesperson license;

v. Failing to disclose to purchasers of land subject to taxation under the Tree Growth Tax Law, [36 M.R.S.A. §§ 571-584 (1978 and Supp. 1988)], the penalties arising from withdrawal of land from that tax classification.

3. It is further ORDERED, ADJUDGED AND DECREED that, at such time as Patten knows or should know that advertised real estate is no longer available for sale or has been sold, Patten shall take reasonable steps to remove advertisements relating to such real estate from all advertising media in which the real estate was advertised for sale.

4. It is further ORDERED, ADJUDGED AND DECREED that Patten shall clearly disclose to prospective purchasers, when making an appointment to show advertised property located in the State of Maine:

a. Whether the lowest-price advertised lot is still available for sale;

b. The number of lots in the advertised subdivision available at each advertised price;

c. The highest and lowest price of lots offered in the advertised subdivision; and

d. Each category of charges that will be added to the advertised price, including but not limited to, if applicable, closing costs, homeowners association dues, attorneys fees, current use tax and property transfer taxes.

5. It is further ORDERED, ADJUDGED AND DECREED that prior to accepting a deposit from or executing a purchase and sale agreement with the prospective purchaser, Patten shall disclose in writing to each prospective purchaser, in the form attached as Exhibit A, the following information with respect to the real estate being sold. The written disclosure statement shall be provided in addition to any other disclosures required pursuant to state or federal law.

a. The presence or absence of utility services (electric and telephone services), the availability of such services, and, if utility services are available, the approximate cost of obtaining any utility services which will not be present at the time of closing. Patten shall also disclose whether utility easements may be required to extend, or make available, utility services to the real estate and the approximate cost of and procedure for securing said easements. Patten shall further disclose the name, address and telephone number of the source from which the approximate cost was obtained and of the state or local agency from which additional information in regard to the availability or installation of utility services may be obtained.

b. All material regulatory limits on sewage disposal, and the estimated cost of installing legally adequate sewage disposal for a 3 bedroom house. Patten

shall provide the name, address and telephone number of the appropriate source from which the estimate was obtained and of the state or local agency responsible for regulating installation of such service.

c. Practical and regulatory limits on potable water supply, the estimated per foot cost of drilled wells, and that the range of depths of drilled wells in the State of Maine is _____ to _____ feet. Patten shall provide the name, address and telephone number of the source from which the estimated per foot cost was obtained and the state agency from which the well depth information was obtained.

d. All material state and local land use restrictions pertaining to the real estate, including land use and zoning laws, regulations or ordinances, homeowners association rules and bylaws, restrictive covenants, easements and other conservation or environmental restrictions.

e. If a residence can be built on the real estate, Patten will identify a building site and disclose any physical features of such site which Patten knows or reasonably should know may render it extraordinarily expensive to build a residence on such site. If a residence cannot be built on such real estate, Patten shall disclose that fact. If Patten knows that it is impossible

shall provide the name, address and telephone number of the appropriate source from which the estimate was obtained and of the state or local agency responsible for regulating installation of such service.

c. Practical and regulatory limits on, potable water supply, the estimated per foot cost of drilled wells, and that the range of depths of drilled wells in the State of Maine is _____ to _____ feet. Patten shall provide the name, address and telephone number of the source from which the estimated per foot cost was obtained and the state agency from which the well depth information was obtained.

d. All material state and local land use restrictions pertaining to the real estate, including land use and zoning laws, regulations or ordinances, homeowners association rules and bylaws, restrictive covenants, easements and other conservation or environmental restrictions.

e. If a residence can be built on the real estate, Patten will identify a building site and disclose any physical features of such site which Patten knows or reasonably should know may render it extraordinarily expensive to build a residence on such site. If a residence cannot be built on such real estate, Patten shall disclose that fact. If Patten knows that it is impossible

or extraordinarily expensive to build a residence on any other portion of the real estate, Patten shall disclose that fact. For purposes of this section, a residence cannot be built if the land is not suitable for sewage disposal.

f. The existence or nonexistence of roads providing access to the real estate. If any such road is not publicly maintained twelve months a year, Patten shall disclose (i) the status of such road; (ii) whether arrangements have been made or will be made to provide for maintenance of such road; (iii) the estimated cost to the purchaser for normal maintenance of such road, including snow removal; (iv) the name, address and telephone number of any state or local agency providing regulation of construction or maintenance of such road; and (v) the name, address and telephone number of any person or entity responsible for maintaining such road. If Patten informs the prospective purchaser that a road described in the preceding sentence may, in the future, be maintained by the local municipality, Patten shall disclose that expenditures may be necessary before the local municipality will take over maintenance of the road, and that there may be additional expenditures and permits necessary for construction or normal maintenance of the road.

g. The current tax rate applied to the property and that information with regard to the taxation of the real estate is available. Patten shall also provide the names and telephone numbers of the appropriate state or local office from which such information can be obtained.

h. That the purchaser, at his or her own expense, has the right to consult an attorney concerning all aspects of the transaction, including building permits, sewage disposal, utilities, and roads, and to be represented at the closing by an attorney of his or her choosing, and that such purchaser will not otherwise receive any representation of his or her interests.

i. Any additional charges, including homeowners association fees, attorney fees, and taxes that will be added to the total charges.

6. It is further ORDERED, ADJUDGED AND DECREED that Patten shall disclose orally to each prospective purchaser that the written disclosures required pursuant to paragraph 5 contain important information and should be read prior to making a decision to purchase, and shall afford the purchaser a reasonable uninterrupted period to read said disclosures.

7. It is further ORDERED, ADJUDGED AND DECREED that the written disclosures required pursuant to paragraph 5 shall be signed by the sales agent and prospective purchaser to acknowledge receipt and a copy provided to the prospective

purchaser prior to acceptance of a deposit, agreement or commitment of any kind. Patten shall make no oral or written statement to the purchaser which in any manner contradicts or modifies any statement contained in the disclosure form.

8. It is further ORDERED, ADJUDGED AND DECREED that Patten may make a change in the form attached hereto as Exhibit A with the approval of the Attorney General. If Patten proposes to make any change in such form, it shall give written notice of such proposed change to the Attorney General by certified mail, return receipt requested; addressed to Amy M. Homans, Assistant Attorney General, Department of Attorney General, State House Station 6, Augusta, Maine 04333. Such proposed change shall be deemed to have been approved by the Attorney General if Patten does not receive from the Attorney General written notice of disapproval of the proposed change within 30 days after Patten's notice was received by the Attorney General.

9. It is further ORDERED, ADJUDGED AND DECREED that each purchaser of real estate from Patten who either purchases land located in the State of Maine or resides in the State of Maine and who purchases land in Massachusetts, New Hampshire, New York, or Vermont, shall be given an absolute right to cancel any contract for the purchase of said real estate by providing written notice of cancellation to Patten not later than seven (7) days after the date of execution of the contract. The date of closing on real estate

purchased from Patten shall not be less than fourteen (14) days from the date of execution of the contract unless requested by the purchaser and confirmed in writing by Patten.

10. It is further ORDERED, ADJUDGED AND DECREED that each contract for sale of real estate within the states of Maine, New Hampshire, New York, and Vermont and the Commonwealth of Massachusetts shall include in 12 point bold-face type the following language:

You, the purchaser, have the right to cancel this contract for seven (7) days after you sign this contract. This right to cancel may not be waived. If you decide to cancel, you must notify Patten in writing by certified mail, return receipt requested, post-marked on or before midnight of the seventh day after you signed the contract. Address the notice of cancellation to: Patten Corporation, 646 Main Road, Stamford, Vermont 05352. Cancellation within the 7 day period is without penalty, and all payments made by you before cancellation must be refunded by Patten within twenty (20) days after receipt of the notice of cancellation. Payments shall be deemed timely when Patten deposits in the U.S. mail, first class postage pre-paid, a check payable to you on or before the twentieth day.

The language set forth above shall apply to each and every sale of real estate by Patten within Maine, Massachusetts, New Hampshire, New York, or Vermont and shall be disclosed to each potential purchaser prior to execution of any purchase or sale agreement or contract for sale of real estate by Patten. Patten shall make no oral or written statement to the purchaser which in any manner contradicts or modifies this language except as otherwise set forth herein.

11. It is further ORDERED, ADJUDGED AND DECREED that Patten shall refund all payments within twenty (20) days after it receives notice of cancellation as set forth in paragraph 10. For this purpose, payments shall be deemed timely when Patten deposits in the U.S. Mail, postage pre-paid, a check payable to the purchaser on or before the twentieth day.

12. It is further ORDERED, ADJUDGED AND DECREED that within thirty (30) days after a request from a purchaser of a lot in a multi-lot subdivision, Patten shall provide to such purchaser a complete list of the names, last known addresses, telephone numbers and lot numbers of each purchaser from Patten within that subdivision. Prior to providing such list, Patten may require the purchaser to identify a noncommercial purpose for such request, in addition to executing a confidentiality agreement with Patten prohibiting the purchaser from distributing the list for commercial purposes.

13. It is further ORDERED, ADJUDGED AND DECREED that Patten provide a dispute resolution procedure to Purchasers (as defined in subparagraph b below) in the following manner:

a. By June 1, 1989, Patten shall send a notice, in the form attached hereto as Exhibit B, to each person who (i) purchased real estate located within the State of Maine from Patten after August 1, 1982 and before May 1, 1989; or (ii) purchased real estate from Patten after August 1, 1982

and before May 1, 1989 in Vermont, Massachusetts, New Hampshire, or New York and was a resident of Maine at the time of purchase. This notice shall inform such persons of the dispute resolution procedure as set forth below. The notice shall include a self-addressed envelope containing the form, attached hereto as Exhibit C. In the event any such notice is returned undelivered, Patten shall make reasonable efforts to locate the addressee of such notice, such efforts to be limited to contacting real property taxing authorities and the United States Postal Service.

b. For the purpose of paragraphs 13 and 18, a Purchaser shall mean any person who (i) is described in clauses (i) or (ii) of subparagraph a above, and (ii) owns such real estate on May 1, 1989 and at all times thereafter until the dispute is resolved in accordance with this paragraph, and (iii) claims on the Form attached as Exhibit C, that Patten misrepresented or omitted to disclose, a material fact existing at the time of sale with respect to the use of such real estate, the access to such real estate, the availability of telephone, electric, or water services to such real estate, or the ability of such real estate to support an on-site sewage disposal system at a cost which is not extraordinary; and (iv) makes a claim for full restitution under subparagraph c or partial restitution under subparagraph d.

c. In order to make a claim for full restitution under this subparagraph c, a Purchaser must submit a written request to Patten for full restitution on the form attached

hereto as Exhibit C on or before the latest of (i) the day which is six (6) years after the date of purchase of such real estate, (ii) the day which is one (1) year after the earlier of the dates the Purchaser discovered or should have discovered the material misrepresentation or omission described in clause (iii) of subparagraph b, or (iii) the day which is one (1) year after the date of the notice required by subparagraph a.

In addition, in order to qualify for full restitution under this subparagraph c, a Purchaser must make a timely claim and prove that Patten misrepresented or omitted to disclose a material fact described in clause (iii) of subparagraph b.

Patten shall provide such full restitution to each Purchaser who so qualifies by repurchasing such real estate from such Purchaser for an amount (the "Reconveyance Price") equal to the sum of (i) the original purchase price of such real estate from Patten, (ii) all interest paid by the Purchaser (or accrued and unpaid at the time of

reconveyance) on any portion of such original purchase price which was financed at the time of purchase through a first mortgage loan on such real estate, (iii) all prepayment penalties paid by the Purchaser (or accrued and unpaid at the time of reconveyance) on any first mortgage loan referred to in clause (ii), (iv) all real property taxes and homeowners' association assessments paid by the Purchaser (or accrued and unpaid at the time of reconveyance) with respect to such real estate and (v) all closing costs paid by the Purchaser in purchasing such real estate, including but not limited to title fees, title insurance premiums, recording fees, attorneys' fees, survey fees and mortgage recording fees. At the closing of any such reconveyance the Reconveyance Price shall be applied first to obtain complete discharges of all mortgages, liens, and other encumbrances on such real estate and to provide for the satisfaction or payment of all accrued but unpaid real property taxes and homeowners' association assessments. Any remaining balance of the Reconveyance Price shall be paid to the Purchaser. Patten shall bear all costs and expenses involved in the reconveyance of the real estate to Patten, except that attorneys fees in excess of \$100 incurred by the Purchaser in connection with the reconveyance shall be the sole responsibility of the Purchaser. Patten shall not be required to provide restitution under this subparagraph c to any Purchaser (i)

whose real estate is not in substantially the same condition as when it was sold to the Purchaser (with the exception of reasonable site preparation), or (ii) who cannot reconvey such real estate free and clear of all liens, encumbrances and restrictions, with the exception of utility easements, other than those to which such real estate was subject immediately before the time of original purchase from Patten.

d. In order to make a claim for partial restitution under this subparagraph d, a Purchaser as defined in subparagraph b, must have built, or taken substantial steps to build, on such real estate prior to the date of the notice referred to in subparagraph a, and must make a written request to Patten for partial restitution on the form attached hereto as Exhibit C on or before ninety (90) days after the date of such notice.

In addition, in order to qualify for partial restitution, a Purchaser must meet the requirements of the immediately preceding sentence and prove that Patten misrepresented or omitted to disclose a material fact described in clause (iii) of subparagraph b.

Patten shall provide partial restitution to each Purchaser who so qualifies in the following manner in lieu of any restitution under subparagraph c:

i) Reimbursement to the Purchaser of all reasonable necessary actual and anticipated out-of-pocket expenses of the Purchaser required to compensate the Purchaser for any material misrepresentation or omission described in clause (iii) of subparagraph b, but only to the extent that such expenses relate directly to improvements to such real estate and exceed such expenses as would have been anticipated by a reasonable buyer who was not subjected to such material misrepresentation or omission. The out-of-pocket expenses referred to in the preceding sentence shall include, where applicable, but shall not be limited to, costs of necessary road improvements, installing a sewage disposal system, obtaining utility service, and complying with environmental and/or regulatory requirements.

ii) In lieu of reimbursing anticipated expenses set forth under clause (i) of subparagraph d, Patten may at its option and expense provide specific performance.

iii) In situations where it is not practicable or is prohibitively expensive to provide the partial restitution referred to in clauses (i) and (ii) of

this subparagraph d, and where the current fair market value of the property, absent the value of improvements (as determined by an independent appraiser agreed upon by both Patten and the Purchaser and paid for equally by Patten and the Purchaser) is less than the purchase price of the property from Patten, Patten shall, in lieu of any restitution under clause (i) or (ii) of this subparagraph d, pay to the Purchaser the excess of the original purchase price of the property from Patten over such current fair market value absent the value of any improvements.

iv) Patten need not provide restitution under this subparagraph d if such real estate is not in substantially the same condition as when it was sold to the Purchaser (excepting for this purpose any site preparation or improvements effected by the Purchaser).

v) Total reimbursement or payment as provided in subparagraphs d(i) and d(iii) above to any Purchaser is subject to a cap of \$10,000 except that there shall be no cap on reimbursements or payments for utility services if Patten made written misrepresentations in offering statements, property reports, advertisements, or other like documents, as to the existence, non-existence or availability of such services.

e. Upon receipt of each request for restitution in accordance with subparagraph c or d, Patten shall make a good faith effort to determine whether the claimant is entitled to restitution and, if so, the amount payable to such claimant under subparagraph c or d. Patten shall communicate its determination to such claimant as soon as practicable after such determination is made.

f. If within 45 days after receipt by Patten of a request for restitution, complete agreement with respect thereto has not been reached by Patten and the Purchaser, Patten shall, with the approval of the Purchaser, immediately submit the matter to the American Arbitration Association for binding arbitration in accordance with its rules of arbitration and the standards set forth in this Consent Decree. Both parties may agree to a series of thirty (30) day extensions to the resolution period before submitting the matter to binding arbitration, provided that the total period of extensions shall not exceed 180 days. A Purchaser who elects to proceed to arbitration must waive in writing any and all legal or equitable rights against Patten with respect to such real estate except pursuant to this restitution procedure. Patten shall bear the entire cost of such arbitration; provided, however the Purchaser must post a \$100 fee towards the cost of arbitration. Said fee shall be refunded in the event the arbitrator makes any

award in favor of the Purchaser. Each party to arbitration shall be responsible for its own attorney's fees. Neither party shall have the right to appeal from the arbitrator's decision.

g. Patten shall not plead the statute of limitations as a defense to any claim brought under this dispute resolution procedure by any Purchaser provided the request for restitution is timely under subparagraphs c or d as appropriate.

h. The rights of a Purchaser under this paragraph 13 are personal to the Purchaser and shall not be assignable.

14. It is further ORDERED, ADJUDGED AND DECREED that Patten shall have thirty (30) days from the date the arbitrator's decision is final to make restitution as required, provided that in the case of partial restitution under subparagraph d(ii) of paragraph 13 Patten shall be in compliance with this paragraph 14 if it commences specific performance within such thirty (30) day period and thereafter exercises reasonable diligence to complete such specific performance.

15. It is further ORDERED, ADJUDGED AND DECREED that within thirty (30) days after this Consent Decree is approved by this Court, Patten shall deliver a copy of this Consent Decree by hand or by certified mail to the following persons located or acting within the State of Maine: (a) all of its

sales managers and sales representatives, (b) all agents subject to Patten's control and all its employees who are responsible for the preparation, publication, broadcast or dissemination of advertisements of any form or nature, and (c) all other agents subject to Patten's control and all other of its employees whose duties are affected in any way by this Consent Decree. In addition, Patten shall provide each such person with a form which must be executed and returned to Patten within ten (10) days. The form shall state that the person has read and understands the requirements of the Consent Decree and agrees to conform to such requirements. Within ninety (90) days after approval of this Consent Decree, Patten shall provide the Attorney General with an affidavit to demonstrate its compliance with this paragraph. All future agents and employees described in clauses (a)-(c) above also shall be provided with a copy of this Consent Decree and required to execute the form before commencing employment. The signed forms shall be maintained in a separate file and made available to the Attorney General within ten (10) days of a written request.

16. It is further ORDERED, ADJUDGED AND DECREED that on June 1, 1989 and every six (6) months for a period of three (3) years, and upon request thereafter, (with such requests limited to two (2) per year), Patten shall provide the Attorney General with sample advertisements sufficient to illustrate each distinct format used for advertisements of any form or nature

published, broadcast or otherwise disseminated in Maine or offering land for sale in Maine during the preceding six (6) months; provided however, that once a sample of a distinct format has been provided to the Attorney General, Patten need not thereafter provide any sample of the same distinct format.

17. It is further ORDERED, ADJUDGED AND DECREED that on June 1, 1989 and every six (6) months thereafter for a period of three (3) years, and upon request thereafter (with such requests being limited to two (2) per year), Patten shall provide the Attorney General with an affidavit which states the following information for the prior period or for such prior periods as may be requested:

a. The name and address of each person whose request for cancellation of their purchase and sale agreement under paragraph 9 of this Consent Decree was denied by Patten, the location of the property, the reason stated for denying such cancellation, and the amount of the down payment which was not refunded;

b. The date on which Patten received each such request for cancellation, and the date on which Patten refused to issue the refund; and

c. The name and address of any person whose request for cancellation under paragraph 9 of this Consent Decree was withdrawn.

18. It is further ORDERED, ADJUDGED AND DECREED that on June 1, 1989 and every six (6) months thereafter for a period of three (3) years, and upon request thereafter (with such requests limited to two (2) per year), Patten shall provide the Attorney General with an affidavit which states the following information for the preceding period or such periods as may be requested:

a. The name and address of each Purchaser who received restitution, the location of the property, any reason stated for the request for restitution, and the amount paid to such former Purchaser;

b. The name and address of each former Purchaser whose request for restitution was referred to arbitration pursuant to paragraph 13, and the status or outcome of the arbitration, including the nature of the dispute, the location of the property and the amount of restitution paid or the reason payment was denied.

19. It is further ORDERED, ADJUDGED AND DECREED that within thirty (30) days after the notice is mailed pursuant to subparagraph 13(a), Patten shall provide the Attorney General with an affidavit that states the following:

a. The name and address of each former purchaser to whom the notice was mailed pursuant to paragraph 13.

b. The name of former purchasers who could not be located, the efforts made to locate such purchasers and the location of the property purchased.

20. It is further ORDERED, ADJUDGED AND DECREED that Patten shall maintain a central log of all complaints from purchasers received by any agents or employees. The log shall be made available to the Attorney General within ten (10) days after receipt of a written request.

21. It is further ORDERED, ADJUDGED AND DECREED that Patten shall investigate promptly and thoroughly all complaints received from purchasers by any agents or employees, and shall inform the complainant in writing of its decision with respect to the complaint within forty-five (45) days of its receipt, stating in detail the reason for its decision.

22. It is further ORDERED, ADJUDGED AND DECREED that Patten shall cooperate fully with the Attorney General in attempting to resolve all future complaints filed with the Attorney General or otherwise discovered by the Attorney General which are communicated to Patten in writing by the Attorney General, and Patten shall inform the Attorney General and the complainant in writing of the outcome of the complaint within ninety (90) days after the Attorney General brings the complaint to Patten's attention.

23. It is further ORDERED, ADJUDGED AND DECREED that Patten's obligations to comply with requests for information under paragraphs 15, 16, 17, 18, 19 and 20 shall terminate May 1, 1994, provided that Patten has substantially complied with this Consent Decree. Patten shall not be deemed to have violated any of the reporting provisions of such paragraphs

unless the Attorney General shall have first given to Patten written notice of noncompliance and Patten shall have failed to comply within thirty (30) days after receipt of such notice.

24. It is further ORDERED, ADJUDGED AND DECREED that Patten shall pay to the State of Maine Department of the Attorney General, the sum of \$20,000 for costs of investigation; and shall pay to the Department of the Attorney General the sum of \$80,000 pursuant to the first sentence of 5 M.R.S.A. § 209 (Supp. 1988) which the Attorney General shall use to provide grants to nonprofit groups involved in issues relating to growth management, land use or development.

25. It is further ORDERED, ADJUDGED AND DECREED that this Consent Decree in no way impairs any private right of action that any person may have against Patten except as to the persons who choose to execute waivers under paragraph 13(f).

26. It is further ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction to enforce and modify the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or implementation of the Consent Decree.

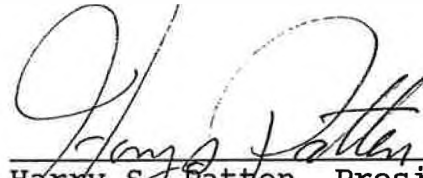
27. It is further ORDERED, ADJUDGED AND DECREED that nothing in this Consent Decree shall require Patten to perform an unlawful act.

28. It is further ORDERED, ADJUDGED AND DECREED that the effective date of this Consent Decree shall be May 1, 1989, except for paragraphs 13, 14, 15, and 24 which shall be effective immediately.

29. It is further ORDERED, ADJUDGED AND DECREED that this Consent Decree is entered into pursuant to 5 M.R.S.A. section 209 (1979). Enforcement of this Consent Decree may be brought by the State of Maine in an action for contempt.

Dated: February 8, 1989

By:



Harry S. Patten, President
Patten Corporation

Dated:

By:

Michael Emmons, President
Patten Corporation of Maine

Dated:

By:

Joseph O'Brien, President
Patten Corporation Downeast

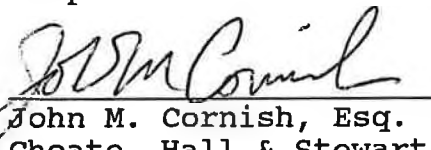
Dated:

By:

_____, President
Patten Auction and Land
Corporation

Dated: February 8, 1989

By:



John M. Cornish, Esq.
Choate, Hall & Stewart
Exchange Place
53 State St.
Boston, MA 02109
Counsel for Defendants

29. It is further ORDERED, ADJUDGED AND DECREED that this Consent Decree is entered into pursuant to 5 M.R.S.A. § 209 (1979). Enforcement of this Consent Decree may be brought by the State of Maine in an action for contempt.

Dated:

By: _____
Harry S. Patten, President
Patten Corporation

Dated: February 8, 1989

By: Michael T. Emmons
Michael Emmons, President
Patten Corporation of Maine

Dated: February 8, 1989

By: Joseph O'Brien
Joseph O'Brien, President
Patten Corporation DownEast

Dated:

By: _____
_____, President
Patten Auction and Land Corporation

Dated:

By: _____
John M. Cornish, Esq.
Choate, Hall & Stewart
Exchange Place
53 State St.
Boston, MA 02109
Counsel for Defendants

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Dated:

By:

Harry S. Patten, President
Patten Corporation

Dated:

By:

Michael Emmons, President
Patten Corporation of Maine


Dated:

By:

Joseph O'Brien, President
Patten Corporation Downeast

Dated: February 8, 1989

By:



Warren Van Genderen, President
Patten Auction and Land
Corporation

Dated:

By:

John M. Cornish, Esq.
Choate, Hall & Stewart
Exchange Place
53 State St.
Boston, MA 02109
Counsel for Defendants

Dated: Feb. 9, 1989

By:

David C. Durham
Counsel for Defendants
DAVID C. DURHAM

Dated: Feb. 9, 1989

By:

Amy M. Homans
Amy M. Homans
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, ME 04333
(207)289-3661

It is hereby ORDERED and DECREED as set forth above:

Dated: February 9, 1989

[Signature]
Chief Justice, Superior Court

EXHIBIT A

VITAL INFORMATION STATEMENT

This Vital Information Statement contains important information regarding estimated costs and responsibilities associated with future development of this property. It also contains important information regarding any restrictions imposed on the use of this property. In addition, this document includes notice of your right to cancel your contract within seven days. Patten urges you to carefully read and consider the attached information prior to making a decision to purchase.

If you are purchasing land based on representations made to you by a Patten salesperson, make sure you get those representations in writing.

A. UTILITY SERVICES, SEWAGE DISPOSAL AND WATER

1. ELECTRICITY:

AVAILABILITY:

ESTIMATED COST OF OBTAINING ELECTRIC SERVICE:

APPLICABLE REGULATORY RESTRICTIONS:

CONTACT FOR FURTHER INFORMATION:

PROVIDER OF ESTIMATE:

REGULATORY AGENCY:

Name:

Name:

Address:

Address:

Phone:

Phone:

2. TELEPHONE:

AVAILABILITY:

ESTIMATED COST OF INSTALLATION:

APPLICABLE REGULATORY RESTRICTIONS:

CONTACT FOR FURTHER INFORMATION:

PROVIDER OF ESTIMATE:

REGULATORY AGENCY:

Name:

Name:

Address:

Address:

Phone:

Phone:

EASEMENTS: It will/will not (circle one) be necessary to obtain utility easements from neighboring landowners in order to connect utility services to your property. The procedure for obtaining a utility easement, if necessary, is as follows: _____

3. SEWAGE DISPOSAL

AVAILABILITY:

ESTIMATED COST OF INSTALLING SEWAGE DISPOSAL
FOR A 3 BEDROOM HOUSE:

APPLICABLE REGULATORY RESTRICTIONS:

CONTACT FOR FURTHER INFORMATION:

PROVIDER OF ESTIMATE:

REGULATORY AGENCY:

Name:

Name:

Address:

Address:

Phone:

Phone:

4. WATER:

AVAILABILITY:

THE APPROXIMATE RANGE OF DEPTHS OF DRILLED WELLS IN THE
STATE OF MAINE IS _____ to _____ feet.

ESTIMATED COST PER FOOT:

APPLICABLE REGULATORY RESTRICTIONS:

CONTACT FOR FURTHER INFORMATION:

Provider of estimate: Provider of Depth Range: Regulatory Agency:

Name:

Address:

Phone:

Patten is unable to provide information regarding the quality
of water on the land.

The estimated costs above and on the preceding page are provided to
you, the purchaser, upon Patten's reliance on quotes by the
contractors listed above; such quotes may be subject to change,
without notice, and subject to variation upon receipt of purchaser's
specifications.

B. ROAD STATUS AND MAINTENANCE

The following information relates to various aspects of the road which provides access to this property:

1. The access road to this property is seasonal/year-round.
(circle one)

2. The access road is publicly/privately owned. (circle one)

3. The access road is currently maintained by: _____

4. Responsibility for future maintenance of the access road will belong to: _____

5. The total estimated costs, if any, associated with normal annual maintenance of the access road, including snow removal, are \$_____, of which you will be responsible for \$_____.

6. Other pertinent information: _____

7. For further information:

Provider of Estimate: name: _____
address: _____
phone: _____

Person or entity responsible for regulation of road construction and maintenance:
name: _____
address: _____
phone: _____

The estimated costs above are provided to you, the purchaser, upon Patten's reliance on quotes by the contractors listed above; such quotes may be subject to change without notice.

C. CERTAIN PHYSICAL FEATURES OF PROPERTY

A residence can/cannot (circle one) be built on this property.

The following statement describes any physical features of the building site identified by Patten which may render it extraordinarily expensive to build a residence on that site:

There may be physical features of the property not known to Patten which may render it impossible or extraordinarily expensive to build a residence on any portion of the property other than the building site identified by Patten.

Patten has/has not (circle one) evaluated any other portion of this property for suitability as a building site. The reason for rejecting any other potential building site is as follows:

D. OTHER STATE AND LOCAL LAND USE RESTRICTIONS AND REQUIREMENTS APPLICABLE TO THIS PROPERTY

The following information describes any material restrictions which pertain to this property imposed by land use laws and regulations, zoning laws, homeowners association bylaws (a complete copy of which is attached), restrictive covenants, easements, and other environmental and conservation restrictions.

1. Type of building and setback or sideline requirements:

Name and telephone number of regulatory authority: _____

2. Use of land: _____

Name and telephone number of regulatory authority: _____

3. Conservation or environmental restrictions: _____

Name and telephone number of regulatory authority: _____

4. Other restrictions (easements, restrictive covenants, water rights, etc.) _____

Name and telephone number: _____

E. REAL ESTATE TAXES AND ASSESSMENTS

The current tax rate in _____ is
\$ _____ per \$ _____ of
assessed value. Information regarding taxes may be obtained from
the office listed below:

Contact: Name _____
 Address _____
 Phone _____

The preceding information in Sections A through E above has
been prepared by Patten, based on information currently available,
and such information is subject to change without notice.

F. FEES, DUES, AND CLOSING COSTS ASSOCIATED WITH THIS PURCHASE

Fees: _____

Dues: _____

Closing Costs: _____

G. LEGAL ADVICE

You, the buyer, have the right (at your expense) to consult an
attorney of your choice regarding all aspects of this transaction,
including development permits, sewage disposal, cost and
availability of utilities, and the ownership and maintenance of
roads serving the land. You have a right to be represented in this
transaction by an attorney. Unless you contact your own attorney,
you will not receive any representation or advice to protect your
interests; Patten's attorney WILL NOT represent your interests.

H. RIGHT TO CANCEL

You may cancel the contract or Purchase and Sale Agreement for seven days after the date you sign the contract or Purchase and Sale Agreement. THIS RIGHT TO CANCEL MAY NOT BE WAIVED. If you decide to cancel, you must notify Patten in writing by certified mail, return receipt requested, post-marked on or before midnight of the seventh day. Cancellation is without penalty and all payments made by you prior to cancellation will be refunded to you by Patten.

I have received my own copy of the above disclosures and have been given sufficient uninterrupted time to read the disclosures before making a deposit or signing a Purchase and Sale Agreement.

Date

Purchaser

CERTIFICATION

I have given the above disclosures to the customer and I have given the customer uninterrupted time to read the disclosures.

Date

Patten Sales Representative

COMMITMENT TO CUSTOMER SERVICE

Patten is committed to customer satisfaction. Our goal has been, and continues to be, to make buying land from our company one of the best and most satisfying purchases that our customers will experience in a lifetime. Consistent with this goal, we currently maintain a customer service department. Employees are available to answer your calls during normal business hours. We have also installed a customer service answering machine which allows you to call our toll-free number and leave a message at any time of day or night. Your call will then be returned the next business day. We encourage you to call if you have any questions or problems with respect to the land you purchase from us.

Customer service number for questions and problems regarding your property is: 1-800-248-8018.

For questions regarding mortgages and mortgage related questions, call: 1-800-451-0315.

EXHIBIT B

[Letterhead of Patten Corporation]

_____, 1989

Dear Customer:

I am writing to inform you of a restitution program for which you may be eligible as a purchaser of land from Patten Corporation or one of its subsidiaries ("Patten").

This program is available to you if your Patten sales representative made a misrepresentation of, or failed to disclose, a material fact existing at the time of purchase with respect to the use of your land, the access to your land, or the availability of utilities or sewage disposal. You are the only person who is eligible under this program with respect to this land. If you sold your land, neither you nor your buyer is eligible. Please note that you will not qualify for restitution unless you claim and can prove a misrepresentation of, or failure to disclose, a material fact as described in the first sentence of this paragraph.

To be eligible for restitution under the program you must also have purchased your land between August 1, 1982 and May 1, 1989, and you must make a request to Patten for restitution on the enclosed Claim Form (or reasonable facsimile) within the time limits set forth in this letter and enclosures.

If you meet the above criteria, Patten will repurchase your land for your original purchase price from Patten plus certain specified out-of-pocket expenses. Alternatively, if you have built on or otherwise improved your property before the date of this notice, Patten will provide partial restitution to you subject to certain specified limitations. A detailed description of the repurchase program is described in Enclosure 1. A detailed description of the partial restitution program is described in Enclosure 2. Enclosure 3 is the Claim Form to use if you are eligible for, and wish to participate in, either program. Please read the enclosures carefully, and note the time limits for filing your claim.

Patten will attempt to resolve your claim through mutual agreement with you. If you and Patten cannot resolve your claim through mutual agreement, you may have your claim heard by an independent arbitrator. If you agree to use arbitration, you must post a \$100 fee to help defray the cost of the arbitration (which will be refunded to you if the arbitrator finds in your favor), and waive in writing any and all other legal or equitable claims against Patten with respect to your purchase. The decision of the arbitrator will be final and binding.

The program summarized in this letter has been developed in conjunction with the Attorney(s) General identified below. It is set forth in a consent order/judgment on file at the (court name and address for state where land is located), under the name of

_____, Docket No. _____.
A copy of the relevant portion of the consent order/judgment is available from Patten upon request. You can obtain a copy of the entire consent order/judgment from the Attorney General upon request. If you have additional questions, you should of course feel free to directly contact the Attorney(s) General listed below.

Several years ago Patten established a customer service department which will, among its other functions to serve you, help administer the program. Its toll free number is 1-800-_____. You may secure more information about the program by calling our toll free number.

Very truly yours,

Harry S. Patten
Chairman of the Board
and President

cc: Name, address and phone number of Attorney General of the State/Commonwealth where (i) the land is located (if located in Maine, Massachusetts, New Hampshire, New York or Vermont); and (ii) the purchaser resided at time of purchase.

Enclosure 1

PATTEN REPURCHASE PROGRAM

Who is eligible for this program?

This program is available to you if:

(1) you purchased land located in New York, Vermont, New Hampshire, Maine or Massachusetts from Patten Corporation or one of its predecessors or subsidiaries (referred to in this enclosure as "Patten") after August 1, 1982, and before May 1, 1989;

AND

(2) you still own such land and continue to own it until your dispute with Patten is resolved;

AND

(3) your Patten sales representative (or other persons employed by or acting on behalf of Patten) misled you about important facts concerning the use of your land, the roads that serve your land, or the availability of utilities (telephone and electricity), water or sewage disposal. You may have been misled either because the Patten representative told you something that was misleading or because the Patten representative failed to tell you something important that you later found out on your own;

AND

(4) you submit a written request to Patten for full restitution on the enclosed claim form within the time limits set forth below.

TO EXERCISE THESE RIGHTS, YOU MUST FILE YOUR CLAIM ON TIME. (See the "Time Limits" below.)

What are your rights if you are eligible?

If you and Patten agree that you are eligible, or an arbitrator decides that you are eligible, Patten will buy your land back from you. You will receive the full purchase price if you paid cash. If you used a mortgage loan to buy the land, you will receive your down payment plus all of the principal and

interest payments you have made (including any penalties you might have to pay for paying off your mortgage early). Whether you paid cash or used a mortgage loan, you also will receive all of the real estate taxes you have paid, any homeowners' association fees you might have paid, and the closing costs for your original purchase of the land. These costs include title fees, title insurance premiums, recording fees, survey fees, fees to record your deed and mortgage, attorneys' fees, and similar expenses. Patten will bear all of the closing costs in connection with the sale of the land back to Patten other than any fees or expenses of your attorney. Patten's responsibility with respect to any fees or expenses of your attorney in connection with the sale of your land back to Patten is limited to \$100.

Patten will make a good faith effort to reach an agreement with you on the validity and amount of your claim within 45 days after Patten receives your claim. If you wish, you and Patten may agree to extend the 45 day period for up to an additional 180 days. If you and Patten still do not agree after 45 (or up to 225) days, at your option, your claim can be submitted to an independent arbitrator with the American Arbitration Association. Upon submission of your claim, you must waive in writing all other claims against Patten relating to the transaction, and you must pay a \$100.00 fee toward the arbitration costs, but you will receive a refund of the \$100.00 if the arbitrator rules totally or partially in your favor. If you use an attorney, you will be responsible to pay your own attorney's fees. Patten will be responsible for paying the other costs of arbitration. If you choose arbitration, the arbitrator's decision will be final. Neither you nor Patten may appeal the arbitrator's decision.

Time limits for asserting your rights:

You must send your Claim Form (Enclosure 3) to Patten on or before the latest of the dates described below:

(1) Six (6) years after the date you purchased the land;

OR

(2) One (1) year after the date you first discovered or first should have discovered that you were misled, whichever date is earlier;

OR

(3) One (1) year after the date of this letter.

NO MATTER WHAT, you have at least ONE YEAR after the date of this letter and these enclosures to send in your claim form.

YOU WILL LOSE ALL RIGHTS UNDER THIS PROGRAM IF YOU DO NOT SEND IN YOUR CLAIM ON TIME.

YOU ARE NOT ELIGIBLE UNDER THIS PROGRAM IF:

(1) Your land is not in substantially the same condition as when it was sold to you (with the exception of reasonable site preparation);

OR

(2) You cannot convey the land to Patten free and clear of all liens, encumbrances, restrictions, with the exception of normal utility easements necessary to bring utilities to the property, other than those to which your land was subject immediately before the time of original purchase from Patten.

Note: Nothing in this enclosure is intended to modify any term of the consent order/judgment identified in the letter to you of _____, 1989. In the event of any conflict between this enclosure and the terms of the consent order, the terms of the consent order shall control.

Enclosure 2

PATTEN PARTIAL RESTITUTION PROGRAM

Who is eligible for this program?

This program is available to you if:

(1) you purchased land located in New York, Vermont, New Hampshire, Maine or Massachusetts from Patten Corporation or one of its predecessors or subsidiaries (referred to in this enclosure as "Patten") after August 1, 1982, and before May 1, 1989;

AND

(2) you still own such land and continue to own it until your dispute with Patten is resolved;

AND

(3) your Patten sales representative (or other persons employed by or acting on behalf of Patten) misled you about important facts concerning the use of your land, the roads that serve your land, or the availability of utilities (telephone and electricity), water or sewage disposal. You may have been misled either because the Patten representative told you something that was misleading or because the Patten representative failed to tell you something important that you later found out on your own;

AND

(4) you do not want Patten to buy your land back because you have built on it or prepared it for building;

AND

(5) you had (or think you will have) unexpected expenses in building on the land or completing preparations solely because you were misled about important facts concerning the use of the land, the roads, utilities, water or sewage disposal;

AND

(6) you submit a written request to Patten for partial restitution on the enclosed claim form within the time limits set forth below.

TO EXERCISE THESE RIGHTS, YOU MUST FILE YOUR CLAIM ON TIME. (See the "Time Limits" below.)

What are your rights if you are eligible?

If you and Patten agree that you are eligible, or an arbitrator decides that you are eligible, Patten will compensate you in one of the following ways:

(1) Patten will reimburse the amount you spent and/or will have to spend to bring the land, roads, utilities, water or sewage disposal up to the condition you expected them to be in on the basis of the information that Patten's representative gave (or did not give) to you. For example, this amount might, in a given case, include undisclosed costs of road improvements or maintenance, the cost of sewage disposal in excess of the ordinary costs of in-ground septic systems, the cost of obtaining utility service or the cost of complying with land-use restrictions that were not disclosed;

AND/OR

(2) at Patten's option, instead of reimbursing anticipated expenses under paragraph (1), Patten will instead arrange, at its expense, to bring the land up to the expected condition;

OR

(3) if it is not practicable or is prohibitively expensive for Patten to perform options (1) and/or (2), above, Patten will pay you the excess, if any, of your purchase price over the current fair market value of the land (as determined by an appraiser chosen by you and Patten and paid for equally by you and Patten).

If option number (1) or (3) is chosen, Patten will not have to pay you more than \$10,000 except to the extent that all or part of the amount necessary to bring the land up to the expected condition is (or would have been) for utility services and Patten made misleading statements in writing (for example, in agreements, advertisements, or offering statements) about the existence or availability of the utility services.

Patten will make a good faith effort to reach an agreement with you on the validity and amount of your claim within 45 days after Patten receives your claim. If you wish, you and Patten may agree to extend the 45 day period for up to an additional 180 days. If you and Patten still do not agree after 45 (or up to 225) days, at your option, your claim can be submitted to an independent arbitrator with the American Arbitration Association. Upon submission of your claim, you must waive in writing all other claims against Patten relating to the transaction, and you must

pay a \$100.00 fee toward the arbitration costs, but you will receive a refund of the \$100.00 if the arbitrator rules totally or partially in your favor. If you use an attorney, you will be responsible to pay your own attorney's fees. Patten will be responsible for paying the other costs of arbitration. If you choose arbitration, the arbitrator's decision will be final. Neither you nor Patten may appeal the arbitrator's decision.

Time limits for asserting your rights:

YOU MUST SEND YOUR CLAIM FORM (Enclosure 3) TO PATTEN WITHIN 90 DAYS AFTER THE DATE OF THIS LETTER AND THESE ENCLOSURES.

YOU WILL LOSE ALL RIGHTS UNDER THIS PROGRAM IF YOU DO NOT SEND IN YOUR CLAIM ON TIME.

YOU ARE NOT ELIGIBLE UNDER THIS PROGRAM IF:

Your land is not in substantially the same condition as when it was sold to you (with the exception of reasonable site preparation or improvements).

Note: Nothing in this enclosure is intended to modify any term of the consent order identified in the letter to you of _____, 1989. In the event of any conflict between this enclosure and the terms of the consent order, the terms of the consent order shall control.

EXHIBIT C

Enclosure 3

Mail to:

Patten Corporation
646 Main Road
Stamford, Vermont 05352

CLAIM FORM

I believe I qualify for the restitution program described in your letter of _____, 1989. The following information will help you evaluate my claim:

PLEASE PRINT

1. My name is: _____
2. My mailing address is: _____
3. My telephone number is: Home _____ Work _____
4. My land is located in: _____
(Town) (State)
5. I purchased my land on _____
(Date)
6. I purchased my land from: _____
(Seller)
7. (If applicable) My land is Lot # _____ in _____
(Name of Subdivision)
8. The name of the sales representative was: _____
9. The sales representative (or other Patten representative) made statements to me, orally or in writing, that were misleading or failed to tell me something important about certain aspects of my land. The statement or omission concerned one or more of the following aspects of my land: [check applicable box or boxes]

☐ the use of my land.

☐ the access to my land (roads and road maintenance).

☐ the availability of water, telephone or electric services to my land (including the need to get utility easements).

☐ the ability of my land to support an on-site sewage disposal system at a cost that is not extraordinary.

10. Please describe the misrepresentation or omission in detail and enclose copies of all documents (including advertising material, contracts, receipts, cancelled checks, etc.) which you feel will help us evaluate your claim: (Be sure to keep original documents for your records.)

11. I claim I am eligible for (check one):

☐ THE REPURCHASE PROGRAM (See Enclosure 1)

☐ THE PARTIAL RESTITUTION PROGRAM (See Enclosure 2)

Please fill out either paragraph 12 or paragraph 13 depending on whether you believe you are eligible for the REPURCHASE or PARTIAL RESTITUTION program. Do not fill out both.

12. I claim I am entitled to have Patten repurchase my land under the REPURCHASE PROGRAM (described in Enclosure 1).

I have paid the following amounts to date in connection with my purchase:

- (a) Original purchase price: \$ _____
- (b) If the purchase was financed;
the down payment: \$ _____
total mortgage payments: \$ _____
- (c) Real Estate Taxes: \$ _____
- (d) Homeowners' Association assessments:
\$ _____
- (e) Closing costs in purchasing my land (includes points, title insurance premiums, title fees, recording fees, survey fees, attorneys fees, etc.): \$ _____

I can reconvey my land to Patten free of any liens, encumbrances or restrictions other than those in place at the time I purchased it from Patten:

☐ Yes ☐ No If no, please explain:

My land is in substantially the same condition as when I purchased it:

☐ Yes ☐ No If no, please explain:

13. I claim that I am entitled to payments under the PARTIAL RESTITUTION PROGRAM (described in Enclosure 2).

(a) I have made the following improvements to my land (describe in detail what you have built or the steps you have taken to prepare for building):

(b) I had, or will have, unexpected additional expenses of \$_____ as a result of the misleading statements or omissions described in paragraph 9.

Except for the work done to improve the land as described above, my land is in substantially the same condition as when I purchased it:

☐ Yes

☐ No

If no, please explain:

14. I have enclosed: (IF AVAILABLE)

☐ a copy of my Purchase and Sale Agreement

☐ a copy of the Closing Statement given to me at the closing.

☐ a copy of the deed for my land.

☐ copies of all bills, receipts or other evidence of payment of items for which I am requesting reimbursement.

☐ a copy of any advertisements and written statements made by Patten which I feel were misleading.

☐ copies of any other correspondence or other documents of any kind that relate to my claim (if available).

NOTE: BE SURE TO MAKE A COPY OF THIS COMPLETED FORM AND KEEP ORIGINAL DOCUMENTS FOR YOUR RECORDS.

The information provided above is true to the best of my knowledge and recollection.

(Signature)

(Date)

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV 89-62

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
PATTEN CORPORATION, a)
Massachusetts Corporation)
with a principal office)
located in North Adams,)
Massachusetts; PATTEN)
CORPORATION DOWNEAST, a Maine)
corporation with a principal)
office located in Bangor,)
Maine; PATTEN CORPORATION OF)
MAINE, a Maine corporation)
with a principal office)
located in Portland, Maine;)
PATTEN AUCTION & LAND)
CORPORATION, a Massachusetts)
corporation with a principal)
office located in North)
Adams, Massachusetts,)
)
Defendants)

COMPLAINT
(For Injunctive Relief and
Restitution)

REC'D & FILED
NANCY A. DESJARDIN

FEB - 8 1989

CLERK OF COURTS
KENNEBEC COUNTY

I. INTRODUCTION

1. This action is brought by the State of Maine pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1988) to permanently enjoin Defendant PATTEN CORPORATION, Defendant PATTEN CORPORATION OF MAINE, Defendant PATTEN CORPORATION DOWNEAST, and Defendant PATTEN AUCTION AND LAND CORPORATION (hereinafter collectively referred to as "Defendant") from engaging in unfair and deceptive practices in the sale of land, and to compel Defendant to pay restitution.

II. PARTIES

2. Plaintiff STATE OF MAINE is a sovereign state and brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209 (Supp. 1988), and the powers vested in him under the common law.

3. Defendant PATTEN CORPORATION is a Massachusetts corporation with a principal office in North Adams, Massachusetts and is engaged in the business of buying and selling land, including land within the State of Maine.

4. Defendant PATTEN CORPORATION DOWNEAST is a Maine corporation with a principal office in Bangor, Maine and is engaged in the business of buying and selling land in the State of Maine.

5. Defendant PATTEN CORPORATION OF MAINE is a Maine corporation with a principal office in Portland, Maine and is engaged in the business of buying and selling land in the State of Maine.

6. Defendant PATTEN AUCTION AND LAND CORPORATION is a Massachusetts corporation with a principal office in North Adams, Massachusetts and is engaged in the business of buying and selling land in the State of Maine.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209 (Supp. 1988), 4 M.R.S.A. § 105 (Supp. 1988), and 14 M.R.S.A. § 6051(13) (1980).

8. Venue is properly laid in Kennebec County pursuant to 5 M.R.S.A. § 209 (Supp. 1988).

IV. FACTS

9. From 1981 to date, Defendant has been engaged in the business of purchasing and subdividing large tracts of land within the State of Maine and selling the parcels to purchasers who generally reside in urban areas outside of the State of Maine. Defendant currently maintains three sales offices in the State of Maine, located in Portland, Bangor, and Presque Isle.

10. Since 1981, Defendant has developed approximately 60,000 acres of land in the State of Maine into approximately 138 subdivisions and has sold in excess of 2,000 individual lots. Defendant's subdivisions range in size from 18 to 4500 acres while the number of lots within each subdivision ranges from two to two hundred. Defendant's subdivisions are typically located in rural areas, such as Beddington, Starks, Belgrade, Deblois, Sandy Stream Plantation, Fayette, Chesterville, Linneus, Liberty, and Hartford, where there are few, if any, ordinances or regulations which govern the development of subdivisions. Defendant designs its subdivisions in such a manner as to avoid state or local review whenever possible.

11. Defendant's general approach to the sale of land is to advertise heavily through local, state, and national media, including newspapers, magazines, radio and television. The advertisements, which describe attractive-sounding parcels of land, are drafted to create the impression that the land is a single parcel offered for sale by a private owner. Frequently, the advertised parcel is not accurately described in the advertisement and is no longer available for sale at the time the appointment to view the land is scheduled. Prospective purchasers, who typically drive many hours to view the rural land, are frequently showed parcels priced significantly higher than the advertised parcel. In order to make a quick sale of the land, Defendant combines high pressure sales techniques with a variety of misrepresentations and omissions of facts material to the decision to purchase the land including, but not limited to, the condition of the land, available uses of the land, access to the land, cost and availability of utility services, and the ability of the land to dispose of sewage. Defendant urges prospective purchasers to make an immediate decision to enter into a purchase and sale agreement and offers attractive financing terms which, on occasion, differ from the terms disclosed at the closing. Defendant informs purchasers that Defendant's attorney will represent all parties to the transaction and discourages purchasers from obtaining independent legal advice or services. Defendant's conduct as

described above and set forth in greater detail herein, viewed in its entirety, constitutes a pattern or practice of unfair and deceptive conduct in the course of its business.

A. False and Bait Advertising

12. Defendant regularly advertises land in Maine for sale through a variety of means including, but not limited to, the following: advertising in newspapers and periodicals, including the Bangor Daily News, the Maine Sunday Telegram, the Boston Globe, the New York Times and USA Today; advertising on television and radio; and advertising in promotional materials, including brochures and videos, which are distributed both through the mail and in person.

13. Defendant's advertisements typically emphasize attractive features of the land or the terms of sale including, but not limited to, the proximity of the land to recreational areas, the availability of waterfront lots, and the offer of low prices and attractive terms for owner financing.

1. Advertising of land for "sale by owner".

14. Defendant's advertisements routinely represent that the land is for sale by an individual owner through use of language including the following: "for sale by owner", "owner must sacrifice", or "owner-financing".

15. Defendant's advertisements create the impression that the land is a single parcel for sale by an individual owner when, in fact, the land is one parcel in a subdivision for sale by a large corporate real estate company.

2. Advertising of low price lots which are
unavailable.

16. Defendant routinely advertises only the lowest price lot in a multi-lot subdivision. Prospective purchasers, who typically travel from two and half to ten hours to view advertised land in Maine, are frequently told by Defendant when they arrive to view the low priced parcel that that particular parcel has already been sold. Defendant then encourages the prospective purchaser to view other lots in the same subdivision which are priced at a considerably higher amount. Defendant frequently continues to run the advertisement and makes appointments to show the lowest priced lot for a significant period of time after the alleged sale of that lot.

17. By way of example only, one prospective purchaser responded immediately to an advertisement placed by Defendant in the Lowell Sun which listed a parcel of land in Maine for sale for \$16,900. When the prospective purchaser arrived to view the parcel of land advertised at \$16,900, Defendant informed him that that particular parcel had been sold and instead offered him a different parcel priced at \$29,900. After viewing the more expensive parcel and returning to the Defendant's office to enter into a Purchase and Sale Contract, Defendant informed the prospective purchaser that the \$29,900 parcel had also been sold and that the only remaining parcel

for sale was priced at approximately \$40,000. The prospective purchaser decided not to purchase the parcel for \$40,000 and instead had his wife call Defendant on the next day to inquire about the \$16,900 parcel. Defendant gave the prospective purchaser's wife an appointment to view that parcel. Defendant continued to publish the advertisements listing the parcel at \$16,900 for several weeks after Defendant had informed the prospective purchaser that the parcel had been sold.

3. Advertising of "waterfront" lots.

18. Defendant's advertisements frequently offered "waterfront" or "lakefront" lots for sale at a specified price when, in fact, on a number of occasions, the advertised parcel had only water views or a right of way to water, and did not have any actual water frontage. On those occasions, waterfront lots were available, but at a substantially higher price than the advertised lot.

B. Misrepresentations and Failures to Disclose

1. Misrepresentations Concerning the Condition and Uses of Land.

19. Defendant routinely misrepresents and fails to disclose material facts to purchasers relating to the condition and uses of land including, but not limited to, the following:

- a. Defendant routinely represents that all land sold by Defendant is "guaranteed buildable" when, in fact,

Defendant does not know whether the land is buildable and, in some instances, the land is not buildable.

b. Defendant represented on a number of occasions that land offered for sale was dry when, in fact, the land was wet and swampy.

c. Defendant represented that land offered for sale was suitable for year-round residential use without disclosing that the land was inaccessible to police patrol vehicles and fire-fighting equipment due to the condition of the access road and/or the remote location of the land.

d. Defendant represented that a subdivision was approved by the local planning board when, in fact, approval was not obtained until two and one half months after Defendant began making such representations at which time the planning board placed additional restrictions on the land.

e. Defendant represented on a number of occasions the dimensions of lots as being larger than what was actually conveyed, due in several instances to Defendant's sale of a portion of the parcel after execution of the Purchase and Sale Agreement and prior to closing without the knowledge or permission of the purchaser.

f. Defendant represented that land offered for sale had been surveyed and that the boundaries had been

marked when, in fact, the boundaries of land were not clearly or permanently marked, rendering it difficult or impossible for purchasers to locate their respective lots.

g. Defendant misrepresented the location of boundaries of land offered for sale, resulting in purchasers buying land with different frontage and dimensions than the land they viewed.

h. Defendant routinely failed to disclose that land which is subject to valuation under the Tree Growth Tax Law is subject to substantial monetary penalties if the land is developed.

i. Defendant represented that land offered for sale was a good investment which could be resold at a profit when, in fact, no profitable resale market existed due in part to the extreme remote location of the property, unavailability of utilities, and/or restricted physical access to the property.

j. Defendant represented that timber could be cut from land and could be sold to pay the cost of mortgage payments when, in fact, restrictive covenants prohibited timbering activities.

k. Defendant represented that land could be used for tent-camping or for placement of a mobile home when, in fact, restrictive covenants prohibited such uses.

2. Misrepresentations Concerning Access Roads to
the Land.

20. Defendant frequently forms a homeowners association comprised of all lot owners in a subdivision. Defendant represents to prospective purchasers that the homeowners association will be responsible for maintaining roads and that each lot owner will be assessed an annual fee of approximately \$100 for road maintenance costs.

21. Defendant fails to disclose to prospective purchasers that roads will require more than normal annual maintenance due to poor condition or construction and will, in fact, require rebuilding or improvements at substantial cost to the lot owners.

22. Defendant frequently represents to prospective purchasers that access to property is year-round when, in fact, access is only seasonal due to the poor quality of roads or to the prohibitive cost of snow removal.

23. Defendant represented to prospective purchasers on a number of occasions that the access road to the land offered for sale was publicly owned and maintained when, in fact, the road was privately owned and maintenance was the financial responsibility of the lot owners.

3. Misrepresentations Concerning Cost and
Availability of Utilities.

24. Defendant routinely represents that utility services (telephone and electricity) to the land offered for sale are "available" without disclosing that such services are available only at extraordinary expense to the purchaser. The extraordinary cost of bringing utility services to much of the land offered for sale by Defendant is often prohibitive and, in fact, renders utility services "unavailable."

25. By way of example only, Defendant informed a purchaser at the time of the viewing that utility services were available, but failed to disclose the extraordinary cost of bringing utility services to the land. The purchaser discovered, in the course of preparing to reside on the land year-round, that the cost of bringing electric service to the land would be approximately \$23,000.

4. Misrepresentations Concerning Legal Effect of
Purchase and Sale Agreement.

26. On a number of occasions Defendant urged prospective purchasers to purchase the land immediately and represented that a Purchase and Sale Agreement is not binding but rather can be entered into by a prospective purchaser for the purpose of taking a parcel off the market in order to provide the prospective purchaser with time to carefully consider whether to purchase the property.

27. In fact, the Purchase and Sale Agreements used by Defendant obligate the purchaser to buy the property.

5. Misrepresentations Concerning Legal Services.

28. Defendant routinely advises purchasers that they do not need to retain their own attorney because Defendant's attorney will represent the interests of all parties at the closing.

29. In fact, Defendant's attorney is retained to represent the legal interests of Defendant in its capacity as seller and mortgagee and not the legal interests of the prospective purchaser.

30. Because purchasers routinely are charged at the closing for legal services provided by Defendant, Defendant creates the misimpression that Defendant's attorney has represented the purchaser's legal interests as well as those of Defendant.

6. Misrepresentations Concerning Financing.

31. Defendant on a number of occasions misrepresented at the time of the execution of the Purchase and Sale Agreement.

32. By way of example only, Defendant informed one prospective purchaser at the time of the viewing that advertised property was available with 10% down at a fixed rate of interest of 13%. At the closing on that piece of property, Defendant informed the purchaser that the interest rate would be variable with a cap of 18%.

COUNT ONE

(False & Bait Advertising)

33. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-32 of this Complaint.

34. Defendant's advertising practices as described in paragraphs 9-18 of this Complaint constitute a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. § 207.

COUNT TWO

(Material Misrepresentations and Omissions)

35. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-32 of this Complaint.

36. Defendant's practice of misrepresenting and failing to disclose to prospective purchasers facts material to the decision to purchase land, including but not limited to those misrepresentations and omissions described in paragraphs 9-11, and 19-32 of this Complaint, constitutes a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. § 207.

RELIEF REQUESTED

Plaintiff requests this Court to order the following relief:

1. Enter a permanent injunction enjoining Defendant, their agents, employees, assigns, successors, or anyone acting under their control from:

a) Engaging in false, misleading, or bait advertising of land offered for sale;

b) Misrepresenting or failing to disclose to prospective purchasers any fact material to the decision to purchase land offered for sale, including but not limited to: the condition of the land offered for sale; available uses of the land; ability of the land to dispose of sewage, including the estimated cost of installation of an in-ground sewage disposal system; availability of utilities, including the estimated cost of bringing electric and telephone service to the land and the fact that it may be necessary to obtain and purchase utility easements from neighboring landowners; the costs associated with ownership of the property, including the estimated cost of annual road maintenance and snow removal; financing terms; and the need for independent legal advice and representation.

2. Order Defendant to pay restitution to all purchasers of land who were subjected by Defendant to any of the unfair and deceptive practices described in the Complaint;

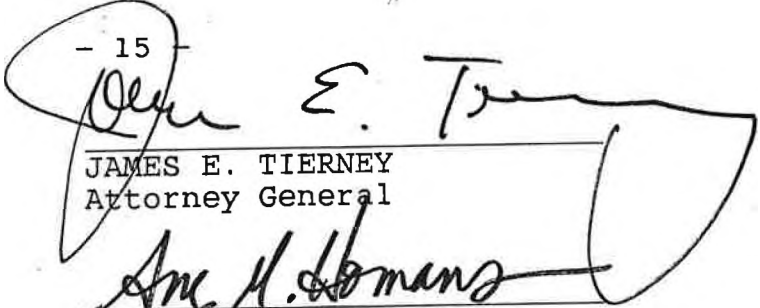
3. Order Defendant to pay the Department of the Attorney General the costs of suit and investigation; and

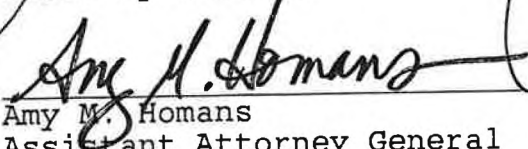
4. Order such other relief as may be necessary to ameliorate the effects of Defendant's unfair and deceptive practices.

Dated:

2/8/89

- 15 -


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CLERK OF COURTS
KENNEBEC COUNTY