Atrisco Grant's 64,000 acres (TR 11178).[126] [The record contains no comparable figure for Pajarito's 27,000 acres[127] but the tenor of the evidence generally indicates a similar situation there].

149. What we are looking at in the Pajarito and Atrisco Land Grants is obviously nothing like the "constraint" of the Sandia Mountains on Albuquerque's East Side. While clearing an ancient title may take a little time, it seems safe to assume that, if and when there is sufficient real demand to develop Pajarito and Atrisco land, the process of clearing title will be expedited. In such case the "constraint" of confused titles is likely to disappear rather quickly. Be that as it may, even Carruthers, who refused to see development possibilities west of the "escarpment" simply because the City does not want to service that area, estimated there are now available for development lands in the Spanish Grants totaling 12,600 acres.[128] This leaves about 75,000 acres west of the "escarpment" which we think could be developed if there were really enough demand to justify development but which, out of an abundance of caution, we will not classify as "immediately available".

150. West of the Rio Grande River and north of the Pajarito and Atrisco Grants lie several developments that still have some vacant land. One, called Volcano Cliffs, [142] was estimated by Planner Carruthers to have 2,400 to 3,000 acres of vacant, developable land left when he testified (TR 10834).[129] Another, the Taylor Ranch (from whose original 12,000 acres Horizon Corporation's Paradise Hills was carved) still has about 1,000 acres available for development (TR 10835, 10911).[130] Horizon's Paradise Hills, immediately adjoining Respondent's Rio Rancho Estates, is said to have 6,000 acres still undeveloped (TR 10835, 11006–07).[131] All together these represent a total of about 10,000 acres but Carruthers explained that an adjustment should be made for 1,500 acres of Volcano Cliffs and 2,000 acres of Paradise Hills, which require blasting with dynamite to build foundations (because of the nature of the escarpment) (TR 11166–68). Accordingly, we calculate that there are about 6,500 acres of land immediately available for building northwest of Albuquerque but short of Rio Rancho Estates.

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[126] The 5,000 figure presumably refers to 2,400 developable acres in Snow Vista ("SV"), the original Atrisco Village, (TR 10825); 1,200 developable acres along Central Avenue ("BC") (TR 10826); and other, unidentified land.

[127] The portion denoted "P" on CX 552 contains only 3,000 acres (TR 10825). The portion denoted "P2" contains 24,000 acres (TR 10830).

[128] The components of this 12,600 figure are: College Park ("CP") and surrounding area, 6,000 acres (TR 10837); the easterly end of the Pajarito Grant ("P") 3,000 acres (TR 10826); Snow Vista ("SV") 2,400 acres (TR 10824–25); and the Central Avenue corridor ("BC") 1,200 acres (TR 10826–27).

[129] Identified on CX 552 as "VC".

[130] Identified on CX 552 as "TR".

[131] Identified on CX 552 as "PH".

e. *The inner city*

151. Having reviewed the vacant land available in areas just *outside* Albuquerque's city limits, it should be added that, as in most cities, there is also a certain amount of vacant land left *inside* the city limits, the residue of leap-frogging growth and so-called "urban sprawl". Periodic studies have indicated that there is some, although not much such land.

152. A "Vacant Land Study" published by the Albuquerque/Bernalillo County Planning Department in 1972 found only 14,035 gross usable vacant acres within the City's then-existing (1972) boundaries (CX 547H). Of this 14,035 acres, 9,670 acres were holdovers from a total of 20,059 vacant acres found in 1962 (when the City limits were somewhat smaller), while 4,365 of the vacant acres in 1972 were among the **[143]** peripheral lands that had been annexed by the City of Albuquerque between 1962 and 1972 (CX 547H). Of the total of 14,035 vacant acres the Planning Department noted, however, that over one third were not zoned residential (CX 547H). Moreover, Complaint Counsel's principal expert on this branch of the case (City Planner Carruthers) agreed that so much of this vacant land was not immediately available for development (*e.g.*, because of utilities problems) (TR 11133–36) that the City could fairly be said to be about "out of land" (TR 11131–39, 11156). A later "Vacant Land" Review in 1977 confirmed that the City's supply of vacant land within its own bounds in 1976 was still about 15,000 acres or 27 percent of the City's 1976 area (57,000 acres) (CX 649Y) and we adopt that figure here.

153. While necessarily accepting the results of the City's "Vacant Land" Surveys, we note the extreme conservatism of these studies with reference to the condition of what is known as "the Valley". This is the low-lying land on both sides of the Rio Grande River, which flows through Albuquerque in a southerly direction. North of Central Avenue it is known as "the North Valley" while south of Central it is called "the South Valley" (CX 547K).[132] The 1972 study showed only a relatively small amount of vacant land in "the Valley" (1,314 gross acres; 689 residential acres) because most of "the Valley" is now in use for grazing and agriculture (and so was not considered "vacant") (CX 547K). Planner Carruthers explained that it is the considered policy of the Planning Department to keep the Valley that way and prevent conversion of farm land to residential use because there is a very limited amount of irrigated farm land available (TR 1827, 11121).

154. Carruthers made it clear, however, that "big parcels" of land in the South Valley (TR 10827) and "a great deal" of land in the North

[132] The 1972 Vacant Land Study defined "the Valley" as bounded by the freeway (I–25) on the east, Coors Blvd. on the west, and the City limits on the north and south.

Valley (TR 10815) *could* be developed "residentially" but for the City government's official opposition. Since the conversion of suburban [144] farm land to urban uses (and values) is a very normal phenomenon in American history, it seems quite possible that, if the pressure of population were to become more intense than it has been thus far, Albuquerque's policy might well be changed or overridden in this regard. That, in turn, could add very large supplies to the metropolitan area's stock of developable residential land.

f. *Summary of available vacant land*

155. Our review of the supply of vacant lands fairly available in the near future for new residential construction in Albuquerque and those parts of Bernalillo County immediately adjoining the City yields the following *minimum* availability:

Figure 11

Area	Available land (in acres)
City of Albuquerque	15,000
Northeast surburban areas	
Elena Gallegos (Sims)	3,000
North Albuquerque Acres	1,500
Tijeras Canyon	3,500
Southern suburban areas	
Montessa Park	200
Four Hills	300
University/New Mexico	3,500
Western suburban areas (Atrisco/Pajarito Grants)	
College Park area	6,000
East end of Pajarito Grant	3,000
Snow Vista	2,400
Central Ave. corridor	1,200
Northwestern suburban areas	
Volcano Cliffs	1,000
Taylor Ranch	1,000
Paradise Hills	4,000
Total available vacant land:	45,600 acres [145]

156. Assuming continuation of Albuquerque's historic housing density of about five persons per acre (TR 12298), *our review reveals that about 228,000 more people could be absorbed just on the vacant land immediately available in and around Albuquerque* even without taking into consideration 234,000 acres of nearby Pueblo Indian lands to the north and south of the City, 78,400 acres of Spanish Grants to the west, beyond the "escarpment", 6,000 acres in the old North Albuquerque Acres development and "a great deal" of farmland in the

Rio Grande Valley. If metropolitan Albuquerque were to continue to grow at the same rate after 1975 that characterized its growth between 1960 and 1975 (*i.e.,* an increase of 108,000 people during 15 years or 7,200 persons per year), metropolitan Albuquerque would still not be out of buildable vacant land for three decades.[133]

157. In light of this summary review of the vacant land available for building in and around Albuquerque, it becomes plain that Respondent's main selling point—that the City is surrounded on three sides by various constraints and can therefore expand *only* in the direction of Rio Rancho Estates—is false and misleading. The alleged constraints in fact do not constrain the growth of Albuquerque's population—*and will probably not do so for at least three decades*—because there is enough adjoining land immediately available to take care of the City's likely growth needs during that period, without recourse to one lot at Rio Rancho Estates.

158. Finally, it is by no means clear that what Respondent calls constraints today will really prove to be constraints when it matters, early in the 21st century. **[146]** To assume that even then there will still be no subdivision of any part of the nearby Indian lands nor any solution of the Spanish Grants' title problems nor any opening up of Valley farm lands to residential construction seems rash and unjustified. Respondent's admittedly plausible "frame" theory may be good for business but it bears little resemblance to the facts of life in Albuquerque.

B. *Silver Springs Shores*

159. At Silver Springs Shores Respondent has not employed the "frame" theory used so successfully at Rio Rancho to the effect that due to constraints on growth in all other directions, an inevitable overflow population from the nearest city will have no place to go except to Respondent's development. Instead, the promotional theme at Silver Springs Shores seems to have been simply that more and more retirees and others who want a warm climate are moving to Florida, referring particularly to Central Florida, and that Silver Springs Shores and Marion County as part thereof have shared and will continue to share in that growth (CX 58P-S).

160. Any assumption that Marion County will automatically share in the population growth of Central Florida or that Silver Springs Shores will necessarily share in the population growth of Marion

[133] Our use of a simple straight-line projection of metropolitan Albuquerque's population increase from 1960 to 1975 for a rough idea of further growth to the year 2007 seems quite conservative. A 1974 projection by the Commerce Department's Bureau of Economic Analysis of which we take official notice anticipated a 1990 population of only 423,000 or 70,000 less than the 493,000 yielded by our straight-line projection based on 1960–75 experience. U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis, *"Area Economic Projections, 1990"* (1974), p. 76.

County is plainly unjustified. Respondent has tried to insulate itself from a charge of deception in this respect with a fine print, barely readable disclaimer of such logic tucked away in a corner of the rear cover but not, we think, effectively.[134]

170.* Moreover, Respondent has grossly exaggerated the growth of Ocala, the city nearest to Silver Springs Shores. We do not refer to such mere puffing as "A one-in-a-million location" (CX 58B) but to unambiguous quantitative **[147]** misstatements in advertising copy prepared for Respondent in 1972 which represented that "Silver Springs Shores is [directly][135] in the path of tremendous growth" (CX 73). There follows this statement: "Ocala, the city adjacent to Silver Springs Shores, has grown over 66% from 1960 to 1970" (CX 73A).

171. The fact is that this claim of growth was based *entirely* on a redrawing of Ocala's city limits during the decade; the population of what was Ocala in 1960 actually *declined* during the ensuing decade (CX 476H, P). Respondent's carelessness of the truth enabled it to advertise a growth rate nearly twice what a realistic figure (34 percent for all Marion County) would have dictated (CX 476L).

172. Finally, Respondent's representations of locational advantage have been misleading because they have focused attention solely on the demand for building lots, to the exclusion of the supply factor. The testimony of Withlacoochee Regional Planner Mimms was that there were (as of 1977) at least 94 land developments of more than 100 acres size (each) in Marion County and that in the aggregate they contain over 135,292 acres (TR 6795–96).[136] Mimms thought it reasonable to assume a density of about two housing units per acre (that being the lower end of a Marion County range from 1.8 to 11) and further to assume a Marion County average of 2.9 persons per household unit (TR 6802–03).[137] On these very conservative assumptions Mimms estimated that 270,548 units could be placed on the 135,292 acres of land in the 94 subdivisions in Marion County (TR 6802) and from this he further calculated that Marion County currently (1977) had enough subdivided land to accommodate a population of 784,693 persons (TR 6803). **[148]**

173. Unless the population of Marion County in the future grows at a rate greater than that experienced during the 15 years from 1960 to 1975, there thus already exists enough subdivided land in Marion County to house the growth of its population for 280 years or well into the second half of the 23rd Century A.D. Under such conditions a

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[134] Information obtained in this booklet is general to the central Florida area. Property offered for sale in Silver Springs Shores may or may not be affected by the events or predictions described (here) (CX 58X).

* There are no Findings 161–169.

[135] The word "directly" was apparently removed before the State of New York approved this copy (CX 73A).

[136] For a map of these 94 developments *see* CX 479.

[137] The witness used 2.8 on page 6802 and 2.9 on page 6803.

representation of keen demand for land without an accompanying explanation of the plenitude of supply can be disastrously deceptive.

C. *Eldorado at Santa Fe*

174. Respondent's promotional literature for Eldorado at Santa Fe owes something to both the Silver Springs Shores and Rio Rancho themes. The former may be seen in Eldorado's effort to tie its own growth to that of the sunbelt generally:

> . . . [W]ith a dramatic increase in population of over 23% in the past decade, Santa Fe has been growing right along with the golden southwest, today the fastest growing region in the U.S.A. (CX 173C)[138]

175. However, it also stresses something very much like Rio Rancho's "frame" theory:

> As more and more people move to Santa Fe, the question asks itself: Where will they live? Where will they find land? (CX 83D)

And Respondent answers its own question:

> Here the great open spaces are jealously guarded. *Approximately half the land in Santa Fe [County] is reserved* . . . federal and state-owned lands . . . lands for parks and recreation, closed to residential living (CX 83D) (emphasis added).[139] **[149]**

Then, in language a Rio Rancho salesman could repeat by heart, this Eldorado brochure continued:

> *With much of Santa Fe's potential growth blocked on the North, West and East by mountain and reserved lands, the most logical direction for Santa Fe to expand is to the South.* The community of Eldorado is located *in the general path* of the Southward expansion . . . only 7 miles from Santa Fe! (CX 83D) (emphasis added).

Such a statement is literally true, but only in the sense that Chicago's expansion might theoretically be limited by the Atlantic Ocean, the Pacific Ocean and the Gulf of Mexico.

176. The record here shows that immediately to the *west-northwest* of the City of Santa Fe—one of the supposedly "blocked" directions—lies the 9,000 acre Weil Ranch, just beginning to be subdivided for sale (TR 10488–89). At the rate that Santa Fe County's population grew between 1960 and 1975 (1,219 persons per year)[140] and assuming

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[138] *See also* CX 84W ("growing vigorously") and CX 83D ("nothing short of extraordinary").

[139] *See also* CX 173H ("More than 44% of all the land in Santa Fe County is either reserved Federal or State land. It is simply not for sale") and CX 84W ("[A]vailable sites [are] sharply limited by Reserved Federal and State lands and by mountains that embrace the town . . .").

[140] U.S. Department of Commerce, Bureau of the Census, *County and City Data Books for 1972 and 1977*, pp. 318; calculations by Administrative Law Judge.

Santa Fe's present urban density rate (4.5 persons per acre) (TR 10481), *it would require approximately 33 years to sell out the Weil Ranch alone.*

177. Even excluding the Weil Ranch and the even vaster (40,000 acres) Jarrett Ranch located just southwest of the City, Santa Fe City Planner Moul found four categories of developable land totaling 14,090 acres, in and around Santa Fe and calculated that at normal Santa Fe density (4.5 persons/acre) the 14,090 acres could support 63,400 or the whole County's probable population growth for the next 51 years (TR 10479–81). Plainly the picture Respondent has been painting of Santa Fe "blocked on the north, west and east" and Eldorado lying "in the general path of the Southward expansion" of Santa Fe (CX 83D) is grossly misleading and unfair. [**150**]

D. *Oakmont Shores*

178. During the brief four year tenure as developer of Oakmont Shores on Table Rock Lake in the Missouri Ozarks Respondent did not, so far as this record indicates, employ a sales theme similar to its "frame" theory at Rio Rancho Estates but stressed the great demand and limited supply of "recreational land" in general (CX 102C)[141] and zeroed in on the drawing power of the Ozark mountain country in particular:

> In the first place, it is in the unspoiled and unpolluted Ozarks. In fact, a panel of experts from the U.S. Dept. of Interior recently chose the Ozarks as one of the seven best places to live in the entire country. This was the only location they chose between the Rockies and Eastern Virginia (CX 102C).

179. In particular, Respondent's advertising looked to "the closeness of Oakmont Shores to [Table Rock Lake] the second largest manmade lake in the nation (which) means that the demand-and-prices-can be expected to go only one way—UP!" (CX 102C).[142]

180. In the case of Oakmont Shores this record contains relatively little quantification either of Respondent's optimistic representations or objective reality. It did assert that "there are over 60 million people living within a 600 mile radius of Oakmont Shores" (CX 102C) and that "the Corps of Engineers informs us that the (Table Rock Lake) area draws over six million visitors a year, with the number constantly growing" (CX 102C). [**151**] In a vague way this does suggest a potential market for building lots.

181. However, as with Respondent's other subdivisions, there is

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[141] ("land directly associated with water-based recreational opportunity . . . (is in) strong demand . . ."); CX 140F ("no secret that recreation land is becoming increasingly scarce.")

[142] (Being on the shores of Table Rock Lake was said to be important because an "authoritative" Interior Dept. report stated that "lands directly associated with water-based recreational opportunity . . . (are in) strong demand.")

already a great deal of similar land equally available. Table Rock Lake even now boasts 290 subdivisions (ranging from 5 to 1,500 lots each) (TR 9173–74) and 75 percent of the shoreline properties are as yet undivided (TR 9175). On this limited evidence, however, we are unable to make a proper judgment as to the alleged deceptiveness of Respondent's promotional literature during the brief period it operated Oakmont Shores.

II. INVESTMENT REPRESENTATIONS

A. *Special significance of investment representations*

182. The truth or falsity of representations made by Respondent concerning the investment value of its land is of the utmost importance because a heavy preponderance of Respondent's customers have been solely or primarily concerned with reselling their lots at a profit rather than with retiring or for some other reason taking up residence there. That this has been the case is evidenced in several ways.

183. Respondent's land contract, in order to determine whether the Truth-in-Lending Act applies to the transaction in question, requires a buyer to indicate whether he expects to use the property purchased as his "principal residence" (CX 152A, CX 154A, CX 155) or "current or future principal place of residence" (CX 106A). Examination of the 185 such contracts in this record reveals that about 80–85 percent of all buyers say they do *not* intend to use their lots as a "principal residence". While the language quoted does not exclude use of such lots to build second homes, the economics of second homes being what it is, it seems reasonably certain that most purchases are primarily for eventual resale at a profit, *i.e.*, for investment.

184. Such a conclusion is strongly confirmed by the circumstance that most buyers have never, in fact, built on their lots. At Rio Rancho Estates 75,134 lots had been [152] sold by Respondent as of 4/30/76 (CX 459J), yet as late as 1978 there were still only 2,400 residential units built and 800 more a-building (CX 162N; TR 19675, 19680). At Silver Springs Shores 19,426 lots had been sold by Respondent as of 4/30/76 (CX 459K), yet there were still only about 661 homes completed and another 38 under construction (CX 164G).

185. One of Respondent's builder-witnesses expressed his opinion that Rio Rancho's thousands of lot buyers are likely candidates to move to Albuquerque and will look first at their Rio Rancho building lots when they do (TR 19831–32) but Respondent's experience with its oldest subdivision (Rainbow Lakes in Central Florida), which was sold out years ago, has been that no more than 7 percent of the lots there were ever occupied by their buyers (TR 12948–51, 24167). Brochures and movies might feature Spanish patios and championship golf

courses but it has plainly been the possibility of land boom profits that has motivated most of Respondent's customers.

186. That Respondent's management has been thoroughly aware of the investment orientation of most of its prospects—and indeed has actively encouraged it—need not be left to inference. In evidence is a transcription of a tape recording (CX 108) of a 1968 lecture by one of Respondent's top-drawer sales managers (Hollander) to a group of its salesmen, making this point crystal clear:

> Don't come up with all these little tidbits of facts that you have learned . . . and take that newspaper article that you have that's very, very beautiful and throw the goddam thing away . . . because you are talking about something that these people couldn't care less (about). All they want to do is eat that damn dinner and get out of there. *They didn't care about Rio Rancho and they don't care about 55,000 acres or 40,000 acres or 90 square miles or sagebrush or beautiful roads. All they care about is money and how can I get some of it. That's all they care about.* So you tell them how they can make money. *You implant in their minds greed.* . . . And then you'll close. And then you'll write business (emphasis added) (CX 108U). [153]

And the same AMREP official put it even more unabashedly when addressing a dinner party for prospective purchasers about the same time:

> It is not important that you live there [at Rio Rancho Estates] or that you retire there or even that you visit there. *The only thing that's important is that you want to make money* (CX 110D) (emphasis added).

187. Respondent's investment representations fall generally into three classes. *First* are assurances that the land in question is offered for sale at bargain prices. *Second* (and most important) are assurances that this will be a good investment, *i.e.*, will yield a handsome profit. *Third* are assurances that this is not only a good money-maker but a safe place to put one's money—sometimes called a no-risk investment. We shall now document each of these three facets of Respondent's investment representations.

B. *Three principal investment representations*

1. A bargain buying price

188. Respondent's prospective purchasers have always been assured that Respondent is selling its land at bargain prices, commonly with an explanation that such "low" prices are made possible by alleged efficiencies of its large-scale operations. Thus the 1972 version of one of Respondent's principal promotional brochures ("How To Live - Retire - Invest In The Sunny Southwest") refers to "the wonderful VALUE we are offering" (CX 30Q) and the "low cost made possible

through our large-scale planning and operations" (CX 30H).[143] An earlier version of the same brochure advertises: **[154]**

Now comes an opportunity to secure "your place in the sun" at land prices far below market value (CX 393E)

and:

Only our low mark up, large-volume policy makes such an outstanding land bargain possible. . . . (CX 393W)

The 1972 version of Respondent's other principal brochure ("This Is My Land") states simply:

And considering all this development activity (around Albuquerque) it is truly amazing that you can still buy property in Rio Rancho Estates at such low prices and such modest terms. Truly one of the best land offerings in the entire southwest (CX 32N).

2. A profitable investment for the future

189. From the very beginning Respondent's principal selling point has been making money. The record literally overflows with its representations, express or implied, that lots at its subdivisions are a fine investment for the future. More than almost any other evidence these representations give the case its flavor.

190. The oldest promotional brochure in the record is a 1961 pamphlet for Rio Rancho prospects entitled "How To Invest Profitably In Southwest Real Estate, with very little cash outlay" (CX 393). Its frank investment orientation is evident not only from the title but from the text of the front page, which refers to *"booming Albuquerque"* and promises to reveal (1) "why land values at Albuquerque have consistently risen by an average of more than 25 percent per year since 1941—*and are now expected to climb even faster!*" and (2) "How to use the least amount of money *to make the largest possible gains in land investment*" (CX 393A) (emphasis added). **[155]**

191. Inside, this brochure's investment orientation is confirmed in language reminiscent of old-time blue-sky promotions:

The opportunity of a lifetime for a small investment to grow into a *sizeable fortune* in an area where land *values are constantly doubling, redoubling and then redoubling again . . . often in just a few years* (emphasis in original). It is a demonstrable fact that land prices in general at Albuquerque have increased 20, 30, even 50 times or more in the past 20 years. Now with its greatest population boom only just starting—one does

[143] *See also* another reference in the same brochure to Respondent's "scale operation" which permits acquisition of property at "prices and terms which, to our knowledge, are below that of any comparable residential acreage in our area" (CX 30M).

not have to be an expert to predict that *land prices here should increase in the future as they have in the past . . . and more likely at an even greater pace* (CX 393E) (emphasis added).

After referring to price rises of 45–50 percent at two other developments with which Respondent was said to be associated, this brochure "confidently and conservatively" predicts:

You won't be able to touch a piece of property at Rio Rancho Estates for two to three times the current price within the next five years. As a matter of fact, in line with recently increasing values in the area, we have already posted price rises up to $200 per homesite scheduled to take effect shortly (CX 393R).

192. And after explaining the "leverage" principle ("using the least amount of money to make the largest possible total profit"), Respondent's imagination finally soars off into the wild blue yonder:

As more and more average investors realize how the dynamic use of small monthly payments in suburban/city real estate *can grow into a substantial fortune* and at the same time assure themselves a choice Southwest retirement spot at prices that will look incredibly low a few years from now, the steady gradual uptrend which has been taking place here for [156] many years *could conceivably break out in a speculative fever that can trigger runaway land prices.*

With inflation on the march, with thousands of people a month now moving into the Albuquerque area, can any reasonable man doubt that price tags for homesites will advance greatly over the next three to five years? *And 10 to 15 years from now may reach astronomical figures . . .* may easily be 10 to 20 times what they are today at Rio Rancho Estates (CX 393W) (emphasis added).

It seems safe to say that these extracts from Respondent's earliest Rio Rancho brochure fairly evidence a representation that vacant land at Rio Rancho is a good investment.

193. Seven years later Respondent was still emphasizing the investment value of its Rio Rancho land. A standard dinner speaker's presentation dating from late 1968 makes this clear:

. . . [W]hether you prefer to live there (Albuquerque) or invest in its future, Albuquerque's growth offers you *an opportunity to make a great deal of money,* and that is what we are going to talk about here, this evening, *making a great deal of money* —because I am assuming *everybody likes to make money* (CX 38D-E) (emphasis added).

* * * * * * *

The word "investment", incidentally, brings me to the main reason for being here this evening, because what we are presenting tonight, ladies and gentlemen, is a land investment program. . . . [T]his evening you have the opportunity of participating in a land investment program to help assure yourself of the advantages that you are now just dreaming about . . . an ideal way to assure children or grandchildren *a valuable estate* that could take care of their college education or provide their many needs (CX 38 I-J) (emphasis added).

* * * * * * * [157]

You see, ladies and gentlemen, *the entire program and what we make available to you keeps coming back to money.* Money and the uses of it. You don't have to be a financial genius or a sophisticated land investor to participate in this program. All you have to be is what most people are, a person with a sense of responsibility for himself and his loved ones (CX 38W) (emphasis added).

194. As we leave the 1960's and get into the 1970's, Respondent urges us to find a significant change in the tenor of its advertising and relates this to its own systematic efforts to eliminate improper promotional approaches. It calls our attention, for example, to testimony by one Simon, a suave trainer of AMREP's salesmen during the period 1972–74 (TR 16004), that he taught these salesmen *not* to use an investment theme and to limit any assurance of resale to "15, 20 years down the road" (TR 16005). All they ought to say, he thought, was "that based upon the past that this could be a possible potential in the long range" (TR 16005). We also take note that in 1970 an outside attorney, Solomon H. Friend, Esq. (one of Respondent's counsel here), took over as General Counsel and proceeded to organize Respondent's 5-man Legal Department, becoming Senior Vice President in 1973 (TR 7936). This Commission began the investigation which preceded issuance of this Complaint during December 1972 (TR 24491–93).

195. Careful consideration of the tenor of Respondent's promotional materials during the first half of the 1970's convinces us that with good legal advice and the hand of this Commission on its shoulder, Respondent has sophisticated some of its more blatant assurances of pie-in-the-sky by-and-by, particularly in its standard brochures. However, even the sometimes more sophisticated approaches which have characterized the 1970's have not abandoned the old "good investment" theme. The record makes this clear.

196. The 1972 version of "How To Live-Retire-Invest In The Sunny Southwest" announces an "opportunity" [158] to obtain land that has "a reasonable long-term potential" (CX 30E).[144] Mild though this may sound in comparison with the 1961 version's reference to making "a substantial fortune" and price increases of "astronomical figures" (CX 393W), it is nonetheless clear that in this 1972 brochure Respondent is still representing that its lots at Rio Rancho are a good investment.

197. More interesting is the 1972 version of Respondent's other principal Rio Rancho brochure: "This Is My Land". This booklet avoids any express reference to investment at Rio Rancho but one

[144] In the same document *see also* CX 30Q ("investment potential"); CX 30W ("no better long-term investment"); and CX 30G ("an opportunity to share in future-growth patterns").

section (which also contains the notable "frame" diagram showing Rio Rancho surrounded on three sides by various "constraints" (CX 32H-I) lists a half dozen concrete examples of how land prices *in the Albuquerque area* had "increased at a rapid pace [over 20 years] at an average rate of about 25 percent a year and in many cases as much as 300 to 400 percent in a given year" (CX 32–I).

198. One example from Buena Ventura in Albuquerque's Northeast section erroneously shows six (should be 16)[145] lots bought for $33,000 in 1958 and sold in 1963 for $59,200 (CX 32I). Another example from Quaker Heights in Albuquerque's Northwest section (deceptively described as being "within a few blocks of Rio Rancho Estates")[146] shows 15 acres bought in 1942 for $375, sold in 1955 for $5,000 and resold in 1960 for $20,000 (CX 32 I). Four other such examples from various parts of metropolitan Albuquerque are reported (one without a purchase date so that no per year profit can be computed) (CX 32–I). **[159]**

199. Despite explicit disclaimers by Respondent that "no one can accurately forecast how population, inflation and other factors may affect the price of land" and that the past price increases reported "do not in any way represent or imply a promise or prediction of future land values or prices, which, of course, depend on location, rate of development, marketability, population growth plus other factors" (CX 32–I), *it is perfectly plain that the whole purpose of putting these examples in a sales brochure about Rio Rancho Estates has to be to sell Rio Rancho land and the plain implication is that Respondent's land is a good investment.*

200. Such inference is confirmed by the testimony of one Bondy, a salesman for Respondent during half of 1969 and a sales team captain from late 1969 to early 1973 (TR 7466). A veteran of some 600 sales presentations (TR 7489), his standard script (CX 36) called for him to tell dinner audiences:

> You will find that one of the brochures is a very colorful pamphlet entitled "This Is My Land". May I suggest that you take the opportunity [while awaiting dinner] and browse through this brochure and also may I suggest that you do pay particular attention to pages 7, 8 and 9—especially page 9 because on this page you are going to find *the huge profits* that have been made on the sale and resale of real estate in and about the City of Albuquerque over the past several years (CX 36A-B) (emphasis added).

Testifying here Bondy compared price increases at Rio Rancho to the above described price increases in other parts of Albuquerque:

> We [Respondent's salesmen] used to carry old prices because usually the property

[145] CX 631Z–9 reveals that there were really 16 lots instead of six (so that the average gain was really $1,633 instead of $4,333 per lot).

[146] CX 552 (map of Bernalillo County) shows that Quaker Heights is about six miles from the county line which constitutes Rio Rancho's southern boundary.

within Rio Rancho Estates had an average [list price] increase per year, anywhere from 10% to 15%. So, to bring out what we would . . . refer to as *the greed factors,* [we said] "if you would have bought this property two years ago you would have paid so much less for it." *We made comparisons* **[160]** *just like we make comparisons in "This Is My Land"* on pages 7, 8 and 9, and we *show how it goes* up in value because predominantly in the New York area we treated Rio Rancho Estates as an *investment* type of factor [rather] than a relocation type of factor (TR 7503) (emphasis added).

201. By June 6, 1973, Respondent's new General Counsel and reinforced legal department had had some three years to get promotional policy under control (TR 7936). Sales trainer Simon had presumably been hard at work for over a year trying to delete the investment theme from Respondent's promotional materials (TR 16006). And everybody knew that since the end of 1972 this Commission had had its hand or at least its eye on Respondent (TR 24491–93). *Yet a version of Respondent's standard speaker's presentation dated June 6, 1973 (CX 35) reveals Respondent's blythe continuation of the time-tried, successful investment approach on nearly half of the script's twelve pages.*

202. After making the initial selling point—that Albuquerque is surrounded on three sides, leaving *only* one direction for expansion, etc.—the speaker compares an alleged *"real estate boom"* at Rio Rancho Estates with the totally unrelated and largely incomparable boom on Staten Island that followed the opening of the Verrazano Bridge:

I would like to take you back for a moment to the first film ["West Side Story"] which made mention of the Verrazano Narrows Bridge in Staten Island after the completion of this bridge. *Tonight you happen to be in the right place at the right time because you will be given an opportunity to participate in a real estate boom in the fastest growing area of our country* (CX 35D) (emphasis added).

Thereafter the speaker describes various of Rio Rancho's advantages, including its "magnificant" 18-hole championship golf course pointing out the value of a golf course whether or not a purchaser himself plays golf:

because you know as well as I do what inevitably happens in the vicinity of golf courses. *Land values go up rapidly* (CX 35F) (emphasis added). **[161]**

203. This same theme of rising land values is repeated in reference to Respondent's alleged active "development" of four more areas of Rio Rancho Estates ("again, driving up land values") (CX 35F); completion of a "fabulous" major shopping center ("again adding value to property") (CX 35G); Respondent's industrial park ("nothing drives up real estate values faster than industrial growth") (CX 35G); and the "thousands" of new factory workers who will "most logically look

for a place to live in Rio Rancho," concluding with an express reference to rising land values at Rio Rancho:

You don't have to be a mathematical genius, with all of these facts in front of you to realize *what is going to happen to land* values in this particular area (CX 35H) (emphasis added).

203.1. Subsequently the speaker explains "financial leverage" ($10,000 worth of "very valuable real estate" controlled for only $915 down and $128 per month) (CX 35K) and points out that:

as the value increases, you will control whatever the value may be with that same monthly payment. . . . (CX 35K) (emphasis added).

Finally, the speaker's closing words simply assume a profitable investment and go on to reassure his listeners—as if they were really worried about it—that "[t]here is nothing wrong with your desire to make more and more money. . . ." It seems reasonably clear that in this relatively recent (mid-1973) presentation Respondent is still representing its land to be a good investment. While the documentary evidence just reviewed would certainly be sufficient to support a finding that Respondent's investment theme continues, we note also much confirming testimony by consumers and others with respect to each of Respondent's developments.

204. a. *Rio Rancho Estates*

(1972) *Consumer Dellacoma:* [T]he property value was *constantly going to be on the increase, just like Mr. Levitt made millions and billions,* so was our chance in buying a parcel of land a good investment (TR 5062) (emphasis added). **[162]**

(1972) *Consumer Aschenbach:* We had had no land and we thought it would be a good idea to put some money in land *since it was going to triple and double* and it was *a golden opportunity* (TR 2033) (emphasis added).

(1972) *Rio Rancho - O.P.C.*[147] *Sales Manager Daugherty* (in response to a question "Did you tell them (prospects) how much money they could expect to make on Rio Rancho land?": *We discussed histories of what had happened at Rio Rancho;* generally I think the figure used was—I can't remember now—*I think it was about 15 percent* (TR 21157) (emphasis added).

Q. Did you tell them that they should expect 15% in the future?

A. No, no way, because there was no way of knowing what the future would bring.

Judge Teetor: Why did you tell them about what had happened in the past if you weren't thinking about the future?

The Witness: Well, real estate—I guess you can call it blind faith if you like—real

[147] The testimony differs as to whether "OPC" stands for "Outside Procurement Consultant" (TR 968) or "Outside Property Consultant" (TR 21156).

estate had always increased in value, always in excess of the rate of inflation, and that's generally the guideline we use, even in general real estate.

Judge Teetor: *Didn't you have in mind, then, that they would apply this lesson of the past to the future?*

The Witness: *We assumed that that would be the case* (TR 21158) (emphasis added). **[163]**

(1972) *Consumer Yuknes:* He [the salesman] said that it was *a very good investment* and we could—would have *a good return on our money* and that it was a valuable property and *improving at all times* (TR 5385) (emphasis added).

(1973) *Consumer Torres* (inspecting the lots he had previously purchased): [T]hey said they were *good investments* (TR 7906).

(1973) *Respondent's sales manager Wilson:* We explained to them [dinner guests] that *the average increase in property [values] across the United States was somewhere in the 30%—30 to 33%—[range] and with AMREP it was increasing at a higher rate* (TR 9651) (emphasis added).

205. b. *Silver Springs Shores*

(1971) *Consumer Yarnall:* Well, he said . . . *[i]t should be a good investment and bring us back our money within 2 or 3 years* (TR 6129) (emphasis added).

(1971) *Taped presentation:* Good homesite land anywhere in the United States has been appreciating between 18% and 22% a year. Florida property at 25%. *Good Florida property has been doubling every 3 1/2 years. AMREP property, which is property in our own development, has appreciated even more.* For instance in 1964 you could have purchased a homesite in our previous development [Rainbow Lakes] for $1500. By 1969 the equivalent homesite was selling for in excess of $6 - 7,000. *That's a whopping $4,500 increase in a 5-year period* (CX 456G) (emphasis added). **[164]**

(1972) *Saleswoman Strully:* Q. *You did not use the word "investment" but you used the concept of increasing price and investment* didn't you? A. *Sure, we all did* (TR 14542–43) (emphasis added).

(1972) *Consumer Cohen* (in response to a question whether Respondent's salesman had said anything else about land): Land, like I said, *will double and triple your money in a very short time,* especially in Silver Springs Shores. . . .[148] (TR 6239) (emphasis added).

(1972) *Consumer Irizarry:* [Respondent's salesman said] Trust me. I've been in real estate a long time. *It's a good investment.* It's always going up, people. . . . (TR 7300) (emphasis added).

(1974) *Consumer Roomey:* [Respondent's saleswoman said] . . . *it would be a good investment.* . . . [T]he real estate, she said, is better than stocks and bonds. *The value of the property would go up, you know, constantly go up*[149] (TR 7163–64) (emphasis added).

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[148] The "short time" was said to be "in 2 or 3, 4 years."

[149] *See also* the same witness' testimony at TR 7164 ("the value of the property always goes up") and TR 7166 ("and the value of the property, always going up").

206. c. *Eldorado at Santa Fe*

(1973) *Consumer Scirica:* [Respondent's salesman said] *You got a fantastic investment here. You can't go wrong with it....* He said *the investment possibilities were tremendous* because it was only a small, exclusive area, he says, and with the arrangement that AMREP had made up with the Eldorado property, he says, *it was bound to go up.* He said *it had to go up* (TR 5552) (emphasis added). **[165]**

207. d. *Oakmont Shores*

(1972) *Consumer Weber:*... [T]hey talked about the property down there and what *a good investment* it was and how you could *increase your money* even though (if?) you were just *speculating* on it and did not intend to build a home (TR 8938) (emphasis added).

* * * * * * *

Q. Did he tell you how fast it would increase in value?

A. Let us see. Like I believe that probably in about seven years that it would double (TR 8943).

(1973) *Consumer Reynolds:* [Respondent's salesman] went into quite a lot of detail about investment... and *within 2 years we would double or triple our money. That was one of their basic things, that it was an investment.* It wasn't really a place [to live]—they didn't really encourage to build.

* * * * * * *

[T]hey said we should resell it; that we should not hang on to it; that we should *keep it for a prime period, which he called anywhere from 2 to 5 years.*

* * * * * * *

He also told that *it was a good investment....* (TR 8400) (emphasis added).

208. It will be observed that in a little over half of these testimonial examples Respondent's salesmen were reported to have told the consumer in *haec verba* (as late as 1974) that the land in question was "a good investment" (TR 7163–64). In another example (from 1972) it appears **[166]** that, as saleswoman Strully testified, the *word* "investment" may not have been used but the *concept* was there (TR 14542–43). In all cases Respondent's salesmen were representing that Respondent's land was a good investment, either expressly or impliedly by such techniques as quantifying a predicted return (*e.g.,* "will double or triple in 2 to 5 years"); pointing out the profits on land already made in the same or other areas (*e.g.,* Mr. Levitt's "millions and billions"); generalizing about the advantages of land investment in a context where such generalization is likely to be applied to the facts at hand (*e.g.,* "better return than stocks and bonds"); and many other representations whose import cannot be mistaken *under the circumstances.* Perhaps the most effective representation that lots at Respondent's subdivisions are a good investment has been calling attention to the price record itself: the history of constant, huge in-

creases—and no decreases—in Respondent's list prices (*see* Figure 9) [p. 1420] to which Respondent's salesmen have always been able to point (TR 7503).

209. We conclude that Complaint Counsel have proved by a heavy preponderance of the evidence that at least until well after the start of the investigation preceding this Complaint[150] Respondent has affirmatively represented the "homesite" lots in its developments to be good investments.

3. No resale risk

210. Complaint Paragraph 15 charges Respondent with failing to disclose affirmatively to prospective purchasers that its lots are a risky investment because, among other things, the purchaser will probably be unable to sell his lot except by taking a loss on it.

211. The record here contains many loose statements by Respondent's salesmen broadly negating *all* risks of *any* sort:

considered a no-risk investment (TR 9651)

bound to go up (TR 5552) **[167]**

always going up (TR 7300)

constantly going to be on the increase (TR 5062)

improving at all times (TR 5385)

212. The real thrust of the Complaint, however, is directed as just noted, to the particular "risk", if it can be called that, of inability to resell a lot for as much as the purchaser paid Respondent for it. There is no question but that the ability to resell Respondent's lots has been very much on the minds of most of Respondent's customers—investment minded as they are—and accordingly on the tongues of its salesmen.

(1970) *Consumer Benchoff:* He (the dinner speaker) said yes, there was *definitely a resale* of property (at Silver Springs Shores). . . . [I]f people invested their money they would have no trouble *selling or reselling* the land (TR 4294)[151] (emphasis added).

(1971) *Consumer Cameron:* [H]e did say *you could sell it* (land at Rio Rancho) at a later date (TR 5003) (emphasis added).

(1972) *Consumer Martire:* . . . [T]hey said there would always be a resale value. Like, I think they mentioned they wouldn't sell it for you but *you could always sell that property and always find buyers.* I don't remember the exact words but (they) did indicate that (TR 7766) (emphasis added). **[168]**

(1972) *Salesman Jarrett:* AMREP Corporation is not in the business of resale but

[150] This is not, of course, to be misconstrued as a finding that such representations thereafter ceased.

[151] For the same assurance by her salesman, *see* TR 4295; *also* TR 4275.

there are several brokers in Santa Fe. You would have no problem (TR 10341) (emphasis added).

(1972) *Consumer Torres:* . . . [I]t would be a good investment to buy land in Florida; *you can always sell it afterwards.*

* * * * * * *

[H]e said it was an investment and *you could always sell the land* a few years from now and get back what you had paid for it and make a profit (TR 7898–99) (emphasis added).

(1973) *Consumer Pallas:* (referring to the 3,000 acres of Rio Rancho still unsold, his salesman said) As soon as these were sold, then the resale market, then people would have to be buying from other property owners rather than from the company, and that the property value would increase (TR 5737).

(1973) *Consumer Bongers:* Q. What did he (salesman Williams) say about resale? A. That any time we felt that we wanted to resell it that *it would be very easy to sell* (TR 8453) (emphasis added).

(1973) *Consumer Odrobina:* Q. Did he tell you anything about resale of land? A. Yes, *he said it was easy to turn a quick profit on it* because of the amount of people that were coming out and purchasing homes and new land was needed to build on (TR 9818) (emphasis added). **[169]**

(1973) *Consumer Grimaldi:* [H]e said that *if we wanted to resell, we would be able to do so* through a local Florida real estate [broker] but that they (Respondent) did not handle that (TR 4784) (emphasis added).

(1974) *Consumer Raimondi: [W]e would have no problems if we changed our minds and wanted to sell the property.* . . . (TR 5129) (emphasis added).

(1974) *Consumer Roomey:* It was a good investment; *we could sell the property if we decided to.*

* * * * * * *

She said, about selling the property *it would be easy to sell once you purchased it.* The value of the property always goes up and *it would be easy to sell* (TR 7164).

213. The foregoing leaves no serious doubt that Respondent not only omitted to disclose to prospective purchasers the real risk that they might not be able to get their money out of this investment but affirmatively represented time and again that there was a ready market for such land and no risk of loss whenever the purchaser from Respondent might want to resell it.

214. The Administrative Law Judge does not, however, adopt the further contention of certain of Complaint Counsel's witnesses[152] that Respondent went beyond assurance of **[170]** resaleability to guarantee of resale (or at least a promise to handle resale efforts for the purchas-

[152] Consumer Muzzillo claimed he was told in 1973: "You're not going to lose. . . . In the event you want to sell we will buy it back" (TR 7243–46); Consumer Freundlich claimed she was told in 1969: "[Y]ou will have no problem in selling it. There will be resale offices opened for people like you" (TR 4183). Consumer Bongers testified: "If we wanted them (Respondent) to handle it (resale) they would be happy to handle it" (TR 8453).

er whenever so requested). In this respect the record shows that during a brief period there may have been a plan to open a company resale office at Rio Rancho but it was quickly abandoned (TR 21302–03). It may be, as Salesman Bondy testified, that some customers were told there would be a company resales office at that development once it was about sold out (TR 7589). However, our considered judgment, after weighing all credibility factors, is that, while Respondent frequently gave assurances that its lots could be resold without difficulty, it did *not* usually give assurances that *it* would do the reselling (or guarantee any particular sale price) and we so find.

C. *The facts concerning these three representations*

1. Rio Rancho Estates

215. We come at last to the crux of this case. Has Respondent really given its customers the bargain price, the profit potential and the safe investment that it has constantly assured them would be theirs with the purchase of a lot at any of its subdivisions? Or, if not, has it at least given fair warning of known risks, including particularly the unmarketability or illiquidity of such land? Each of these questions turns to a considerable extent on one issue: *What is the real value of Respondent's land (outside the so-called "building areas")?* Once that question is answered, answers to the other questions tend to fall into place.

a. *True market value of lots*

(1) Appraisal evidence

216. With respect to the current market value of land at Rio Rancho Estates (here as always the chief concern of [171] the case) both sides rely heavily on the opinions of their expert appraisers. Testifying for Complaint Counsel was a distinguished Mississippi appraiser named Mann, who has been, among other things, National President of the American Institute of Real Estate Appraisers (TR 3329). Testifying for Respondent was a New Mexico real estate appraiser named Godfrey who has had numerous professional honors and in 1978 was national Chief Examiner for Demonstration Appraisal Reports for the American Institute of Real Estate Appraisers (TR 23491–92). Both are Members of the prestigious Appraisers Institute ("M.A.I.'s")[153] and both are undoubtedly professionally qualified to express opinions as to the market value of Rio Rancho land.

217. We take this occasion to state, however, that we have relied on such opinions as little as possible, particularly where (as in selecting "comparable" land prices) there is room for wide differences of opinion. It is our experience over many years that the opinions of paid

[153] TR 3324 (Mann); TR 23488–89 (Godfrey).

forensic experts invariably, support the positions of their forensic employers. This limitation on the credibility of expert testimony applies to the experts on both sides, although we should also add that in this case we were inclined, after hearing both appraisers testify, to give greater credit to Mann than to Godfrey.

218. Mann was asked to give his expert opinion as to the true market value of eight "typical" lots at Rio Rancho Estates (TR 3394). The first two of these "typical" lots (one zoned residential and one commercial) were pre-selected by Complaint Counsel and the remaining lots (all zoned residential) were randomly selected by Mann from pre-selected units chosen by Complaint Counsel to obtain complete geographic distribution of the "typicals" throughout the project (TR 3348–49). All were lots already sold by Respondent and Mann accordingly used the term "resale value" but by this, he explained, he meant nothing more than the general term "market value" (TR 3351). **[172]**

219. Mann made a careful and intensive investigation of these eight "typical" lots in their distinctive market setting (TR 3356–63, 3373–79) relying for his appraisal of their value primarily on the level of comparable values in the vicinity (TR 3345). His "comparables" consisted largely of two groups of transactions: (1) 16 resales of Rio Rancho lots handled through Albuquerque's Multiple Listing Service ("MLS") between 1970 and 1976 and several dozen resales at public land auctions held in Albuquerque between 1975 and 1976. We deal separately with each.

220. The 16 MLS resales were the *only* sales that MLS brokers were ever able to make out of a total of 878 vacant lots in Rio Rancho listed with it by customers of Respondent for resale. [We deal later with the striking fact that 98 percent of such listings could not be sold at all; at this time we are concerned solely with the prices brought by the two percent which could be sold.] The relevant data for each of these 16 MLS transactions (year of sale, location by unit, lot size, zoning, price and *pro forma* price per acre)[154] are shown in Figure 12.[155] **[173]**

Figure 12

Sixteen MLS Resales of Rio Rancho Lots (1970–75)

Mann Resale No.	Unit	Lot Size	Zoning	Year	Price	Price/Acre (pro forma)
#1	1	.5 acre	Residential	1970	$1250	$2500
#2	2	1 acre	Residential	1973	$2400	$2400
#3	3	2 lots 1 acre each	Residential	1972	$2500	$1250
#4	4	.5 acre	Residential	1972	$850	$1700

[154] *Pro forma* price per acre calculated by Administrative Law Judge.

[155] *See* CX 263, p. 7, Mann's summary of selected data found in CX 200 (MLS Vacant Land Listings). A statistical summary of listings and sales resulting therefrom is found in CX 201.

Mann Resale No.	Unit	Lot Size	Zoning	Year	Price	Price/Acre (pro forma)
#5	4	2 lots – 1 acre each	Residential	1970	$2900	$2900
#6	4	.5 acre	Residential	1970	$1250	$2500
#7	6	2 lots .31 acres each	Commercial	1971	$5500	$8400
#8	7	.5 acre	Rural	1971	$1200	$2400
#9	9	2 lots 1.21 acres total	Rural	1971	$3200	$2645
#10	10	.53 acre	Residential	1971	$1700	$3200
#11	16	.5 acre	Rural	1971	$2000	$4000
#12	16	2 lots 1 acre total	Rural	1971	$3950	$3950
#13	16	.5 acre	Residential	1970	$2876	$5762
#14	16	.5 acre	Residential	1972	$1500	$3000
#15	22	.5 acre	Residential	1971	$2000	$2000
#16* [174]						

* Data for Mann's Resale #16 is uncertain on this record.

221. It will be observed from Figure 12 that after factoring out the four sales in Unit 16 (which averaged $4,175) and the so-called "commercial" lot in Unit 6 ($8,400) the remaining lots, all but one in the hinterland, brought an average of $2,350/acre on resale. At first glance this might seem a fair basis for an appraisal and Mann did, in fact, give the sixteen MLS resales some weight in forming his opinion of the value of Rio Rancho land.[156] However, when combined with the circumstance that the other 98 percent of all vacant lots listed with MLS could not be sold at all,[157] elementary economics suggests that what we are seeing here is simply the tiny top of the demand curve: the few consumers who for various reasons will pay a good deal more for a given product than will the great majority. This inference is confirmed by the lower level of resale prices revealed by the more recent land auction evidence to which we now turn.

222. These land auctions were held in Albuquerque by a Rocky Mountain Land Auction Co. of Denver, Colorado at various times during 1975 and 1976.[158] Complaint Counsel's expert, Mann, talked with builders who had patronized these auctions and he obtained information on the prices they paid for lots at Rio Rancho Estates (TR 3358, 3374–75) as a basis for his appraisal. The price evidence, itself,

[156] TR 3356, 3361, 3692.

[157] CX 258.

[158] The testimony of Albuquerque broker Heinz concerning his connection with and attendance of a Rocky Mountain auction held on 8/23–24/75 (TR 11346–11353) was stricken by the Administrative Law Judge as not properly noticed during pretrial but he added that if he was wrong the Commission would "know what to do with it" (TR 11355). The ruling was wrong and the testimony is now reinstated and CX 562 and CX 563, which were identified for the record at TR 11349 but never offered in evidence (presumably because the surrounding testimony had been stricken) are now admitted into evidence.

however, came in independently through the mouths of the builders themselves. [175]

223. It appears that a very large number of Rio Rancho lot owners patronized the Rocky Mountain auctions. A list of the lots to be sold at an August 1975 auction contained 1,453 items (CX 562–63). Moreover, Mann, in forming his valuation opinion, relied on what he considered reliable evidence that there were about 3,000 items, mostly located in Rio Rancho, listed for a November 1975 auction; of these only about 65 could be sold (CX 391, p. 2).[159]

224. Because the testimony here was couched in aggregates and usually did not identify individual lot items as to unit[160] or lot size[161] the auction evidence is more general than the MLS evidence, but for the purposes used here entirely valid. The relevant auction data are shown in Figure 13: [176]

Figure 13

Auction Prices for Undeveloped Rio Rancho Lots (1975–78)

Builder	TR Reference	Year of Sale	Lot Price	Acre/Price (pro forma)	No./lots purchased
Bradley	TR 2163	1975 (Oct.)	$500	$1000	17 lots
			$600	$1200	4 lots
			$650	$1300	1 lot
	TR 2165	1975 (Dec.)	$500	$1000	10 lots
			$600	$1200	1 lot
	TR 2166	1976 (Feb.)	$600–$800	$1200–$1600	7 lots*
Douglass	TR 10069–72	At "an auction"	$500–$800	$1000–$1600	5–6 lots
		From "Uncle's Real Est. Co."**	$1000	$2000	3–4 lots
		In "open mkt." 1976–77***	$500–$800 (most)	$1000–$1600	20–25 lots****
			$1000–$1500 ("a few")	$2000–$3000	
Huckaby	TR 19822–24, TR 19871	1975–78	$800–$2200	$1600–$4400	8–9 lots [177]

* Excludes one Unit 16 lot at $1673 (= $3346/acre).

** Not an auction price.

*** Not an auction price.

**** Excludes one Unit 16 lot at $3000 (= $6000/acre) and 1 "commercial" lot at $10,000 (= $20,000/acre).

225. On the basis of the foregoing[162] and, of course his expert judg-

[159] The 3,000 lot figure is also found in Mann's written report to Complaint Counsel (CX 263, p. 9) but this portion of the report was not admitted into evidence here.

[160] However, Unit 16 prices were carefully segregated at trial here (TR 2166, 2177, 2196, 10072) and the other units, forming the hinterland, may logically be treated as fungible for present purposes.

[161] However, builder-witness Douglass indicated that virtually all the lots he bought were half acres (TR 10072–73) and builder-witness Bradley seems to have said the same (TR 2183, 2205). We have accordingly assumed auction prices are stated for half-acre lots unless full acre size is other indicated.

[162] Mann also collected data as to listing prices at Rio Rancho (CX 263, p. 8) but testified that listings, being mere asking prices, are of negligible value to an appraiser (TR 3361).

ment, in which we concur, Complaint Counsel's expert Mann reached conclusions as to the current (1976) market value of each of the eight "typical" lots he was retained to appraise. His valuations, which we find to be accurate, are shown in Figure 14:

Figure 14

Mann's 1976 Appraisal of Eight "Typical" Rio Rancho Lots

Mann's "Typical" No.	Unit Location	Lot Size	Mann's Appraisal*	Acre Value (pro forma)**
1	25	2 lots 1/3 acre each	$250	$750/acre
2	24	6/10 acre	$500	$800/acre
3	3	1 acre	$1000	$1000/acre
4	20	1/2 acre	$1000	$2000/acre
5	7	1 1/4 acres	$1000	$800/acre
6	16	1/2 acre	$2000	$4000/acre
7	11	1/2 acre	$1000	$2000/acre
8	26	1 2/3 acres	$1000	$600/acre [178]

* Data from CX 263, pp. 21–46. For Mann's revision of his original appraisals of Typicals 4 and 8, *see* TR 3394, 3693.

** Calculated by Administrative Law Judge.

226. With the establishment of a true market value for each of Mann's eight "typicals" as of 1976, we may now compare these true market values with two different evidences of Respondent's actual selling prices: (1) the "first purchaser price" for which Respondent sold the lot to the present owner (or a predecessor in title); and (2) in a limited number of cases where evidence is available, Respondent's list price for the same lot in 1976. All three are compared in Figure 15:

Figure 15

Rio Rancho Prices and Values

Comparison of current market value, current list price and Respondent's price to first purchaser of selected lots (all price data converted *pro forma* to one acre prices)

"Typical" No.	Unit	Appraised Market Value (1976)*	Respondent's "First Purchaser" Price**	Mo./Yr. Of "First Purchase"	Respondent's Current (12/74) List Price***
1	25	$750	$11,300	1/71	NA
2	24	$800	$4241	9/70	$6200
3	3	$1000	$2495	3/68	$6650
4	20	$2000	$5800	7/73	NA

"Typical" No.	Unit	Appraised Market Value (1976)*	Respondent's "First Purchaser" Price**	Mo./Yr. Of "First Purchase"	Respondent's Current (12/74) List Price***
5	7	$800	$2721	9/69	NA
6	16	$4000	$5010	3/69	NA
7	11	$2000	$2895	11/67	NA
8	26	$600	$3396	11/72	$6200[179]

* From Figure14.
** TR 24297–98 (conversion to *pro forma* acre price calculated by Administrative Law Judge).
*** From CTX 34Q.

227. Careful study of Figure 15, which is one of our most important findings of fact, reveals that Respondent has been selling Rio Rancho lots at prices far in excess of their true market value. Omitting Typical #6 (because it is located in the Unit 16 Complex) and Typical #1 (because under Respondent's bootstrap zoning it was sold as a "commercial" rather than a "residential" lot), the first purchasers of the six other "typical" lots paid an average *pro forma* per acre price of $3,588 for land which even in 1976, several years after such purchases, had an average *pro forma* per acre value of only $1,200 or 33 percent of the original sale price.

228. Unfortunately, the record evidence permits a comparison of current market values with Respondent's current list prices in only three of the six residential "typicals" outside Unit 16 (Typicals #2, 3 and 8). All three examples, however, point clearly to another important point. Respondent's average per acre list price for similar lots in the same Units has, since 12/24/74, been about $6,300 as compared with the average 1976 value of $1,200.

229. With Respondent's customers long paying three times true market value (even as appraised in 1976) and with Respondent's list prices now pegged at five times said true market value, it becomes clear not only that Respondent's customers have not only *not* been getting "a bargain investment" but that they have been getting the worst of a very bad bargain. If Respondent's barren, distant and largely undeveloped lots cannot quite be described as "utterly worthless", it is nonetheless clear that Respondent's sales of those lots at the price charged may fairly be described as "unconscionable" and we so find.

230. It remains to dispose of Respondent's rebuttal evidence concerning price/value comparisons. We noted above that Respondent relied largely on the expert testimony of local appraiser Godfrey concerning comparable market values. As we interpret his evidence, however, most of it was not really "comparable" and in any event the factual bases for his opinions were generally not independently proven, as were the MLS and auction evidence in the case of Mann's

appraisals. Ironically, while Godfrey's "comparables" are naturally higher than Mann's, they still do not reach the level of Respondent's list prices. **[180]**

231. Respondent first asserted that it intended to have Godfrey testify to some 800 "comparables" but the Administrative Law Judge ordered a limitation of such testimony to Godfrey's best 25 (later expanded to 32) "comparables" (TR 23774–75). Of the 32 only about 25 percent are usable for the following reasons.

232. Eight of the lots[163] are not even vacant. They are "improved" lots (*i.e.,* land with a house on it). This requires the value of the house to be factored out: an extra judgmental operation which leaves inordinate leeway for the use of a discretion we are not prepared to entrust to that most partisan of all witnesses, the expert—at least as long as vacant lots which do *not* require such treacherous adjustments are available for comparison.

233. Seven others of Godfrey's 32 comparables are not even located in Rio Rancho Estates.[164] All but one of the seven are located in the little "mountain subdivisions" *east* of the Sandia Mountains (some as far as 30 miles away from Rio Rancho), a location which would obviously have a special attraction for skiers, etc. (TR 23720). One of the seven is in Corrales (TR 23759) in the fertile, green Rio Grande River Valley, which may be close to Rio Rancho but is very different in character from Rio Rancho's desert-like land.[165] Again we are not prepared to entrust to an inherently partisan expert the wide discretion needed to make the adjustments required to assess the "comparability" of lots outside Rio Rancho—at least as long as a fair number of "comparables" can be found inside its boundaries.

234. Finally, Godfrey's 32 "comparables" contain eight[166] as to which we find no dollar prices in this record. While it is true that an expert's opinion is admissible in evidence **[181]** despite the failure of counsel on either side to examine concerning the bases for such opinion,[167] we do not attach much credibility to a value opinion without some indication of the actual figures on which it is based and against which it can be checked.

235. This leaves nine usable Godfrey "comparables". Their dates and resale prices (converted *pro forma* to dollars per acre), together with Respondent's contemporaneous list prices for acre lots in the same unit are shown in Figure 16: **[182]**

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[163] Godfrey's comparables #1 through #8 (TR 23673–85).

[164] Godfrey's comparables #26 through #32 (TR 23715–22, 23754–59).

[165] *See* picture of this area in Respondent's sales brochure CX 32F.

[166] Godfrey's comparables #16, #17, #18, #19, #20, #21, #23, #24 (TR 23701–12).

[167] Federal Rules of Evidence, Rule 705.

Figure 16

Respondent's List Prices vs. Godfrey's "Comparable" Resale Prices ($/acre)*

Godfrey's "Comparable" No.	Unit No.	Date of Resale	Per Acre Resale Price (pro forma)**	Respondent's Latest List Price (12/24/74)***	Resale Price As % of List Price****
9	7	5/28/70	$3200	NA	—
10	17	6/21/71	$3990	NA	—
11	13	2/16/72	$3481	NA	—
12	8	10/ /73	$3522	$7100	50%
13	24	10/ /74	$3833	$6200	62%
14	1	6/ /75	$5000	$6200	81%
15	23	1/20/76	$7332	$6200	1.18%
22	3	5/5/76	$4000	$6650	.60%
25	4	7/3/74	$6265	NA	—[183]

* Transcript references to Godfrey "comparables" and data for each include the following: Godfrey #9: TR 23687–89, 23769–70; Godfrey #10: TR 23690–91, 23771; Godfrey #11: TR 23691–93, 23762–65, 23771; Godfrey #12: TR 23692–93, 23771; Godfrey #13: TR 23693–95, 23771; Godfrey #14: TR 23697, 23766, 23771; Godfrey #15: TR 23699, 23768, 23771; Godfrey #22: TR 23710, 23728–29; Godfrey #25: TR 23712–15.

** *Pro forma* conversion to $/acre calculated by Administrative Law Judge.

*** CTX 34.

**** Calculation by Administrative Law Judge.

236. We conclude this summary of Godfrey's Rio Rancho appraisal by noting his ultimate opinion that the least value one acre lot at Rio Rancho is now worth $5,000.[168] In contrast, it appears that ever since the end of 1974 Respondent has been selling acre lots for no less than $6,200–$7,100,[169] at least when making sales.[170] In general, therefore, Godfrey's appraisal, even if we were to accept it, would show that Respondent has been selling its Rio Rancho lots at excessive—not at bargain prices.

237. However, we do not accept Godfrey's appraisal. None of the price evidence on which it is based is in the record other than as a basis for Godfrey's opinion and this is not just a technical failure of proof but a substantive deficiency. Indeed, the structure of that opinion is so deficient in probative value that we accord it no weight. Instead, we now accept Mann's opinion from the independently proven MLS and auction evidence of resale prices: that over the years Respondent has not only sold no bargains at Rio Rancho but has sold its land at such a premium over true market value as to amount to positive unconscionability.

(2) Non-price evidence

238. Thus far our effort to appraise the true market value of Re-

[168] He also opined that the least valuable *half-acre* is worth $3,500, assuming it carries a building exchange privilege.

[169] *See* price schedule effective 12/24/74. Acre lots in Units 1, 2, 6, 23, 24 and 26 sell for $6,200. Those in Units 3, 5 and 22 sell for $6,650. Those in Units 4, 8, 12 and 21 sell for $7,100 (CTX 34Q).

[170] Respondent's sales operations were "drastically reduced" after bringing of this Complaint (CX 459D).

spondent's undeveloped land has been primarily by comparing Respondent's selling prices with the prices obtained by its customers when they tried to sell comparable land at Rio Rancho. However, comparable sale prices are not the only evidence which can be helpful for this purpose. [184] Indeed, the ultimate in lack of value is a lot nobody wants. It may well never be the subject of a sale and is therefore useless for the kind of price comparison which is the appraiser's usual stock in trade (TR 3356).

239. Here we have already seen indications of a huge imbalance between the supply of land and the demand for it around Albuquerque where there is apparently enough buildable land *other than Rio Rancho* to take care of Albuquerque's probable growth into *the early years of the 21st century* (TR 2629, 2659–60). With such a gigantic imbalance of supply and demand it would not be surprising to find the emergence of surplus lots, lots so relatively undesirable that they simply cannot be sold at existing price levels and perhaps not at all. What we shall now see developing at Rio Rancho Estates looks very much like this.

240. As we have heretofore indicated, the most striking evidence of the growth of surplus lots (those which are for sale but apparently cannot be sold) is found in the records of Albuquerque's Multiple Listing Service. We have studied the (resale) prices obtained for 16 Rio Rancho lots resold through MLS between 1970 and 1975. Far more important, however, as we stated in that connection, is what the broker-members of MLS found they could *not* sell. Exhibits CX 200 and CX 201, with the aid of a tabulation thereof (CX 258A-D), reveal that of 724 MLS listings of vacant lots at Rio Rancho between 1969 and 1973 only the 16 already referred to were sold (at least through MLS or its members). Of 153 additional listings between 1973 and 1975, *none* resulted in a sale through MLS. Combining these statistics, it appears that *between 1969 and 1975 MLS brokers were unable to sell more than about 2 percent of the 877 vacant lots at Rio Rancho listed with MLS* (CX 202 and CX 258)

241. In view of the many sellers' inquiries MLS was receiving about selling vacant Rio Rancho lots (TR 2131), MLS's attorney drafted a form letter,[171] approved by the Board of Realtors on 2/13/74, which was thereafter sent out (usually 1–3 per day) in answer to such inquiries (TR 2137). [185] This form letter, *which was prepared over a year before issuance of this Complaint,* explained that MLS was not forwarding to the inquirer the usual list of local realtors from which to choose:

[171] The record does not indicate that any of MLS' 877 listings were subsequently sold by anyone else.

For your information, *our records reflect that there is little, if any, local market for resales of tracts in this particular subdivision.*[172] Our Multiple Listing Service records reflect that during the past three years we have received approximately 690 listings of properties within the area and that there have been approximately 20 sales of listed properties[173] (emphasis added).

If the correspondent was still interested in listing his lot despite this warning, MLS would be glad to furnish its membership roster, the letter concluded.

242. To similar effect was the testimony of Paul Heinz, one-time Rio Rancho salesman turned independent Albuquerque broker in 1971 (TR 11320). Heinz made a special effort to broker Rio Rancho resales and nearly went bankrupt in the process, even though he persuaded 468 would-be sellers to pay him $25 (later $50) apiece as an advance on a sale fee (TR 11323–24, 11335). *He estimated that he had probably received a total of 2,500 inquiries about the possibility of listing Rio Rancho lots, yet neither he nor any other MLS broker, to his knowledge, was ever able to negotiate a single sale of any of these listings* (TR 11334). Even before MLS prepared its form letter to discourage listing, Heinz was sending inquirers one of his own, dated July 1, 1973. It included the following statement: **[186]**

Re: Rio Rancho Estates
Listed 400, Expired 200
Current 200; Sold 0
Since 1 December 1971[174]

243. Similar, too, is the story of the Clack & Hill Land Digest, a publication started just before the issuance of this Complaint in early 1975 (CX 308). Some 107 paid-in-full Rio Rancho lot-owners were persuaded to put up $75 apiece for a listing in the Digest (TR 9980). This listing was then disseminated primarily to *out-of-state brokers* involved in this kind of selling (TR 9985) but the result was no different from the Heinz/MLS experiences. *Not a sale resulted from either the first or second edition of the Clack & Hill Digest* (TR 9986). The Clack & Hill evidence of a sales effort through conventional out-of-state brokers is of special significance, as tending to confirm that the striking contrast between Respondent's overwhelming success in selling lots and its customers' overwhelming failure to resell them must be attributed less to where the prospects lived than to the way they were approached. Such evidence supports our inference that Respondent's high-pressure and deceptive marketing techniques were a decisive factor in its sales success.

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[172] (In CX 1L and CX 5L, Respondent states that it expects most sales to be made outside the situs area).

[173] The sale figure seems reliable, particularly since a listing broker was required to report sales to MLS within 48 hours (TR 2075).

[174] CX 560.

244. It is appropriate to mention certain additional evidence confirming in a general way how few have been the resales of lots at Rio Rancho (and at Respondent's other developments, too). Complaint Counsel obtained from Respondent a print-out of all (32,956) lot-owner changes of name in its computer's memory for any purpose (CX 564). The breakdown by development was as follows:

Rio Rancho Estates		28,322
Silver Springs Shores		4,351
Eldorado at Santa Fe		83
Oakmont Shores		200
	Total	32,956 [187]

245. Analysis revealed that the great bulk of these references patently did not involve sale or similar transactions (CX 564). This winnowing left a group of 2,981 name changes which might turn out on investigation to involve resales of Respondent's lots by Respondent's customers (CX 564). Accordingly, Complaint Counsel surveyed these 2,981 names by mail to determine how many resales were, in fact, represented.[175]

246. Most surveyees never got the questionnaire or at least never returned it (CX 566) but a substantial number (863) did send in answers, distributed among Respondent's four developments as follows (CX 566):

Rio Rancho Estates	530
Silver Springs Shores	302
Eldorado at Santa Fe	19
Oakmont Shores	12

247. Of the surveys returned, the number of transactions identifiable as "Sales" (based primarily on the surveyee's designation) was as follows (CX 566):

Rio Rancho Estates	106
Silver Springs Shores	86
Eldorado at Santa Fe	0
Oakmont Shores	3

248. However, these figures should be extended by use of appropriate multipliers[176] to take account of the "unreturned/undeliverable"

[175] The mailing was actually to 2,962 names. *See* CX 566.

[176] The Administrative Law Judge has used the following multipliers (all derived by dividing returns into mailings) to make this adjustment:

Rio Rancho Estates	3.75
Silver Springs Shores	3.16
Eldorado at Santa Fe	1.26
Oakmont Shores	1.25

group, which must be presumed to have had the same percentage of resales as all other surveyees. [188] After making this adjustment, the probable number of resales turned up by Complaint Counsel's survey are as follows:[177]

Rio Rancho Estates	398
Silver Springs Shores	272
Eldorado at Santa Fe	0
Oakmont Shores	4

249. Complaint Counsel's mail survey results would perhaps be more significant if they also revealed the numbers of lot-owners at each of Respondent's subdivisions who were actively but unsuccessfully seeking to sell their lots (as did the MLS Heinz and Clack & Hill evidence). The survey does establish clearly, however, that the numbers of resales so turned up (398 at Rio Rancho and 272 at Silver Springs Shores) are pitifully small portions (1 percent and 1 1/3 percent respectively) of the numbers of lots sold by Respondent at each subdivision by 1976: 75,134 lots at Rio Rancho (CX 459–I) and 19,426 at Silver Springs Shores (CX 459K). [The Eldorado and Oakmont Shores experiences are not usable, but not inconsistent, either.]

b. *Probability of loss*

250. Our comparison of Respondent's "first purchaser" and current list prices with true market values leaves no doubt that, despite its "bargain price" advertising, its lots were consistently and significantly over-priced, commonly at three to five times fair value. It is Complaint Counsel's position that buying prices so far out of line limit ultimate resale profit possibilities substantially and that so substantially handicapped an investment should not be promoted as a "good investment". In general this has to be right, although, somewhat surprisingly, the price/profit evidence here is somewhat less striking than the price/value evidence just reviewed. The price/profit evidence here seems to show that *if* you are one of the lucky few who somehow resell an undeveloped vacant lot at [189] Rio Rancho there is at least a chance you may break even or just possibly make a wee profit. Overall, however, the odds are very high that you will not make money on the resale.

251. Thus Complaint Counsel's Lusteck, a real estate planning consultant (TR 2557, 2560), took the 16 MLS resales between 1970 and 1975 (CX 200, CX 201) and found sufficient data for comparison of Respondent's "first purchaser" sale prices with its purchaser's resale prices. Lusteck's first calculation (CASE I) was a gross one, based simply on the difference between the purchaser's buying and selling prices, while a second calculation (CASE II) refined the result by

[177] Calculation by Administrative Law Judge.

deducting 14 percent from the sale price to cover commissions and other selling costs. The second is undoubtedly the correct methodology. Lusteck's results are as follows:

CASE I[178]		CASE II[179]
High	+6.5%	+4.5%/yr.
Average	+2.4%	0.1%/yr.
Low	−5.6%	−9.9%/yr.

252. Lusteck further testified that such returns were *inadequate* to attract capital to invest in *unimproved* real estate. *Improved* real estate, he explained, typically yields something like 10–12 percent/year and, in view of the greater risk involved, unimproved land ought to return at least 15 percent to attract investors (TR 2700).[180] **[190]** Neither by this nor any other standard of which we are aware can a break-even result such as Lusteck found at Rio Rancho be thought a "good investment".

253. Lusteck's results are generally confirmed by Complaint Counsel's mail survey just referred to above. The 398 Rio Rancho resellers were further questioned as to whether they had made a profit on their resales. Adjusting the results to compensate not only for "unreturned/undeliverable" questionnaires but for "no answer or unusable" responses, it appears that of the 398 Rio Rancho resales only 30 (or 8 percent) were profitable; about 153 were approximately break-evens; and 190 actually involved losses (CX 567).[181]

254. Respondent, however, tenders the opinion of its local real estate appraiser, Godfrey, to the effect that resale profits at Rio Rancho have been higher than Lusteck's study and Complaint Counsel's mail survey would seem to indicate. Godfrey testified that his search for "comparable" properties to determine current market values led him to 115 Rio Rancho transactions, which he said yielded an average resale profit of 88 percent (TR 23671–73).[182]

255. However, the record contains no evidence as to the average (or any other) holding period that preceded these allegedly profitable resales. It makes a difference. If we apply Mann's 15 percent/year rate of return rule of thumb (TR 2700), which Respondent does not seem to contest (RRB 143–44), an average holding period of just under six years would have been required to yield a satisfactory return on

[178] TR 2698–99.

[179] TR 2705–06.

[180] Lusteck called 15 percent "really a conservative return for investment in unimproved real estate." Respondent apparently does not contest the 15 percent standard (RRB 143–44).

[181] These are not, of course, the figures that appear in CX 567. The adjustment described above was made by the Administrative Law Judge.

[182] It is not entirely clear whether Godfrey considers *selling* costs in determining the profit or loss on a real estate investment. He clearly does not include *holding* costs such as taxes or interest (TR 23690, 23728). *If* Godfrey did *not* deduct selling costs, the estimated 88 percent resale profit should be reduced by 14 percentage points to 74 percent.

the investment. But we have no way of knowing [**191**] what the average holding period was and thus no way of calculating the average annual rate of return or, indeed, much of anything else about Godfrey's methodology (TR 23772).[183]

256. Nor are we helped by the seven specific examples of allegedly profitable resales of Rio Rancho land which Godfrey read into the record as a basis for his price/value opinion (TR 23772–73).[184] Godfrey apparently omitted to deduct *selling cost* or to specify the *holding period* necessary to yield the reported profit. Indeed, he failed even to identify the *location within Rio Rancho* (*i.e.*, the Unit) involved in any of his seven examples (or any others of the 115 transactions, for that matter).

257. Since the case here turns largely on the fundamental distinction between an attractive but small developed core area—what we have called the Unit 16 Complex—and a large, barren, largely undeveloped area around it—what we have called "the hinterland"—failure to specify the Unit in which an "example" is located is fatal. Moreover, there is no independent evidence to which reference can be made to supply these missing facts (the seven "examples" being admitted merely for the limited purpose of illustrating one basis for Godfrey's price/value opinions). Accordingly, we find that Godfrey's effort improve the resale profit picture painted by Mann and Complaint Counsel came to nothing. We give it no credit.

c. *Investment risk*

258. How much you can make on a resale of property is important only if you can make a resale. It must always be borne in mind that the rate of return studies reviewed [**192**] above apply to the tiny percentage of lots at Rio Rancho which somebody has been willing to buy, notably the 16 vacant lots resold through Albuquerque's Multiple Listing Service out of the huge number (877) unsuccessfully listed for sale (CX 258A-D). For MLS' other 861 listing owners, for the 2,500 lot-owners who sought help unsuccessfully from broker Heinz (TR 11334), for nearly 1,500 owners who tried to get rid of their lots through the Rocky Mountain auctions, and for others (CX 562–63),[185] the harsh reality has been that they are stuck with something for which there is no market. Whatever they paid was too much; whatever Respondent got for its lots had to be unconscionable.

259. Faced with the massive unmarketability of so many of the

[183] ("I have no concept of the numbers being used.")

[184] Godfrey's price example (a purported profit of 515 percent over some period) is an obvious error. *See* CCPF 117.

[185] There is also hearsay evidence in the record (CX 391, p. 2) that the 65 lots actually sold at auction in November 1975 were part of a total offering of 3,000 lots registered for the auction. This evidence is in the record, however, only to illustrate one basis for Mann's expert opinion as to the value of land at Rio Rancho, *see* TR 3764. Accordingly, we rely on it only in that indirect way.

75,000 lots sold off by Respondent by 1976 (CX 459–I), Respondent has argued that such unmarketability is nevertheless of a temporary nature and was, in fact, brought on by the adverse publicity attendant on the Commission's issuance of this Complaint on 3/11/75 (RPF 18–19). There is a first-blush plausibility in such an argument but the argument will not withstand scrutiny. As we have seen above, it was as early as 7/1/73—*more than a year and a half before this Complaint issued*—that broker Heinz began sending out the discouraging word that a lot owner's chance of marketing a Rio Rancho lot had been close to nil: *a year before this Commission started its investigation:*

Re: Rio Rancho Estates
Listed 400; Expired 200
Current 200; Sold 0
Since 1 December 1971.[186] **[193]**

Moreover, it was on 2/13/74, still more than a year before issuance of this Complaint, that the Multiple Listing Service began sending out *its* warning that "our records reflect that there is little, if any, local market for resales of tracts in [Rio Rancho Estates], etc." (CX 202).

260. It is manifest that the glut of unsaleable lots at Rio Rancho antedated the publicity attendant on issuance of this Complaint (3/11/75 and thus could *not* have been caused by the Complaint. Rather, it is an inherent problem of long standing and likely to last an even longer time. In this conclusion we are strongly supported by Complaint Counsel's real estate planning consultant, Lusteck, whose expert opinion it is that:

Reasonably expectable future economic and market conditions in the Albuquerque SMSA cannot possibly support the ultimate absorption[187] of all of the lots platted at Rio Rancho Estates within a reasonable period of time (*i.e.*, 30 years).[188]

* * * * * * *

[We were] led to the conclusion that a vast oversupply of lots in this type project exists relative to the potential for their ultimate utilization.

* * * * * * *

Data study and evaluation undertaken indicate that absorption [within the 30 years] could be expected for only about four percent of the lots platted (TR 2659–60) (emphasis added). **[194]**

261. We have found that the inability of hundreds of purchasers of Respondent's lots outside the Unit 16 complex to resell their lots reflects a massive disequilibrium between supply and demand. Some of those lots may be sold by substantial price-cutting and some may be sold even without price-cutting because some buyers will pay the

[186] CX 560.
[187] Lusteck defined "absorption" as "land in use" (TR 2630).
[188] "A reasonable period of time" was defined for this purpose as being 30 years (TR 2629).

kind of prices that Respondent, with its high-pressure and deceptive marketing techniques has been able to get. There may well be some such potential buyers in any demand curve. However, the glut of lots for sale at Rio Rancho is of such proportions that it is likely to be with us many years. It will continue to give the lie to all those optimistic assurances of Respondent's salesmen and sales brochures that customers are getting a good bargain and a good investment for the future which can be resold at any time desired.

262. This finding, the heart of the case, was challenged by Respondent through so-called expert witness, Charles Elias, on whose testimony we feel bound to comment. Elias is employed by a business economics research center on the Fullerton Campus of the State University of California to promote "a closer relationship between business and the community" and doubles as a part-time associate with a firm which counsels residential developers in the Los Angeles area (TR 23808). In Respondent's employ as an expert witness here, he solemnly concluded that the mere inability of Rio Rancho owners to sell their lots at present does not necessarily indicate any long-run infirmity in the investment (TR 23880–81).

263. Any wise investor, Elias explained, determines before making an investment what his "holding period" is.[189] **[195]** What happens during that "holding period" such as an unsympathetic attack by a regulatory agency like FTC, may hurt sales temporarily but does not affect the long-run value of the investment, if the owner is willing and holds on (TR 23899, 23940). (He viewed 10–15 years as a reasonable "holding period" for himself and thought even a century might not be too long for some people (TR 23893–94), explaining that "the descendants will realize the gains" (TR 23942).

264. We have already concluded that the massive glut of land at Rio Rancho is no temporary phenomenon. Even if some investors prove hearty enough to survive the glut, a good many investors will want to get their money out sometime before the 21st century. Indeed, as we have just seen, the record reveals hundreds of them who apparently want it right now. Elias' theorizing seems little more than an admixture of nonsense and double talk. We reject it.

265. We reject, too, Elias' ultimate opinion that current prices at Rio Rancho Estates, being "unduly depressed by current regulatory problems" (TR 23940) are lower than true investment values (TR 23860, 23955–56). Elias, who found that "the press of time and the

[189] [T]he investment value of an asset doesn't depend on its immediate market price or marketability. It depends on the estimate by the purchaser of the returns over time that he thinks that asset will throw off (TR 23830).

The estimate of value by the investor depends on his perception of the forces that are going to impact that particular property. And there may not be a market place transaction which squares with the investment value. . . . The investment value calculation is based on the commitment for a period of time. The market value is today's value in a market transaction (TR 23861).

resources available" did not permit him to see much of Rio Rancho or visit impartial local sources of information (TR 23856, 23914–17), made no independent study of the market. His **[196]** own opinion was *expressly* based on Godfrey's opinion as to market values[190] and his estimate of the overall supply/demand situation was equally expressly based on the opinions of another of Respondent's experts, Fawcett (TR 23856–58).[191] The law is crystal clear that an expert may not base an opinion on the opinion of another expert:

> It is generally agreed that the opinion of an expert, however qualified to speak, cannot be predicated either in whole or in part upon the opinions, inferences, and conclusions of others, whether expert or lay witnesses.[192]

Accordingly, we give no weight to Elias' opinion as to the investment value of lots at Rio Rancho Estates, built as it is, on improper foundations. We add that our estimate of his credibility and that of his fellow investment expert, Tischler, was not high. **[197]**

2. Silver Springs Shores

266. Although the profitability evidence is thinner for Respondent's other subdivisions than for Rio Rancho Estates, the general tenor of all the evidence is similar.

267. The results of Complaint Counsel's mail survey at Silver Springs Shores when adjusted for "unreturned/undeliverable" questionnaires[193] and "unusable" returns, indicate that of 272 resales only six percent were profitable; the remaining 94 percent were split evenly between break-evens and definite losses (CX 567, as adjusted).

268. When we turn from the profit evidence to the supply and demand evidence, the undesirability of investment in Respondent's lots at Silver Springs Shores becomes even more plain. Witness Cepeda, Chairman of the Ocala Multiple Listing Service (MLS) (to which 62 of Ocala's 75 brokers belong), testified that during 1973–74 MLS had 24 listings of lots in Silver Springs Shores and only one sale (CX 250, CX 507; TR 6524, 6537–38). During 1975–76 MLS records did not report the number of listings but reported three resales of vacant lots (CX 504–06; TR 6525–26, 6530–35, 6961–62). This neglible traffic in

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[190] TR 23859–60: "Mr. Godfrey indicated that he thought any lot in Rio Rancho could be appraised at $5,000 and that a half acre with the exchange privilege would carry an appraised value of $3500.00. . . . Based on the [Godfrey] price information, the rate of growth for prices in residential land in the area and the prospects for growth in Rio Rancho, I came to the conclusion that the purchase of lots in Rio Rancho did represent a good investment." *See also* TR 23934: "I understood from Mr. Godfrey that there is a good resale market but I have not looked into its characteristics." *See also* TR 23926–27.

[191] ("I accepted his [Fawcett's] conclusions as representative of the facts and that's what I based my opinion of the investment value of the lots at Rio Rancho on.") *See also* TR 23925–26.

[192] 31 *Am. Jur.* 2d, "Expert and Opinion Evidence" Section 42, citing *Manufacturers' Acc. Indem. Co.* v. *Dorgan*, 58 F. 945 (6th Cir., 1893).

[193] Adjustment by the Administrative Law Judge was based on a multiplier of 3.16 because of "unreturned/undeliverable" questionnaires and a multiplier of 1.16 because of failures to answer the profit questions.

resales at Silver Springs Shores is to be contrasted with almost 20,000 lots sold there by Respondent by 4/30/76 (CX 5, p. 1). While the Ocala MLS had no form letter to discourage sellers like that used in Albuquerque, Chairman Cepeda testified that his general response to inquiring sellers of Silver Springs Shores lots is that he cannot be of service, a simple reflection of past lack of success in selling these vacant lots (TR 6536).

269. Similar was the testimony of an Ocala broker named Willis Moutz. Although he never had a single inquiry from a prospective buyer of a lot at Silver Springs Shores, **[198]** on the average he has received three or four inquiries per month from prospective sellers. In reply he discloses the lack of prospective purchasers and routinely refuses to list such properties (TR 6601–02).

270. Another Ocala realtor, Virginia Kanninen, testified that over a 2 1/2 year period she received some 100 inquiries directly from hopeful resellers of lots at Silver Springs Shores and another 500 to 1,000 inquiries indirectly through the Ocala MLS and Chamber of Commerce (TR 6850–51). Her standard advice to all such would-be resellers is that "there is no particular market for resale lots, because at the present time the developer is still selling there. . . ." (TR 6851).

271. The supply glut evidenced by such difficulty in reselling Silver Springs Shores lots [without the help of Respondent's sophisticated marketing techniques, including high-pressure and deceptive practices], is quite consistent with what we know of the supply and demand situation. As we have previously seen, there are enough building lots in Marion County to house the projected growth of its population at the present rate for 280 years.[194]

272. Respondent proffered as "real estate investment experts" one Elias, whom we have already met at Rio Rancho and one Tischler, who confined his testimony to Silver Springs Shores. We are concerned here primarily with Tischler, a young, self-styled "real estate economic consultant" and part-time teacher at Montgomery Community College (in a suburb of Washington, D.C.) (TR 23248, 23251).

273. Unfortunately, young Tischler's excessive dependence on his client for getting the facts and his avoidance of knowledgeable outsiders who might have given him a fair, realistic orientation, make it hard to give much credit to his opinions (CCPF 149–153). For example, Tischler assumed that Silver Springs Shores could count on "capturing" (as residents) a large percentage (perhaps half) of the almost 20,000 people who have invested in a lot there (TR 23331, 23453). He had apparently not been **[199]** made aware of the fact that Respondent's other Florida subdivision, Rainbow Lakes, had "captured" only

[194] Above, page 148. [p. 1474]

seven percent of its investors over a period of 20 years (TR 12948–57, 24167).

274. The ultimate opinion which Tischler rendered for his client was that a lot in Silver Springs Shores is a "good investment", apparently without regard to ability or inability to sell such a lot for many years (TR 23314, 23478). He supported this opinion with argument that almost any land is a good investment and that this particular land's location and growth potential make it an especially likely candidate (TR 23314 *et seq.*).

275. On cross-examination, however, it turned out that Tischler had never himself analyzed a single transaction involving a vacant lot at Silver Springs Shores and he admitted frankly to absolutely no knowledge as to "whether they (investors) made money, lost money or broke even . . . buying and selling the raw lot" at Silver Springs Shores (TR 23441–42). With little of value to contribute on rate of return and with no explanation for the well-documented glut of lots at Silver Springs Shores other than Respondent's party line (temporary surplus caused by this FTC Complaint) (RPF 18–19), Tischler's "rebuttal" testimony in our opinion rebuts nothing. Accordingly, we have no occasion to modify our initial conclusion from the Silver Springs evidence that the pattern of Respondent's activities at Rio Rancho Estates was a fair example of what may be expected of Respondent anywhere.

3. Eldorado at Santa Fe

276. Very little evidence was produced by either side concerning the investment potential of Eldorado at Santa Fe. We have already found that there are no demographic pressures on the Santa Fe area which are bound to force up land values at Eldorado.[195] Complaint Counsel's mail survey turned **[200]** up no resales—so, of course, no profit or loss—among 24 resale possibilities (CX 566). (Unfortunately, however, we do not know how many, if any, of the Eldorado land owners have tried to sell out).

4. Oakmont Shores

277. We have heretofore found no record evidence that Oakmont Shores, the Ozark recreational residential development taken over by Respondent and operated by it for four years, has ever been the probable beneficiary of a demographic boom likely to make its lots a good investment.[196] Complaint Counsel's mail survey results are of a similar character. Twelve answers were returned out of 15 questionnaires mailed and of these 12, three had sold their lots (CX 566). Of the three sellers none made a profit (CX 567). However, without a bigger sample

[195] Above, page 149. [p. 1475]

[196] Above, pages 150–151. [p. 1476]

and evidence as to how many lot-owners wanted to get rid of their lots, the significance of these questionnaire results does not seem great. More significant evidence comes from local brokers and others.

278. Broker Roehrs could sell five to six vacant residential lots a year in other nearby subdivisions but he had no sales nor even *buyer* inquiries about 15–20 Oakmont Shores lots he multi-listed during 1972–73 (TR 8651–52). In contrast, he had a total of some 50 *seller* inquiries from 1972 on (TR 8650).

279. Broker Moore received over 110 *seller* requests to list lots at Oakmont Shores; actually listed 10; and managed to sell only one (TR 8890–95). In contrast, he had never had a *buyer* request to see a vacant lot at Oakmont Shores (TR 8894).

280. During 1973–74 Williams Realty, another local brokerage firm, took on 25–30 listings of lots at Oakmont Shores but made no sales (TR 8331–33). Although Williams Realty no longer lists vacant lots at Oakmont Shores, it continues to get 25–30 seller inquiries a year (TR 8332). **[201]** Its routine response to such inquiries is: ". . . . *[W]e do not have a market for the lots. . . .*" (TR 8332) (emphasis added).

281. We think the broker evidence of persistent inability to resell lots which only Respondent, with its high-pressure/deceptive practices, can sell, viewed with the demographic evidence and Complaint Counsel's mail survey, establishes the practical worthlessness of Respondent's lots at Oakmont Shores and negates Respondent's assurances to its customers that such lots would prove a good investment and a safe one.

D. *Unqualified generalizations about investment*

282. From time to time we have observed the employment by Respondent of certain generalizations about investment in land, such as "land always increases in value." Respondent's obvious purpose in reciting these economic aphorisms has been to persuade prospects to invest in Respondent's lots. We might logically have discussed them under representations as to the profitability and/or safety of investment at Respondent's developments. However, such aphorisms have a unique quality in that they assert generalizations which it is up to the hearer to apply to the facts in hand. Because they raise special problems we have chosen to deal with them—both the representations and the facts—under this special heading.

283. A half dozen or more of such economic generalizations are found fairly frequently in this record. In each case the generalization contains a kernel of truth. A deceptive character is imparted to it, however, by expanding it into an unqualified assertion which serves the purposes of Respondent better than the purposes of truth. All this will become quite clear from a few examples. **[202]**

1. Inevitability of profit

284. *Example:* Land values all over the United States . . . are constantly going up and up and they show no signs of anything but an increase in the value of land. . . . (CX 110J)

Example: [L]and and value all over the country are going up. . . . (TR 10934)

285. It requires no expertise to know that *all* land is not constantly rising in value. There is, of course, a kernel of truth in such an assertion in that recent years have often been good ones for investors in land. However, it is in the very nature of business cycles that 1930's follow 1920's. Certainly no one who lived through the Florida Land Boom of the 1920's and its sad sequel would hazard such unqualified assertions as the two quotations above.

286. Nor is it self-evident that undeveloped desert-like land such as Rio Rancho's Unit 1, for example, is rising in value—constantly, sporadically or any other way—at least without the aid of Respondent's high-pressure/deceptive marketing practices. To say that land in Unit 1 must be rising in value because all land always rises in value is pure bootstrap. Complaint Counsel's expert, Lusteck, found at least nine factors affecting the investment potential of unimproved land (including particularly the purchase price of the lot) (TR 2703), none of which factors seem very necessary if all real estate is always moving up in value. Significantly, even Respondent's expert, Tischler (TR 23304), did not presume to make any such sweeping statement about the inevitability of profitability when laying out the reasons why he thinks real estate "in general" is a "good investment" (TR 23314).[197] Throwing such an unqualified and inherently unverifiable assertion into a sales talk has to be a deceptive practice. **[203]**

2. "Similar" land booms

287. *Example:* (After referring to *additional* bridges connecting Albuquerque with the west side of the Rio Grande River) Now, speaking of bridges, you are all undoubtedly familiar with a certain bridge and that is the Verrazano-Narrows Bridge between Brooklyn and Staten Island. Now I'm sure I don't have to remind anyone living anywhere around the New York area what land values were in Staten Island just before this bridge was built and what they are today. And in Albuquerque, only a few years ago there were only two bridges across the Rio Grande leading to our area. Today there are five bridges and six more are planned. If tonight I told you nothing more about our program than the documented story of the [Rio Grande] bridges and what they can mean to land values in Albuquerque, just as the Verrazano Bridge has influenced land values in Staten Island, I think this in itself would be sufficient for everyone seated in this room to join our program (CX 38G-H).

Example: But tonight we are going to be talking about land just 4 1/2 miles from a

[197] (". . . [I]t *can* appreciate *faster* than *most* any other type of investment") (emphasis added).

major metropolitan area,[198] and in the past few years, land, real estate near a metropolitan area has increased from 80–100%. I don't have to go far to quote an example. Here is a beautiful example right here in Cherry Hill [New Jersey, across the Delaware River from Philadelphia]. You **[204]** know what you could have bought land here for ten years ago and what it is worth today—and that's only one of many. Bergen County, New Jersey—a square shoulder from the New York metropolitan area—I come from that area originally. I know what's happened there; you could have bought some lots for hundreds of dollars ten or fifteen years ago. Today you're talking tens of thousands. . . . Staten Island, before the Verrazano Bridge, you could have bought land very low, before the bridge, and all at once you have to pay a lot more money. . . . (CX 111D-D)

288. These two examples of Respondent's penchant for mentioning other land booms with the obvious purpose of suggesting to the listener that the same thing will happen at its own developments[199] is quite misleading. Replacing the Staten Island Ferry with a bridge where there had never been a bridge before is very different from adding one or more bridges to two pre-existing ones over the Rio Grande; and, of course, Albuquerque is not New York.

289. No doubt there are some aspects of similarity in the two situations but an accurate delineation of those limited similarities would require a carefulness and precision of which Respondent shows few indications in this record. Be that as it may, Respondent's bold assumption that every land boom is a fair indication of profits to come at its own developments is plainly a deceptive practice. **[205]**

3. Leverage

290. *Example:* Very often he [the speaker] would get into the subject of leverage, which normally we would then build upon individually, using the analysis or example of: "Ladies and gentlemen, do you know what leverage is?", which was often a foreign term to them. He would say that just as with 20 pounds of pressure with your arm and a jack you can lift up a 2000 pound car, here you can control in real estate. You can control large sums of money by putting a little bit of money down and, for example, if you put $200 down you could be controlling something like $2000, and that *as it improves and increases* per year at whatever percent, that would be the return you would be realizing (TR 10293–94) (emphasis added).

Example: That kind of financial leverage [controlling valuable holdings of land with low monthly payments] *does not exist in any other area of savings or investments* (CX 35K) (emphasis added).

291. There is no question that financial leverage is an important advantage of installment sales and, if Respondent limited itself to

[198] The statement that Rio Rancho is only 4 1/2 miles from Albuquerque is extremely misleading. It is technically correct but only as to the distance between the settled southeastern corner of Rio Rancho and Albuquerque's legal city limits. *See* map CX 552.

[199] In an analogous situation, where Respondent refers to earlier experience at the same location, the Administrative Law Judge asked the salesman's witness: "Didn't you have in mind, then, that they [prospects] would apply this lesson of the past to the future." The reply was: "We assumed that that would be the case" (TR 21158).

saying that, it might not be criticized.[200] Its further assertions, however, cause trouble. In the first place it is *not* true that land purchase is the only form of investment where use can be made of the leverage device. In the case of stock purchases such leverage is commonly referred to as trading "on a margin" and is widely employed. **[206]** For a trader who wants more leverage than the Federal Reserve Board currently permits in the purchase of corporate stocks there is always the Commodities Exchange, where investments are frequently of shoestring size. In short, Respondent's advice to investors that nowhere else can they get the benefits of leverage is simply false.

292. Secondly and equally important is Respondent's one-sided explanation of the merits of leverage. Always the explanation or illustration is one in which a *profit* is multiplied by leverage; never one in which a *loss* is multiplied by leverage. Yet the leverage necessarily works *both* ways. We conclude that Respondent's handling of leverage must be deemed dangerously deceptive.

4. Comparison with other investments

293. *Example:* Well, we showed people various ways, primarily insurance, stocks and bonds, savings accounts, methods of investing money and the types of return they get on that money as opposed to what it can do in real estate . . . and then we invited them to reserve property at Rio Rancho (TR 21157).

Example: Well, they did seem to indicate that investment in real estate, particularly Silver Springs Shores, was much better than any other type of investment. Stocks and bonds certainly have a terribly fluctuating market and they seem to be rather a chancy thing to gamble on, so they indicated that real estate was the best investment and they went on to indicate the properties had been appreciating fantastically every three to six months. . . . (TR 5202–03). **[207]**

294. The record here is filled with accounts of Respondent's standard blackboard comparison between the relatively low rates of return on savings accounts, insurance policies and stocks and bonds and the relatively high rate of return said to be characteristic of investment in Respondent's land.[201] However, these comparisons are extremely misleading because they regularly assume a high degree of leverage for the (installment) land purchase and no leverage for any of the other investments. Since they also assume a *profitable* investment, Respondent's land always wins big.[202] But the "comparison" is quite unfair. Plainly both or neither of the transactions compared should be leveraged. Only then would a fair comparison be possible.

[200] Respondent's young expert, Tischler, when listing the reasons why he thinks real estate "in general" is a "good investment", on this subject said simply that "it allows you to use leverage" (TR 23314–15).

[201] *See,* for example, TR 2223.

[202] *E.g.,* CX 456G ("Let's recap. In the bank $429. The stock market $839. In real estate, AMREP property in excess of $4500.") And *see* particularly the detailed description in CX 37F-H of a presentation combining the comparative investment and leverage themes.

295. Even assuming a comparison with no leverage for any kind of investment, it is impossible for anyone to make an unqualified statement that vacant land is always a better investment than stocks, bonds, insurance, savings in the bank or anything else, for that matter. One can, of course, make comparisons limited in time, place and other circumstances but even this is likely to prove meaningless, as is well illustrated by the feeble attempts of Respondent's expert, Tischler, to make some such comparison.

296. Tischler testified that in January 1966, the Dow Jones average of 30 large, old-line industrial stocks was at a record high of about 1,000 and its value in (undefined) "constant dollars" was 306 (TR 23315). A dozen years later, in December 1977, he testified, the (undefined) "constant dollar" value of the same average was only 134 (TR 23315). The significance of this fact, standing alone, seems nil, except to prove that if one picks the right starting and ending dates one can find a stock market trend in any direction desired. Be that as it may, [**208**] one might reasonably expect Tischler then to come up with comparable data on the rate of return from investments in land over the same period. However, he never attempted any kind of comparison, and the insurmountable problems involved in making any valid comparison seem a good reason for his omission to do so.

297. Tischler further testified that the National Association of Realtors (which he conceded was not entirely unbiased) had compared the changes in value in (undefined) "current dollars" between 1967 and 1977 for five different kinds of investment (TR 23317). It was found that for every dollar spent in 1967, in 1977 you could get $1.23 in single-family homes, as compared with $1.18 for corporate bonds; $.93 for savings accounts; $.80 for common stock; and $.55 for cash. There is no occasion to go into the Realtors' methodology because it seems plain that single-family homes, with which the Realtors' study was concerned, are simply not the same thing as the vacant land with which this Complaint is solely concerned. The results are meaningless for present purposes.

298. In sum, Respondent's effort to demonstrate through Tischler that land is a better investment than stocks, bonds, savings account, insurance, etc. was a failure all the way around and Respondent's representations of the unqualified superiority of land as an investment in order to sell its lots must be viewed as a deceptive practice.

5. Hedge against inflation

299. *Example:* But inflation is the big bugaboo. It's ruining, its eating away at the buying power of our dollar bill. Today, we're spending a dollar which is worth considerably less than half of what it was in 1949 and where it's going in the future the Lord only knows. We should take a hedge against inflation. We should have some of our

precious dollars invested into something that will be worth more dollars as time goes along in order to offset the fact that each of these dollars will buy less and less and less (CX 456F). **[209]**

Example: He said with the way inflation was taking place—there was a map there showing all the dollars being eaten away—and real estate investment is the best thing today because it can double your money within a certain time (TR 7062).

300. It is no doubt generally true that during a period of monetary inflation it is wise to put a substantial part of one's resources into real assets whose value will presumably survive the deteriorating value of the dollar. It is equally obvious, however, that this depends on various circumstances, such as whether the real assets are fairly priced. Where, as here, we have found that Respondent's real estate has commonly been sold to consumers for three times its true market value, it would require a tremendous "eating away" of the dollar to make it worthwhile for a consumer to buy such a "hedge against inflation." Again, Respondent's unqualified generalization is not only inaccurately stated in theory but extremely misleading in the circumstances of this case.

E. *Dramatization of rising prices and profits*

301. Close study of Respondent's selling methods has convinced the Administrative Law Judge that Respondent's most powerful sales tool has probably been its dramatization of continuing illusory price rises, to which we now give special attention. It is one thing to argue in general language that land is always increasing in value. It is a good deal more effective to be able to point concretely to the specific price history of a particular lot[203] and show that it has been rising constantly and substantially at more or less frequent time intervals—and thus is very likely to continue to do so in the future. **[210]**

302. The sales value of this reification of rising prices is well illustrated in testimony by former sales captain Bondy:

We used to carry old prices because usually the property within Rio Rancho Estates had an average increase per year, anywhere from ten to fifteen percent. So, to bring out what we would like to refer to as the greed factors, if you would have bought this property two years ago, you would have paid so much less for it. We made comparisons . . . and we show(ed) how it goes up in value.

* * * * * * *

It was part of our literature. . . . (TR 7503)

* * * * * * *

Q. You said the company raised its prices by about ten to fifteen percent a year?
A. That was the comparison you could make. It was based on the fact that we had

[203] Examples of Respondent's price lists for each of its subdivisions are found in CTX 21–30 (Silver Springs Shores), CTX 31–33 (Oakmont Shores) and CTX 34–35 (Rio Rancho Estates).

a ten to fifteen percent increase every year over the past several years. You can use that as a springboard for the future (but not with a guarantee) (TR 7504).

Consumer Roomey described the sales line this way:

Q. Did she (the saleswoman) say anything about past prices or future prices?

A. She said the value of the property, if we didn't purchase the property at that particular time, like if we invited let's say six months or a year, that the property would go up like a thousand dollars a year. So, like, in other words, if we put off buying at that time, that it would cost us more at a later date. So we decided to take advantage of it at that time (TR 7165). [211]

Another consumer testified:

Q. Did he (a dinner speaker) mention anything about the investment value of land in Oakmont Shores?

A. These lots would be escalated in price. They had already increased in valuation 10% over the year before that we were there in '73. They had increased the 10% over the year before. They were expected to increase another 10% by Fall (TR 8708).

303. As all of the foregoing quotations suggest, there seems to have been a good deal of practical fungibility between "prices" and "values" in the minds of all concerned. Cross-examination of Consumer Roomey attempted without success to establish that Respondent's agents in making such statements referred to prices rather than values.

Q. You said that the saleslady said that the *value* would constantly go up.

A. Yes.

Q. Remember that?

A. Yes.

Q. Now, what she really said, wasn't it, was that the *prices* at which the lots were offered were constantly going up; didn't she say that?

A. *It was actually both.* Like it was, if we waited to purchase the property, you know, like six months to a year, that we would pay $4,500 now; in a year's time it may *cost* $5,500, and that it would also, the *value* would be going up. Maybe that is the reason for the increase in *price.* I don't know (TR 7176) (emphasis added). [212]

304. Most significant was Respondent's practice of regularly advising customers who had already bought a lot whenever Respondent's list price for similar lots in the same unit *thereafter* was raised.[204] In such case, the purpose of the communication, by assumption, could not be to sell that particular lot but rather to induce the buyer to

[204] It goes without saying that all price changes were price *increases.* "Q. Did that percentage [change] increase or decrease? A. No decrease, increase. Q. And that happened each time you went to the dinners? A. Yes, each time" (TR 7067). And *see generally* Figure 9 above, at page 67.1 [p. 1420], derived from CTX 34, showing the steady yearly increase in the prices of lots in Units 1 and 2 at Rio Rancho from about $1,000 in 1962 to about $6,000 in 1974.

invest in another lot or simply to spread the good news of constantly rising values. Consider the following:

> [After the purchase] he (the salesman) called us from time to time telling us that the lot was going up in value and this went up or went on from time to time. I would say he called us every three or four weeks and tell us that the lot had gone up $300 or $400 each time. So it finally reached a figure of almost $1,000 more than we had purchased it for (TR 4786).

And again:

> He [the salesman] would just tell us (after signing the contract), as I said, it would be going up in value $300 at a time, each conversation, until it finally reached over the $5,000 figure, which was the last, you know, we heard from him (TR 4878). [213]

305. If Respondent's ever-rising list prices had truly and accurately reflected rising land values it could hardly be said that Respondent's pricing was deceptive. However, we have heretofore established that its list prices have been unconscionably inflated, typically as much as three to five times true market value. Thus, Respondent's constant, systematic reference to those list prices to dramatize the investment value of its lots has been deceptive in the highest degree.

306. While the vice of Respondent's pricing system lies primarily in this false front of constantly rising "values", one particular aspect thereof seems especially unfair, not only for that reason but also because it lends itself so well to Respondent's high-pressure sales methods.

307. The practice in question is Respondent's custom of giving existing (and occasionally prospective) (TR 1292, 7245) lot-owners advance notice that a general price revision (always an increase)[205] of certain proportions is scheduled for an early (specified) date. The obvious purpose is to entice further purchases by the group of people who will most appreciate the coming increase in "value". There is no question about the truthfulness of the warnings; the predicted increases regularly materialize on schedule and in the amount predicted (TR 7576). The vice of the practice is rather that many customers may be excited by the illustration of a small but quick and certain profit into making a long-term commitment to pay much more for largely valueless land which they would otherwise probably have eschewed.[206] [214]

308. Since Respondent was accustomed to raise its prices across the board at least annually (and even semi-annually) in the several years

[205] TR 7067. And *see* Figure 9 above, at page 67.1 [p. 1420], derived from CTX 34, which shows the steady yearly rise in the prices of lots in Units 1 and 2 at Rio Rancho from about $1,000 in 1962 to about $6,000 in 1974.

[206] TR 7064 ("The price of land went up from the prices that they showed us. It went up so I figured the land was worth some money.")

immediately preceding issuance of this Complaint[207] and since it was Respondent's regular practice to announce such price increases a month or more in advance, it will be observed that this practice has characterized Respondent's selling during a considerable part of each year. It may be noted finally that the practice has been employed deliberately and, indeed, enthusiastically by Respondent's top management as part of its "organized offense" against individual lot-buyers.

309. Illustrations in the record here are legion:

Team Captain Lederman

Q. Do you remember anything in particular that was announced to the people at the homesite owners party that were not announced during the regular dinner party?

A. Well primarily, the difference would be at times shortly before a price increase. It would be announced at the homesite owners dinners that a price increase was imminent; whereas during the regular dinners, this was not mentioned. It was not supposed to be mentioned. At least we never did.

Q. Before making such an announcement, did you have something from the company to indicate there would be a price—

A. Yes. We would be notified by the company two or three months prior to a price increase, that there would be. Sometimes you would know how much, but most of the times you didn't know exactly how much but just the date. [215]

Q. Who specifically would give you that information?

A. Well generally, we would get it from Peter Miller, Leonard Geller, and sometimes we got a memo from Dan Friedman announcing it, and they in turn would be turned over to us by Peter Miller or we would just get a memo from Peter Miller on that (TR 767).

Sales Captain Bondy

Q. Did you ever have any information about a proposed prior increase before it went into effect?

A. Yes, the AMREP Corporation always let us know when there was a price increase, and if they said April 1st the prices were going up five or ten percent, you can be sure that on April 1st there was an increase.

Q. Did you ever discuss that with the customer?

A. Yes, right from the podium.

Q. You put that in your presentation?

Judge Teetor: Can you say how much of an advance notice you used to get?

The Witness: You mean on future price increases?

Judge Teetor: Yes.

The Witness: Well, to give us time to make it, and it was legal in terms I would say anywhere from 30 to 60 days and I would say more so 60 then 30, because you had lot of people to reach out to. [216]

Judge Teetor: You contacted people about the proposed increase?

The Witness: Yes, you could only contact your present customers, which were actually people that owned property within a community, to call up somebody and say, "hey,

[207] *See* Figure 9 above, at page 67.1 [p. 1420], derived from CTX 34, showing a steady yearly rise in the prices of lots in Units 1 and 2 at Rio Rancho from about $1,000 in 1962 to about $6,000 in 1974.

it's going up ten percent," and if he doesn't know what the product is, it's meaningless (TR 7505).

Area Sales Director Goldman

Q. Did there ever come a time when the price would change?
A. Certainly.
Q. And when did you find out about price changes?
A. We would receive a memo stating that the price would change on such and such a thing, within the attached list of the new prices.
Q. How far in advance of the actual date of the change did you get such a memo?
A. Anywhere between one to six weeks, that I can recall.
Q. And did those, the new prices, actually go into effect?
A. Exactly that date, in my offices (TR 7640–41).

National Sales Director Zaknich

Q. Do you recall any communication with regard to price increases which was directed toward sales offices?
A. Increase in prices? Notification of that came out of the Albuquerque office. [217]
Q. Do you know what form that notification took?
A. Generally, telegrams and correspondence.
Q. Were telegrams similar to the telegrams you previously described that you were aware of when you were Manager and Regional Manager and National Director of Sales?
A. Yes (TR 934).

Same (describing an "HSO" dinner party)

Then I would say: "Oh, yes there is a special announcement we would like to be made. We just received from our office in Rio Rancho Estates that we are having an increase in the Rio Rancho property on whatever date it would be". And then the salesmen would turn to the homesite owner and would say: "Aren't you very happy, whatever length of time you have invested with Rio Rancho, you already made money with us". Then he would turn to the prospective buyer (HSO's guest): "You see. Your friends have made money in such a short time. Why didn't (don't) you get started because you can never buy Rio Rancho land less than what it is today" (TR 1292).

310. Testifying here, Respondent's one-time President, Howard Friedman, insisted that Respondent's salesmen were upset by these price increases because a higher price makes it more difficult to make sales once the increase takes effect (TR 24201). He conceded that sales typically increased just before a new price took effect but "wouldn't know" whether impending price increases were used as a "sales tool" or even whether Respondent's salesmen were instructed to so use them (TR 24202). This testimony would seem to reflect some lack of communication between Friedman and his brother Daniel Friedman, then Respondent's Sales Vice President, who set forth Respondent's

policy with notable clarity in the following memo to the field in 1972: [218]

July 14, 1972

To: All Sales Managers
From: Dan Friedman Vice President, Sales
Subject: New PRICE INCREASE Coming

Good news!

Our next price increase will be effective on October 1, 1972. *That gives you approximately 2 1/2 months during which this powerful stimulant can help hypo your sales.*

* * * * * * *

[Price increase will be approximately 10%]

* * * * * * *

Everybody knows a price increase is sheer selling dynamite. Start it exploding in your office at once! (CX 51A) (emphasis added).

III. DEVELOPMENT REPRESENTATIONS

311. A third major area of alleged misrepresentations has to do with whether Respondent's land has been developed as promised. Paragraphs 24 through 27 of the Complaint charge Respondent with misrepresentations that its lots are or soon will be "developed" to the extent that all or most will be usable as "homesites", with potable water, septic tanks or central sewage, electricity and telephone service, without extraordinary charges for hook-up to said utilities. We shall examine this charge as applied to each of Respondent's subdivisions, with emphasis, as usual, on the largest: Rio Rancho Estates.

A. *Rio Rancho Estates*

312. There is apparently no substantial disagreement between the parties as to the actual state of development at Rio Rancho. About 93 percent of its acreage has been [219] platted[208] (CX 459–I) and all platted "streets" have actually been laid out (CX 459J), although 1,464 miles are made of dirt/clay/caliche, while only 31 miles are paved (CX 459J). That about exhausts what can be said of project-wide development.

313. All other development has been concentrated on the slowly growing core areas we call the "Unit 16 Complex", which are well serviced by the utilities now commonly thought necessary for a building lot (or "homesite", as Respondent prefers to call it). On the other hand, the vast hinterland remains virtually bereft of utility services because of the slow pace of core development. It would obviously be uneconomical to extend utility lines out into this vast, barren area at

[208] Calculation by Administrative Law Judge.

the behest of individual land owners unless and until there are enough intervening home owners to share the expense of extension (RX 160J), yet as long as there are no utility services available, there is little incentive to build homes (CX 459–I). All this is well-documented.

314. In a 1967 property report, Respondent conceded that "it is not economical for individual home owners to drill wells on the property" (RX 17G). Gas, electricity, central water and telephone were conceded to be available *only* in Unit 16 (RX 17G-H).

315. In 1971, Respondent admitted that "costs of drilling a well for domestic purposes and having a tank and pump installed make individual wells impractical" (RX 160J). Gas, telephone, central water and electricity were by then available in a new building area in Unit 11 as well as the old one in Unit 16 (which it adjoins) (RX 160J-K), although it was noted that there was no legal assurance that such utilities would be extended any farther (RX 160J-K). At that time (1971) only 1,800 lots at Rio Rancho (all in Units 16 and 11) had central water and other utilities available and of these 1,200 were reserved for sale only to purchasers prepared to construct homes immediately (in the core area) (RX 160H). [**220**]

316. A 1974 property report indicated that the cost of drilling a well at Rio Rancho is somewhere between $4,000 and $15,300 (CX 163J), while the cost of extending electric service is $8,448 per mile and telephone service the equivalent of $2,112 per mile (CX 163J-K). There can therefore be no argument but that the cost of obtaining well water, electricity and phone service would alone cost between $14,560 and $25,860 for one owning a home only a mile beyond the current building area (and much more for locations further from the building area).

317. By 1975 (when this Complaint was brought) according to another property report, a building area in Unit 7 (which adjoins Unit 17) had joined the building areas in Units 16 and 17 in having (central) water available while telephone and electric service were now said to be available in the building area of Unit 11 as well as that of Unit 16 (which it adjoins) (CX 162J-K). However, other evidence made it clear that Unit 7 and perhaps even Unit 11 were still not really developed or even developable.[209] The same property report also explained new ordinance requirements that prevent use of both a water well and a septic tank on a lot smaller than 3/4 acre (CX 162K) but permit a septic tank to be used on a lot of at least a half acre (common at Rio Rancho) if the owner can somehow get central water out of his lot (CX

[209] *See* the testimony of builders Bradley (TR 2169–70) and Douglass (TR 10077–78). In Bradley's opinion *neither* Unit 7 nor Unit 11 was "desirable", because both were too far out from the developed area, proper facilities like sewers were not available and the roads were in poor condition.

162K). The cost of extending water, electric and telephone lines to the lot *farthest* from development was estimated to approximate $315,000 (CX 162K), a sum plainly not calculated to encourage settlement of the hinterland.

318. The foregoing facts, coming as they do out of Respondent's own mouth,[210] indicate that, in general, (1) utilities are now available in the core areas of the **[221]** Unit 16 Complex (*i.e.*, the building areas in Unit 16 and a few building areas in adjoining units) but that (2) outside the Unit 16 Complex utilities are virtually unavailable except insofar as the building area may expand in the future at a rate greater than so far: 1,800 residential units occupied by 1975 (CX 162N) and 1,400 more built or a-building by 1977 (TR 19675, 19680) vs. a total of 75,134 lots sold as of 1976 (CX 459–I). With this factual background firmly established, we consider now the more complex question: what, if any deceptive representations has Respondent made on this subject?

319. A major issue in this case is whether Respondent has abused the term "homesite". In everything it does it constantly refers to all the building lots at all its developments, whether in core area or hinterland, as "homesites" and purchasers as "HSO's" (homesite owners).[211] Complaint Counsel then argue that as applied to lots in the hinterland, the word "homesite" is improperly and deceptively used, because the word, properly used, implies that all the utilities are in or immediately available. In support they cite a 1973 HUD regulation raising a presumption that the word "homesite" means land with potable water available and an adequate sewage system installed or septic tank approved, etc.[212] This should always have been a reasonable man's understanding anyway, they argue. **[222]**

320. While the Commission has made it clear that a dictionary is not a prison, the dictionary meaning of a word ordinarily reflects common usage and for that reason is entitled to some weight.[213] Merriam's 2d Edition of Webster's New International Dictionary, pub-

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[210] Complaint Counsel's concurrence is indicated at CCPF 210.

[211] *E.g.*, TR 929 (Sales Vice President Zaknich: "The policy was to invite homesite owners to dinner parties and to request that they also bring guests to dinner parties and make an effort to sell guests and homesite owners along with others who were attending." *See also* CX 40X (a company training manual for managers): "how we get 'cold turkey' guests, how we use it to get referrals from HSO's. . . ."

[212] 24 C.F.R. 1715.15(jj)(1):

> When homesites or building lots are advertised, the inference is that said lots are immediately usable for such purpose without any further improvement or development by the prospective purchaser and that there is an adequate potable water supply available; that the lands have been approved for installation of septic tanks or that an adequate sewage disposal system is installed; that no further major draining, filling, or subsurface improvement is necessary to construct dwellings, except for reasonable preparation for construction; that the individual homesites or building lots are accessible by automobile without additional expense to the purchaser over existing right-of-way; and that no other fact, such as [periodic flooding or long-standing water] or circumstance exists to prohibit the use of the lots as a homesite or building lot.

[213] "As for dictionaries, words mean what people understand them to mean and dictionaries are only one source. . . ." *Benton Announcements, Inc.* v. *F.T.C.*, 130 F.2d 254, 255 (1942), affirming *Benton Announcements, Inc.*, 31 F.T.C. 882 (1940).

lished in 1934, defined "homesite" as "a location suitable for a home" and one meaning of "site" as "land made suitable for building purposes by dividing into lots, laying out streets, and the like." It thus appears that a half century ago a plat and a street were generally thought enough to make land "suitable" for building.

321. When, however, we refer to Merriam's 3d Edition of Webster's New International Dictionary, published in 1976, we find that the perimeters of the word "site" have expanded with nearly half a century of social change to read: "land made suitable for building purposes by dividing into lots, laying out streets and *providing facilities (as water, sewers, power supply")*[emphasis added]. Clearly, then, people now think of more than a plat and a street when they visualize a "homesite". When **[223]** both Law and Language reflect an expanded meaning for the word "homesite", this Commission can hardly withhold its concurrence.

322. We further find that Respondent, which has often boasted of its long experience in the development of land,[214] *must* have had some intimation that many, if not most, of its customers would expect something advertised as a "homesite" to have the usual utilities in or immediately available. Its constant loose use of the word "homesite" to describe its lots generally, whether or not located in a building area, must have some tendency to deceive dinner party guests and other prospective buyers.

323. In fairness to Respondent, however, the record should show that while its promotional literature is full of many unqualified and therefore misleading references to "homesites",[215] its brochures also contain some carefully worded statements that utilities are available in residential areas "under construction". **[224]** The following quotations from a typical sales brochure[216] are illustrative:

> Centrally-piped water, piped gas, electric power lines, phones are available *in the residential area now under construction at* Rio Rancho Estates . . . [I]ndividual septic tanks are easily and inexpensively installed and maintained here. . . . The water system here is steadily being expanded to supply water to *the first residential section of 4,000 planned homes.* (Rate of future development, of course, will proceed as demand warrants.) (CX 30N) (emphasis added)

[214] The principals of Rio Rancho Estates and its related companies enjoy a long and prominent history of successful nationwide community development, home-building and financing, including Florida, the East Coast and Southwest CX 393P (1961).

[215] *See,* for example, CX 30E ("Let us see how and why you can buy FINE HOMESITE LAND at Rio Rancho Estates on such easy terms and at such reasonable prices"); CX 30G ("You can become the proud possessor of your very own land—a spacious homesite in the community area of your choice—to meet your present or future needs and desires"); CX 30H (". . . magnificent 'picture window' views from each and every homesite . . . an excellent piece of property on level or rolling terrain that is very picturesque, very beautiful, but even more important—well-suited for homesites").

[216] For similar language in earlier brochures *see* CX 393N and CX 232B (both 1961). For a later brochure *see* CX 632P (1974).

. . . [P]ower, phone lines, piped water and gas available to each home *in residential* sections now under construction. . . . (CX 30G) (emphasis added)

324. Note that these statements do not say that utilities are available "only" in the building areas, a qualification which would seem necessary to cure the deception involved in promiscuous use of the term "homesite" to include hinterland lots as well as core area lots. Moreover, after careful consideration, we have concluded that even a properly worded warning of availability "only" in building areas would probably be inadequate if it appeared—as here—only in occasional spots where it might or might not be read at the same time as or in conjunction with numerous references to "homesites".

325. In addition to Respondent's constant use of the term "homesite" to create the misleading impression that its lots—not excluding lots in the hinterland—are ready for building when sold, Respondent's salesmen have frequently exaggerated the pace of coming development at its subdivisions, as necessary to make sales of hinterland lots. Prognosticating the pace of such **[225]** development with any real accuracy under the circumstances of this case is practically impossible and Respondent has recognized the recklessness inherent in any attempt to do so by ordering its salesmen *not* to tell customers or prospective customers that the utilities will be in (or development will otherwise be complete) within a short or specific time.[217]

326. Viewed in a vacuum, such action by Respondent might seem meritorious and hardly subject to censure. However, our study of the evidence convinces us that Respondent has not adequately enforced its strictures against predicting the pace of development. There is abundant evidence that a substantial number of its salesmen have bandied such predictions about whenever they thought it would help win or hold a customer—and Respondent apparently does nothing but wink.

327. Follow on plat map CX 263, p. 68 (attached hereto as Appendix C) the testimony of the following witnesses regarding hinterland lots, which it will be recalled were the only kind that could be bought at Respondent's dinner parties up north (TR 903).

Consumer Alper (purchaser of lots in Units 20 and 26): Well, they said that Unit 20 is closer to the area that's being developed and the other one was in Unit 26 where it would take about five years. This would take a shorter time, maybe more like three years, to have utilities brought in that area (TR 5412, 5422) (emphasis added).

Consumer Scirica (purchaser of a lot in Unit 17). [His salesman] said it would be the

[217] Salesman Levine testified to being told by his superior: "[W]e don't have a crystal ball to tell what is going to be tomorrow" (TR 14616). Salesman Cavallo testified that it was against Respondent's policy to refer to a specific time period for development "because you couldn't tell" (TR 13834–35). *See also* the testimony of witness Roth, a principal marketer of Respondent (TR 21560).

next unit that would be developed [226] because it was not that far from Panorama Inn. . . . He said within five years it would be developed. . . . He said it would be complete with everything you want and that your utilities and everything else would be there (TR 5524–25).[218]

Saleswoman Pitchford: Way out there [in Units 4 and 5 she told customers, if asked, that she did not know when gas or water or other utilities would come out to their property but did assure customers that Unit 10 (adjoining Unit 16) and Unit 8 would have electricity and utilities in there within about two years. (She herself was assured by her superiors that] there would be facilities in all of Unit 16 and Unit 10 within the next two years, and also Unit 11.) (TR 10252–53)

Salesman Wilson: [Asked what he had told customers about utilities, he testified that] I was told that it was one of the guarantees, that the utilities would be underground so that they would not mar the beauty of the landscape (TR 9656). [And again:] Paved streets, utilities, sewage. We would tell them about our plant and, of course, utilities is (sic) water but I'd put water in there anyway—our own water plant (TR 9656). [Being] more conservative [than most other salesmen, Wilson advised his prospects that it would probably take 6 to 8 years (in contrast to other salesmen's estimates of 3 to 5 years) for this land to be fully developed from a $4,000 to $12,000 lot] (TR 9655–56).[219] [227]

328. Some witnesses did not refer specifically to "utilities" but talked more generally about the pace of "development" of various areas beyond the Unit 16 Complex. Inasmuch as even the hinterland of Rio Rancho already had its lots and streets laid out, installing utilities had to constitute the bulk of the "development" that remained to be done. Accordingly, it seems a fair inference that utilities are what both salesmen and consumers had chiefly in mind in the following testimony. (Again the significance of the testimony is best appreciated by following it on a map such as Appendix C (CX 263, p. 68)).

Consumer Pallas: [He saw no signs of development in Unit 20 but his salesman explained that] the development was not proceeding in a consecutive unit fashion, that there would be some development in some area, some in another area and that that particular area would probably be developed in about five years (TR 5738).

Consumer Cameron: When I bought (in) Unit 2 they told me we (they) were moving toward Unit 2. Now suddenly they used the area of development as now north (TR 4900).

Consumer Simmons: [Her salesman recommended Unit 13.] Well, he said it was very near to where the building was going on at the Lomas and that by the time we were ready to go out (west), which we expected it would be perhaps at that time in about 4 years, that it should be or they should be building there and we would be able to build a house (CX 1787).

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[218] The salesman also assured Scirica there would be a lake in Unit 20 (TR 5538).

[219] This kind of logic comes from Respondent's "ladder pitch", which assumes that all development cost is automatically reflected in the market value of a lot. For an illustrated example of this "pitch", *see* CX 513 (admitted to illustrate salesman Wilson's testimony).

Consumer Dellacoma: [Her salesman and his superior both stressed that the pace of development was] rapid [and that Unit 6 would be reached in 3 to 5 years.] He (the salesman) also took out a map . . . and he showed us where the current houses were set up as of '72 already. Then he said: "If you buy near here, this (Unit 6) is closer to where the population is now, so it is choice land" (CX 5063–66). **[228]**

329. The evidence seems clear that in a large number of cases Respondent's salesmen made a deliberate (and apparently successful) effort to keep disillusioned hinterland purchasers [who were apparently not satisfied with a building exchange privilege] from cancelling out by assuring them dishonestly that development of their barren lots was only a few years or a specified number of years away. In truth and fact the pace of development has been so slow that, as we have seen, after a decade and a half of what Respondent likes to call "the swift pace of development" (CX 30M) Rio Rancho Estates still had no more than 3,200 residential units built or building when Respondent's Manager Bailey testified here in 1977 (CX 162N; TR 19675, 19680), in contrast to over 75,000 lots sold by 1976 (CX 459–I).

330. In answer to all this, Respondent flatly denies that it made any representations about the pace of future development in the non-building areas of its subdivisions and continues to assert that its salesmen generally followed instructions to refrain from making any predictions about when development, including utilities, would reach specific areas or lots (RPF 134). Most people don't really care anyway, it argues, because they are satisfied with their right to exchange a hinterland lot for one in a building area whenever they decide to build. In support of these propositions, it mobilized the testimonial might of a dozen and a half witnesses (RPF 134–36). However, this testimony suffered from serious deficiencies.

331. In only one instance did Respondent's witness purport to deny a specific representation previously attested by Complaint Counsel's witnesses.[220] We have **[229]** examined this particular testimony with special care, referring to our impressions of the credibility of the witnesses on both sides, and believe that Complaint Counsel's witness was telling the truth. Respondent's rebuttal testimony is not credited. The rest of Respondent's dozen and a half witnesses were mostly present or former salespersons who testified only to their own experience and thus their testimony would not tend to refute testimony that other salesmen had made other (deceptive) representations.

[220] Respondent's saleswoman Gray at TR 14258 denied the testimony of Consumer Alper at TR 5412, 5422, that Gray had told her utilities would be installed in Unit 26 in five years. (She did not deny Alper's testimony at the same pages that she was told utilities would be in Unit 20 in three years.) Respondent also claims (RPF 136) that there was another instance of such direct refutation but we cannot find the alleged refutation. *See* TR 15364–65 where Saleswoman Tafone denied telling Consumer Benfante when development would reach her lot (in Unit 9). The difficulty is that we find no such statement alleged in the prior testimony of Consumer Benfante at TR 4148.

B. *Silver Springs Shores*

332. The development of Silver Springs Shores to date has been outlined above.[221] We found that as of 1976 only 160 of 450 miles of proposed hard-surface roads have been completed.[222] Neither a central water nor central sewage system exists (CX 164H) and Respondent is under no compulsion by law to install either unless and until a certain population density be reached (CX 164G-H). Absent such central facilities a purchaser must pay about $1,200 to dig his own water well and install his own septic tank (CX 164H).[221] Respondent's "arrangements" for electricity and telephone service are strictly limited to ten specified units in "the immediate building area" (CX 164–I).[223] In the more remote areas of Silver Springs Shores, extension of electric and telephone service is entirely dependent on the power companies' service extension policies and tariffs (CX 164–I). Not too **[230]** surprisingly, as of early 1976, there are still only 661 homes completed and 38 more a-building compared with 19,426 lots sold or contracted (CX 459K).

333. Against the backdrop of this very limited development of Silver Springs Shores, certain, at least, of Respondent's developmental representations have been quite deceptive. Here as elsewhere there has, of course, been constant reference to "homesites" without excluding from the term the preponderance of land *not* in an immediate building area.[224] Moreover, there has been flat-out deception by Respondent as to the status of streets and utilities at Silver Springs Shores. In metropolitan newspapers in 1973 Respondent was advertising:

> Even more important, your land at Silver Springs Shores is an integral part of a thriving, developing community *[w]here streets and utilities are already in*. . . . (emphasis added).[225]

It might, perhaps, be argued that if *any* streets and *any* utilities were "in", this statement would be technically correct. It seems, however, that most and certainly many people would take such a statement to mean that substantially *all* streets and substantially *all* utilities "are already in". As applied to Respondent's sadly lagging development at Silver Springs Shores, such a statement had to be terribly misleading.

334. In addition to this misrepresentation straight out of Respondent's headquarters it appears that, as at Rio Rancho, there has been

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[221] Above, page 70. [p.1422]

[222] Note, moreover, that a switch-over to central facilities would not only require an assessment of lot-owners for that purpose but would deprive them of the value of water wells and septic tanks already constructed.

[223] The "immediate building area" as of 1/9/76 was made up of Units 1, 2, 3, 4, 11, 15, 40, 43, 47 and 48.

[224] *E.g.*, CX 164D ("The section currently [1976] being developed consists of 25,244 homesites.") No lots being offered were, in fact, in "the immediate building area." *Cf.*, CX 164D and I.

[225] CX 72 (Detroit), CX 78 (Long Island).

a good deal of loose talk by [231] salesmen, not adequately policed by Respondent, encouraging doubtful buyers to believe that full-development is just around the corner. Indeed, one salesman assured Consumer Muzillo at a dinner party in 1973 that a lot in Silver Springs Shores' Unit 36 was even then "a fully developed area" and that "the streets are in, electrical lines, sewers" (TR 7244).

335. The fact was, as we have just seen, that even by 1976 electric service was still limited to "the immediate building area," of which Unit 36 was *not* a part (CX 164–I). There is no central sewage system in the whole subdivision (CX 164G-H). As for roads, their condition left it an open question in one consumer's mind whether they should properly be called "roads".[226] To call this a "fully developed area" was grossly deceptive.

336. Others of Respondent's salesmen did not hesitate to predict completion of development within a certain period, despite the impossibility of doing so accurately, as Respondent has recognized (TR 2156, 13834–35, 14616). In the Spring of 1973 Consumer Rydwels, for example, bought a residential lot in a Unit (31), not part of the immediate building area, then got out of it and bought a commercial lot in another non-building area (Unit 7) (TR 5203–08, 5210, and CX 164–I).

Q. Did they tell you when the community would be fully developed?

A. I don't know if they said that in their (podium) speech openly. I know that our particular sales person and other people we had spoken to more privately had also indicated 3 to 5 years on everything (TR 5203).

* * * * * * * [232]

Three to five years they anticipated that the area would have the facilities for construction of a house there. . . . There would be electrical wiring, sewage, water (TR 5295).

In the Spring of 1974 on a trip from New York to Silver Springs Shores, Consumer Rydwels found "little development . . . in general" (TR 5231) and was told by Ocala brokers that:

there didn't appear to be any prospects for the development of the property and unless there were sewage, water and electricity in there there was no way anybody would be interested that they knew in picking up lots like that (TR 5232).

* * * * * * *

Those things (sewage, water and electricity) as far as we know to date (1976) are not on the property (TR 5233).

Such evidence not only tends to disprove Respondent's 1973 newspaper ads that "streets and utilities are already in" at Silver Springs

[226] "Q. Can you tell us the condition of the roads at that time? A. There weren't any. It was just dirt things that you drive through. . . ." (TR 4797)

Shores but demonstrates graphically as of 1976 the irresponsibility of Respondent's salesmen's unpoliced "private" predictions to customers in 1973 that lots would be fully developed within three to five years.

337. Similarly, Consumer Pinto in 1973 bought a lot in Unit 17 (TR 7191–94) (still outside "the immediate building area" in 1976) (CX 164–I). Recognizing that no house could yet be built on the lot because nothing else was "in" and concerned that the lot be resaleable, Pinto asked Respondent's saleswoman whether everything would be "in" if she wanted to sell it in a decade. The saleswoman reassured her that "in five years, the way it was building up, that utilities would be in, sewers would be in, and so forth" (TR 7189). "Once people started buying houses and building," the saleswoman said, "the sewers would go in, the lighting and so forth, all **[233]** utilities would go in and . . . our property would go up" (TR 7189). Pinto understood that if people did not decide to build their homes, then that would slow down the timetable for sewers but she also understood that *"it was selling so rapidly she (the saleswoman) didn't have much property left"* (TR 7200).

C. *Eldorado at Santa Fe*

338. The present state of development at Eldorado at Santa Fe, with particular reference to the availability of utilities, is set forth above.[227] We found that of 29 miles of roads installed, only seven were graveled by 1975 (CX 161H).[228] In contrast to the 449 lots sold or deeded by mid-1976 (CX 459L), there are (as of 1975) only 21 occupied homes (CX 161L). Only 121 lots have water available (CX 161H). Sewage disposal is only by septic tank (CX 161K). Line extension policies and tariffs of utility suppliers make the cost of electricity and telephone service prohibitive for individual lot-owners located very far from "the immediate building area" (CX 161 I-J).[229] No doubt development under these conditions will be difficult, expensive and discouraging to many lot-buyers.

339. However, Complaint Counsel tender us little evidence of the deceptive statements which are our target here. Aside from too promiscuous use of the term "homesite"[230] **[234]** which seems to be Respondent's regular practice here as elsewhere, we find that Complaint Counsel have in this instance added little of significance to their evidence of deceptive tendency.

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[227] Above, page 72. [p. 1423]

[228] Lot purchasers may be assessed for the cost of improvement through their Community Association (controlled by Respondent) (CX 459L).

[229] Cost estimates for the farthest possible lot-owner to install service are over $30,000 for electric service and almost $8,000 for telephone service.

[230] *See, e.g.*, CX 173D.

D. *Oakmont Shores*

340. Analysis of the development of Oakmont Shores and the truth or falsity of Respondent's representations on that subject is badly complicated by the fact that (1) this project had really been "developed" by others (as "Ozark Paradise Village") and (2) after three or four years of unsatisfactory experience Respondent gave up trying to revive the project.[231] Under such circumstances, it is frequently hard to assess Respondent's responsibility in particular development situations. It is also difficult to assess the extent to which we are seeing dishonest predictions or merely optimistic ones which failed to materialize. Because of these complications, we attach little weight one way or the other to the development evidence at Oakmont Shores but it seems wise to review that evidence carefully for the record.

341. In the first place, the record is clear that here as elsewhere Respondent made constant use of the term "homesite" to describe the lots of land it was promoting and selling.[232] Since, as we shall see, many [235] of these lots seem to have been missing one or more of the utilities which the word "homesite" now commonly connotes, it is fair to say that the Oakmont Shores evidence lends support to our earlier condemnation of too-promiscuous use of the term "homesite", without careful regard for the actual state of development in particular situations.

342. With reference to roads, a 1972 promotional brochure contains this representation:

> All homesites face graded roads . . . five and one-half miles of road have already been paved with a macadam surface (TR 521A).[233]

These five and one-half miles of paved road were obviously quite small in comparison with the project's 56 and one-half miles of road *not* paved.[234] This frequently led Respondent's salesmen to assure customers that the rest of the road network would be paved.[235] One, at least, specifically promised blacktop within a year (TR 8404).

343. As a matter of fact, little if anything seems ever to have been

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[231] *See* above, page 73. [p. 1424]

[232] *See*, for example, a 1972 sales brochure:

CX 140A ("resort homesite of your dreams");
CX 140C ("invest in a homesite", "low-cost homesites");
CX 140D ("easy long-term payments for your homesite that almost any budget can afford");
CX 140–I ("lovely lakeview or wooded homesites," "the benefits of a homesite investment");

See also CX 521A; CX 101N, V, DD, CX 102E, L.

[233] Accord: CX 165G and CX 243D (property reports).

[234] By calculation from a total of 62 miles of roads (CX 1–I).

[235] TR 8709–10 (every "homesite" would be on a macadamized road);
TR9119 (macadam or blacktop);
TR 9002 (would be paved at a later time);
TR 8938 ("the roads would be paved").

done about paving the rest of the network of roads. Several 1973 purchasers testified that 1974 and later years brought nothing of significance in this respect.[236] Meanwhile, according to one saleswoman, [**236**] it was deliberate practice for salespeople to stay on the (five and one-half miles of) paved roads when showing prospective buyers around the development (TR 8552).[237]

344. As for the question of future maintenance responsibility, the property report dutifully disclosed that "[t]he developer is presently maintaining the roads but does not obligate itself to do so" and note was taken that legal liability for maintenance would fall on the Oakmont Community Improvement Association, Inc., until the County should accept such roads (CX 165H; RX 243D). However, this warning that Respondent could put the maintenance burden on lot purchasers (as Association members) was neutralized by one of Respondent's principals, Daniel Friedman. He assured the sales team at Oakmont Shores that as a practical matter Respondent had continued to maintain the roads at other developments and could be expected to do it here, just as a matter of self-interest, even after the development was sold out, to protect the resale market (TR 8567, 8571).

345. Friedman's assurances based on the Rio Rancho experience were passed on to customers by members of the sales team (TR 8600). This was inherently misleading because the road maintenance burden at Rio Rancho had by arrangement with the Sandoval County Commissioners been shifted to the County as soon as Respondent completed the roads there (CX 30J). In any event, according to the same saleswoman's testimony here, her own experience (June 1972–September 1973) was that even before the Oakmont Shores project was abandoned, Respondent did almost nothing to maintain the roads (TR 8568).

346. With reference to water, a 1972 promotional brochure for Oakmont Shores stated simply: "Water is supplied by wells" (CX 521A).

The Federal property report read:

> Water facilities consist of individual wells. The present estimated cost to a buyer for installation of a well ranges from $525.00 to $1,525.00, depending upon the depth of the well, and an additional $600.00 for a pump, tank and accessories. [**237**]

347. The "Declaration of Protective Covenants for Oakmont Shores, Inc.," dated 6/23/71 and signed by Respondent's Vice President and counsel here, Solomon H. Friend, Esq., provided in part:

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[236] TR 9010 (found no paved streets in 1974);
TR 8404–11 (grass still growing in the street in 1977);
TR 9090 (in 1974 the roads were "the same").

[237] (She explained euphemistically that this was to "confirm" her assurances to the customer that all streets would be paved.)

If and when a central water and/or sewer system becomes available to serve an individual lot, an individual well, cesspool or septic tank shall no longer be permitted on such lot (CX 528B).

A question arises as to whether a representation that "water is supplied by wells" (or that "water facilities consist of individual wells") fairly implies that such a well is waiting for a purchaser on the lot or must be drilled by him. In this admittedly ambiguous situation, Complaint Counsel argue for the former implication but we think the latter makes more sense. Certainly the cost data in the property report points that way, not only for the writer but for the reader. Consequently, there is no misrepresentation about the availability of well water, even though it appears from the testimony that the vacant lots at Oakmont Shores in fact came without drilled wells.[238]

348. It will be noted that neither Respondent's sales brochure nor the property report (both quoted above) even mentioned a central water system, although the possibility was referred to in the Protective Covenants (also quoted). It appears, however, that Respondent's salesmen frequently found it necessary to reassure customers that they would not have to live with well water indefinitely. Consumer Brand [238] for example, quoted his salesman as saying "there was going to be water brought in there; water lines would be brought in on the streets" (TR 9120).

349. While Brand recalled only that his salesman had said water lines would be installed "eventually" (TR 9080),[239] one saleswoman told her customers that Respondent would be putting in central water "in the very near future" (TR 9120) and her less credible husband (TR 8567), also a salesman for Respondent, allegedly promised his customers that:

While they would have to drill their own well if they built today and put in their own sewer system, that they would be able to tie into a central system that the company was going to put in at some future date.

* * * * * * *

I told people that the future date wasn't very far off because the company's plans were to develop a given piece of property up on the highway and expand from there; leading them to think that they wouldn't be too far from water in the near future.

Q. This is central water that you are talking about?

A. Yes, sir.[240]

350. Clearly, some of Respondent's customers were given assur-

[238] Witness Bongers denied that there were, in fact, any wells and illustrated with a memory that a nearby lot-owner asked Bongers to put in a well, presumably together (TR 8504). *See also* the testimony of witness Bristow, who expressly understood that individual lot-owners had to drill for their own water (TR 9280).

[239] Accord: Consumer Weber (TR 8938).

[240] The "Reverend" Thomas Pollock was a three-time Federal felon.

ances of central water (and some were assured it would be soon) but there is no record evidence one way [239] or the other bearing on whether or not the company really had such plans, except the provision in the Declaration of Restrictive Covenants that if a central system is initiated, individual wells must be abandoned in favor of the central system (CX 528B). This does seem to imply that Respondent at one time had the possibility of a central system in mind, even though it does not appear ever to have gotten around to doing anything about it before abandoning the whole Oakmont Shores project in 1975.

351. As concerns sewage, a 1972 promotional brochure stated: "Sewage disposal consists of individual septic tanks or other disposal units" (CX 521A).

The Federal property report stated:

> Sewage disposal is by individual septic tanks or individual sewage treatment plants, depending upon soil conditions. The present estimated cost to buyer of an installed septic tank or treatment plant varies from $300 to $1,200, depending upon the soil conditions in a particular area as well as the type and size of the installation (CX 165G; RX 243D).

352. The property report went on to warn in some detail that there was a dispute between Respondent and the Missouri Water Pollution Board as to whether septic tanks and tile fields function properly in the State of Missouri or constitute a threat to the quality of both surface and subsurface water of the State. It was further explained that if it should prove necessary to give up the septic tanks, the Oakmont Community Development Association was authorized to install an appropriate sewage system and to levy assessments therefor.

353. As with water, a question arises whether a representation that "sewage disposal consists of individual septic tanks or other disposal units" (or that "sewage disposal is by individual septic tanks or individual sewage treatment plants") fairly implies that such a facility is waiting for the purchaser on the lot or must be installed by him. Again, as with water wells, we think common sense [240] points to the latter conclusion (*i.e.*, that a consumer should realize a tank must be installed by him) and we are confirmed in our thinking by the additional language of the property report—which, of course, the consumer may or may not have read[241]—that the "cost to buyer" of installing a septic tank would be $300 to $1,200. Reaching this conclusion, it is immaterial that the record seems to be lacking in evidence as to whether any septic tanks were, in fact, installed.

[241] Witness Beller apparently read this in the property report (TR 8747) but the situation is not clear as to others.

354. Again, as in the case of water, there is some testimony that Respondent's agents assured customers that central sewage disposal would come[242] but things got worse instead of better.[243]

355. One problem deserves special attention. The small type in the complex "Declaration of Protective Covenants" of Oakmont Shores, Inc., contained a provision which would *require* a landowner to give up his septic tank (and investment therein) if a central sewage system were to be installed (CX 528B).[244] This was not referred [241] to either in Respondent's promotional brochure (CX 521A) or its property report (CX 165G; RX 243D). It became the subject of affirmative misrepresentation by Respondent's agent Morrison (saleswoman Pollock's prior husband), who assured Consumer Bristow, at least, that "it would not be necessary [to convert] if we had a proper septic tank" (TR 9281).

356. As for electric power, Respondent's 1972 promotional brochure stated: "Electric power from Carroll Electric Corporation and White River Valley Electric Cooperative Corporation" (CX 521A). The Federal property report stated: "Electricity is furnished by the following companies (identifying Carroll and White) and adds:

> All costs for installation of electrical service will be paid by the utility companies, or Oakmont Community Improvement Association, Inc., in accordance with the service extension policies of the utility companies. Utility companies have indicated that they will expand facilities to serve additional lots as and when the demand develops. However, there are no legal assurances that the companies will so expand their facilities. The cost for electrical services by the two companies is as follows: (setting out required deposits and minimum service fees required) (CX 165H; RX 243D-E).

357. It appears from the testimony of one consumer that no electric lines passed his lot, the nearest line being 2–3 city blocks away (TR 9277–78). Even, however, if we assume that many lot purchasers found themselves similarly situated, there is nothing in the record to indicate that Respondent's salesmen's assurances of the immediate or ultimate availability of electric power[245] [242] proved wrong or that the costs of hook-up were not borne as indicated in the property report (quoted above).

358. The situation with regard to telephone service seems to have

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[242] TR 8938 (Witness could not recall time schedule but knew his salesman had "told us that . . . they would put in utilities"). Saleswoman Pollock told customers that "the sewers would be put in by the AMREP Corporation but that would take a little longer [than central water] because they had to blast" (TR 8567).

[243] TR 9148–49: "I have been visiting once a year [since 1974] and nothing has been improving out there as far as I can see."

[244] "If and when a central water and/or sewer system becomes available to serve an individual lot, an individual well, cesspool or septic tank shall no longer be permitted on such lot."

[245] TR 8567 ("There is a rural co-op down there and they [purchasers] were told they could have power-electric, power-immediately"); TR 9253 ("no problem to hook up utility whenever we were ready"); TR 9117 ("eventually, he says, that there will be water and electricity through here"); TR 8938 ("They told us that . . . they would put in the utilities, such as electricity").

been similar to that concerning electric power and we omit detailed discussion.[246] Natural gas was the subject of hardly any evidence.[247]

359. We have gone into the availability of utilities at Oakmont Shores in detail far beyond the importance of the subject in order to make the highly unsatisfactory state of the evidence clear. We find that Complaint Counsel have not carried their burden to show significant developmental misrepresentations other than too-promiscuous use of the term "homesite" during Respondent's tenure as developer at Oakmont Shores.

IV. EMPLOYMENT REPRESENTATIONS

360. Complaint Counsel ask us to find, in accordance with the allegations of Complaint Paragraphs 32–33, that Respondent has misrepresented the abundance and quality of employment opportunities in the Rio Rancho Estates area as part of its effort to sell Rio Rancho lots to dwellers in the big cities of the North. Our own search of this massive record has turned up nothing more impressive than the handful of incidents which Complaint Counsel cite to us (CCPF 200–02). **[243]**

361. These examples of misrepresentations are as follows:

1. *Representation:* ". . . that there were a lot of job opportunities in Albuquerque of comparable salaries." *Reality:* Consumer's salary dropped from $9,000 to $6,000 a year and her husband never got back to his $18,000 east coast salary level (TR 9884–85, 9891–92).

2. *Representation:* ". . . that job opportunities were astronomical." *Reality:* Consumer could find nothing in his field (delicatessen manager) (TR 4023–25, 4030–44).

3. *Representation:* that a technical or specially qualified person "can easily get work." *Reality:* Consumer, a hearing aid saleswoman, found work but was unable to make nearly as much money as back in New York (TR 1791–92, 1806, 1811–12).

4. *Representation:* ". . . that they would have no difficulty obtaining teaching jobs in Albuquerque." *Reality:* Consumers were interviewed by Albuquerque Public Schools System but were not offered employment (TR 5728, 5747–48, 5760–67).

5. *Representation:* that "there would be job opportunities," for teachers with a master's degree. *Reality:* Uncertain. Consumer never,

[246] *See* CX 521A (brochure); CX 165–I and RX 243E (property reports); TR 9252 and 9277–78 (testimony of Consumer Bristow).

[247] Saleswoman Pollock told her customers it would be "many years" before natural gas would be in and meanwhile they would have to make do with propane tanks (TR 8567). *See also* CX 521A (brochure) and CX 165H and RX 243D (property reports).

in fact, moved to Rio Rancho but the record does not reveal what, if any, attempts she made to obtain employment. [244]

362. We cannot read such statements as promises or guarantees of employment nor do we think that such would be the interpretation of the ordinary consumers. Indeed, these statements do not even promise "best efforts" by Respondent to get lot-purchasers jobs. Yet the record shows that Respondent did make some kind of effort to help customers find jobs, by arrangement with the Guideline Employment Agency in Albuquerque (TR 20395) and other agencies, both public and private (TR 9423, 13840–41, 14619, 14853, 15356).

363. We have already found that Albuquerque is undoubtedly a fast-growing city.[248] Nor is there any doubt about Respondent's very real efforts to lure sundry businesses to its own "industrial park" (TR 24025). In the absence of unemployment statistics to the contrary, it does not seem unreasonable to have told out-of-state prospects that job opportunities were good in Albuquerque. Accordingly, we decline to find a deceptive tendency in the handful of alleged employment misrepresentations advanced by Complaint Counsel.

Unfair Contractual Provisions

I. RESPONDENT'S ADHESION CONTRACT

364. In several respects the form contract signed by Respondent and its customers is as unfair as the parties' substantive agreements. Before analyzing four major facets of Respondent's form contract's unfairness it is important to establish its character as an "adhesion" contract, since the standards of fairness to be applied obviously depend in part on the way the contract was entered into.

365. An "adhesion" contract is a "take-it-or leave-it" contract. Commonly, now, big sellers unilaterally prepare a standardized or form sales contract embodying all the terms they want in it and because of their economic power vis-a-vis most individual buyers, the latter, either "adhere" to the seller's whole contract or don't buy. There is no question but that "adhesion" contracts serve [245] a useful function in a world of mass production and distribution[249] but their inherent capacity to oppress consumers has increasingly attracted the attention of jurists and commentators.

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[248] Above, at page 113. [p. 1451]

[249] "Nothing can approach in speed and sanity of readaptation the machinery of standard forms of a trade and for a line of trade. They save trouble in bargaining. They save time in bargaining. They infinitely simplify the task of internal administration of a business unit, of keeping tabs on transactions, of knowing where one is at, of arranging orderly expectation, orderly fulfillment, orderly planning. They ease administration by concentrating the need for discretion and decision in such personnel as can be trusted to be discreet. This reduces human wear and tear, it cheapens administration, it serves the ultimate consumer." Llewellyn, K.N., Book Review, 53 *Harvard L. Rev.*, 700–01 (1939).

366. A leading law review recently summarized the problem as follows:

> In recent years the realities of mass production and a consumer economy have undermined the theoretical basis for much of traditional contract law. Today, an active consumer enters scores of contracts every week without in any real sense agreeing to the terms that are imposed upon him. For the very reason that these terms are imposed rather than agreed upon, they are almost universally unfair.[250]

Another commentator has written:

> By virtually eliminating the bargaining element, the standardized form contract invites new manifestations of old sins. Power, greed, and "hog-drafting" are not easily concealed [246] or euphemized in the bargaining process which precedes a negotiated, tailor-made, contract. Nor do their terms operate beyond the confines of the contract in which they appear. By contrast, the unilateral "production" of a printed contract can incorporate the time and talent of experts in manipulating form and content to disguise the one-sided nature of the document. With periodic revisions to prevent the recurrence of adverse experiences in or out of court, the form determines contract relations with countless and faceless adhering parties.[251]

367. The record here contains samples of the form sales contracts used by Respondent at each of its four subdivisions.[252] Generally similar, all may fairly be described as "adhesion" contracts. All are printed forms with almost nothing left for individual execution except property descriptions, signatures and dates.[253] Each contains two legal-size pages of fairly small type. A large number of provisions attests the complexity of each contract.

368. Inspection of the 286 signed "Reservation And Purchase Agreements" in this record reveals no alterations of the printed terms to individualize the standard format in any significant respect.[254] Nor [247] are we aware even of any testimony of bargaining between Respondent and a customer about changing any contract provision in any respect.

369. As for the parties' relative bargaining power, customers were constantly reminded that Respondent's assets were over $150 million and that its stock was listed on the prestigious New York Stock Exchange (*e.g.*, TR 9649). On the other hand, almost all customers were

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[250] Introduction to Slawson, W.D., "Standard Form Contracts and Democratic Control of Lawmaking Power," 84 *Harvard Law Review* 529 (1971).

[251] Meyer, A.W., "Contracts Of Adhesion And The Doctrine Of Fundamental Breach," 50 *Virginia L. Rev.* 1178, 1180 (1967).

[252] *See*, "Reservation And Purchase Agreement" for Rio Rancho Estates (CX 155), Silver Springs Shores (CX 154), Eldorado at Santa Fe (CX 106), and Oakmont Shores (CX 152).

[253] Buyers are also requested to initial for receipt of documents like property reports and to indicate whether the property will be used as a principal residence but failure to fill out these blanks would not seem to affect the contract's validity.

[254] Of three alterations found, two amended the interest rate from 6 percent to 7 percent and another contained a (form) rider changing the payment schedule.

individuals of such modest means that one job of a salesman for Respondent was to try and gauge whether a customer could afford to put up a small sum each month[255] to buy a lot (TR 9652–54). To expect such an individual customer, after having been prepared by Respondent's high pressure and deceptive marketing techniques to "sign up", should stop to read over his form contract carefully and proceed to bargain with his salesman concerning such standard provisions as those governing credit terms, forfeiture on default, disclaimer of agents' representations and restraint on alienation seems unrealistic. We turn now to how Respondent's adhesion contract in fact deals with each of these four subjects.

II. CREDIT TERMS

370. Respondent's lots are offered for sale for cash but substantially all lots at all subdivisions have been sold under installment contracts requiring monthly payments over terms ranging from five to eight years (CX 1E, CX 1J, CX 5D, CX 5E). Although commonly called "installment plan sales", Respondent's "Reservation And Purchase Agreements"[256] are technically "conditional sales" agreements. All form contracts contain the essential ingredient of a conditional sale: the reservation of a security title. [248]

As set forth in the Purchase Agreement, Buyer will receive a Warranty Deed to the lot(s) when all required payments have been made in full but until all payments have been made, Seller retains title to the lot(s).

So far Respondent's form is not unusual for an installment sale land contract.

371. Respondent goes beyond usual practice, however, in providing that seller retain not only title but possession (and thus use) of the land in question until it is paid for. Whereas a New York State study reported that conditional sale contracts "almost universally" grant immediate possession of the property to a conditional vendee[257] and another study found that "under an installment land contract the vendee normally takes possession . . ."[258] Respondent retains possession and use of land sold conditionally by the simple device of making no contrary provision in its contract.[259] [A Florida offering statement expressly recognizes that Respondent "retains title and *possession* of

[255] $50 to $100 per month seems to have been a usual payment (TR 9653).

[256] CX 155 (Rio Rancho); CX 154 (Silver Springs Shores); CX 152 (Oakmont Shores); CX 106 (Eldorado at Santa Fe).

[257] King, J.W., Comment, "Forfeiture: The Anomaly of the Land Sale Contract", 41 *Albany Law Review* 71, 74 (1977).

[258] Nelson, G.S., and Whitman, D.A., "The Installment Land Contract—A National Viewpoint," 3 *Brigham Young University Law Review* 541 (1977).

[259] The common law rule is that in the absence of a contrary contractual provision possession follows title and use/occupation follows possession. 92 *Corpus Juris Secundum*, "Vendor and Purchaser", §§ 284–85.

the property until contract is paid in full and the Warranty Deed issued" (emphasis added) (RX 201F).]

372. Plainly the absence of express provisions as to possession and use in any form contracts for Respondent's developments could well be confusing and deceptive to lay buyers who have never had the benefit of a law school course in "Vendor and Purchaser". In any **[249]** event, Respondent's retention not only of title to its lots but of possession and use as well would seem to represent an unusual provision and a substantial overreaching which consumers endure because this is an adhesion contract and consumers take it or leave it.

373. The significance of depriving a conditional vendee of possession and use as well as title to this land purchased becomes fully apparent only in light of another of Respondent's practices: it charges the consumer a time price which in effect includes interest on the unpaid balance of the price until it is all finally paid (typically seven years from purchase) (CX 162Z-AA). But since the vendee presently gets *nothing* for his money—neither possession/use nor title—there is no reasonable basis for charging him interest or its equivalent on the balance "due" Respondent. Analysis makes this clear.

374. No one would think of trying to charge interest on a loan until it is made. There is no more logic in charging interest or its equivalent on the unpaid purchase price of something the buyer has not yet received. Indeed, it would make more economic sense for the buyer to charge Respondent interest on accumulating payments—but this is an adhesion contract prepared by and for Respondent. Here the vendee will receive nothing—no title, no possession, no use—while payments accumulate over an average of seven years after contract.

375. It seems likely that most of Respondent's customers, if they understand the legal theory at all, confuse a "layaway" type installment sale like this, where the buyer gets nothing for his money until years later, when title finally passes, with the garden variety kind of installment sale in which, as noted above, a buyer gets possession and use all the while he is paying off the purchase price. The latter kind may sometimes seem a hardship to a purchaser but there is a real economic tradeoff between an interest obligation and the benefit of possession and use. Here, by contrast, there is no economic justification for awarding Respondent interest or an interest equivalent for *not* giving its customers possession or use of the land in question. This provision **[250]** of Respondent's adhesion contract is not only unusual but unfair.

III. FORFEITURE PROVISIONS

376. There can be little doubt that the chief attractiveness of a conditional land sale contract to a seller lies in its provision for quick

and easy termination of the purchaser's interest on default: *the seller gets a complete forfeiture of all the money purchaser has already paid in.* Respondent's Rio Rancho form contract[260] contains a fair example:

If Buyer shall be in default for a period of 60 days in the making of any payments exactly as due, Seller shall have the right to terminate this Contract by mailing to Buyer notice in writing of its election to do so, sent by registered or certified mail. If within 14 days after Seller so mails such notice,[261] Buyer does not pay in full all payments then in default (i) *all rights of Buyer hereunder and in and to the lot(s) described on the first side shall cease and terminate, and (ii) all payments made by Buyer may be retained by the Seller, as liquidated damages and not as a penalty.* An affidavit made by Seller or its agent showing such default and cancellation and recorded in the office of the County Clerk **[251]** of Sandoval County, New Mexico, shall be conclusive proof, in favor of any subsequent bonafide purchaser or encumbrancer for value, of such default and cancellation; and Buyer hereby irrevocably authorizes Seller or its agent to thus declare and record such default and cancellation, and agrees to be bound by such declarations (emphasis added).

Respondent's Silver Springs Shores form contract[262] is substantially similar, although it contains a sliding scale of grace periods geared to the percentage of the price already paid in:

Seller will grant Buyer the following grace periods without penalty if Buyer is unable to make any payments exactly on the due date: 60 days if 10% or less of the principal amount of the purchase price has been paid; 90 days if more than 10% but less than 25% of the principal has been paid; 120 days if 25% but less than 50% of the principal has been paid, and 150 days if 50% or more of the principal has been paid. This provision shall not prohibit the accumulation of interest for the period of time a payment may be overdue. Seller shall notify Buyer in writing by registered or certified mail at least 14 days prior to the expiration of the applicable grace period, of the amount then due under the contract and the exact expiration date of such period and Buyer shall not be deemed in default in the accumulation of interest for the period of time the contract may be in default. It is understood that Seller has undertaken expenses in developing and selling his property and, therefore, that *all prior payments made by Buyer will be retained by Seller, as agreed, as liquidated damages in the event of failure to make any required payment on the purchase* **[252]** *of this property within the grace period as set forth herein.* The affidavit of Seller or its agent attesting to the termination of this Agreement, the default of the Buyer or the transfer or exchange of property covered hereunder, recorded in the official records in the office of the County Clerk shall be conclusive proof of the termination, default, transfer or exchange, in favor of any subsequent bona fide purchaser or encumbrancer for value. In such case, the Buyer irrevocably authorizes Seller thus to attest and record such affidavit as though it were the act and deed of the Buyer (emphasis added).

The forfeiture clauses in the form contracts used by Respondent at

[260] CX 155B (#11 of "Guarantees and Conditions of Sale").

[261] Respondent's SEC 10K filed 4/30/75 claims that "the Company's general policy is to cancel contracts in which no payment has been received for approximately four months. Under extenuating circumstances, the company may extend this delinquency period" (CX 5QQ).

[262] CX 154B (#12 of "Guarantees and Conditions of Sale").

Eldorado[263] and formerly at Oakmont Shores[264] have generally been similar to those used at Rio Rancho.

377. It must be made quite clear that Respondent stands by no means alone in providing for quick and easy forfeiture of the buyer's interest in the event of any default in payment. In many states the installment land contract is "the predominant means of vendor financing of land sales" and a forfeiture clause is found in "virtually every installment contract." Nelson, G.S. and Whitman, D.A., "The Installment Land Contract—A Natural Viewpoint," 3 *Brigham Young University Law Review,* 541–42 (1977). A number of states, including New York, still permit such forfeiture and this, of course, accounts for much of the current popularity of the conditional land sale contract among land developers: **[253]**

> The basic attraction of the land contract to the seller is the ease and economy by which the purchaser's interest may be eliminated in the event of his default. Since the purchaser, unlike the mortgagor, has no right of redemption or sale, the seller may avoid the costly and time-consuming foreclosure proceedings mandated under a mortgage. Instead, he simply retains the installments and terminates the purchaser's interest.[265]

378. That systematic forfeiture of this kind is still employed as a regular business practice in the United States in the late 20th Century is shocking. Students of legal history tell us that such forfeiture is characteristic of relatively primitive societies where the distinction between ownership of property and security for a debt is not well understood.[266] The dawn of such understanding and the growth of judicial protection for a mortgagor's equity of redemption out of Equity's abhorence of penalties occurred long ago in our Anglo-American legal history.[267] By 1675 Lord Nottingham could explain that "in natural justice and equity the principal right of the mortgagee is to the money and his right to the land is only as security for the money."[268] In 1687 it was held that a mortgagee in possession of the property was liable to account for any advantages over and above his interest which he got thereby.[269] **[254]**

379. How the right to a forfeiture survived in conditional sale land contracts despite the law's general anti-forfeiture posture and its protection of the mortgagor's equity of redemption in particular is not really clear. However, it has been suggested that when modern in-

[263] CX 152B (#7 of "Guarantees and Conditions of Sale").

[264] CX 106B (#9 of "Guarantees and Conditions of Sale").

[265] King, J.W., Comment, "Forfeiture: The Anomaly of the Land Sale Contract," 41 *Albany Law Review* 71, 74 (1977).

[266] Wigmore, J.A., "The Pledge Idea: A Study In Comparative Legal Ideas," 10 *Harvard Law Review* 321 (1897).

[267] *See generally* Holdsworth, W.S., *History of English Law,* I:457; V:293, 330–32; VI: 663–65.

[268] *Thornborough* v. *Baker,* 3 Swanst, at p. 630 (1675).

[269] *Fulthorpe* v. *Foster,* 1 Vern. 476 (1687).

stallment sales of lots by developers began to become common, the image which lawyers and judges kept in mind was the executory land contract[270] (which merely holds the fort briefly until title can be checked, financing arranged and a deed prepared) rather than the mortgage (which was, of course, the more appropriate legal analogy).

380. Be that as it may, large-scale land developers like Respondent here have taken as much advantage of this legal archaism as possible and many States have already moved in varying ways and to varying extents to close the loophole. Thus some, like Iowa[271] and Minnesota[272] have by statute guaranteed conditional vendees minimum "grace periods" within which to make late payments. Other states have taken more drastic action. Maryland now flatly prohibits forfeiture in installment land contracts for the sale of residential property to a non-corporate vendee, and the vendor can utilize the land to satisfy the vendee's debt only through a foreclosure sale (from which the vendee is entitled to any surplus) just as in the case of a mortgage.[273] A very recent Oklahoma statute treats all installment contracts entailing a transfer of **[255]** possession to the vendee[274] as mortgages and thus makes the forfeiture remedy unavailable to a vendor.[275]

381. In some states it has been the judiciary rather than the legislative which has taken action to reform this obvious anachronism. Again, some courts have simply guaranteed "grace periods" for defaulting vendees to make up missed payments, while others have in one way or another created something like an equity of redemption with mortgage-type protection for the defaulting vendee.[276] Yet others have awarded the conditional vendee restitution of his payments in excess of the vendor's actual damages (rental value during purchaser's occupancy plus incidental damages such as repairs and resale agent's commission).[277]

382. In sum, there is widespread feeling throughout the country, embodied in both legislation and judicial opinions, that the conditional sale device employed by Respondent must be brought into line with the judicial wisdom of many years. That this Commission itself has no sympathy with such forfeitures in the analogous case of goods appears from a recent consent order providing that "layaway" customers of a

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[270] Nelson, G.S. and Whitman, D.A., "The Installment Land Contract—A National Viewpoint," 3 *Brigham Young University Law Review*, 541–43 (1977).

[271] Iowa Code Ann. Sections 656.1–.6 (West, 1950).

[272] Minn. Stat. Ann. Section 559.21 (West Supp., 1977).

[273] Md. Real Property Code Ann. Sections 10–101 to 108 (1974); Md. R.P. W79. Md. R.P. W70 to 72, W77.

[274] Apparently so phrased to avoid including executory land purchase contracts.

[275] Okla. Stat. Ann. tit., 16 Section 11A (West Supp. 1976).

[276] *See*, for example, *Nigh* v. *Hickman*, 538 S.W. 2d 936 (Mo. App., 1976); and *H & L Land Co.* v. *Warner*, 258 So. 2d 293 (Fla. App., 1972).

[277] *Jacobson* v. *Swan*, 278 P 2d 294, 3 Utah 2d 59 (1954); and *Venable* v. *Harmon*, 233 Cal. App. 2d 297, 43 Cal. Rptr. 490 (1965) (based on Cal. Civ. Proc. Code Section 580b (West, 1970).

merchant should no longer face contract cancellation and forfeiture of all previous payments merely because they could not continue payments on their "layaway" purchases. *S. Klein, Inc.,* File No. 762 3047, 7/13/78. [95 F.T.C. 387 (1980)]. **[256]**

383. Mr. Justice Holmes once remarked that "it is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV."[278] Here there is not even *that* defense. For at least three centuries the prevailing rule has been the other way. It is time for trade practice to catch up with Lord Nottingham. We conclude that the forfeiture provisions of Respondent's adhesion contracts are grossly unfair to its installment land purchasers.

IV. INTEGRATIONS/DISCLAIMER CLAUSE

384. A third important respect in which Respondent's adhesion contract is unfair to the consumer who is induced to sign it is its inclusion of integration/disclaimer clauses. These supplant all prior negotiations, including salesmen's representations, true or false, by the final, formal conditional sale contract which, of course, is carefully drafted in advance to resolve all questions to Respondent's advantage. The following language appears in all of Respondent's contracts:

> I [We] understand that by signing below I am [we are] offering to purchase the lot(s) on the conditions set forth, and it is agreed that this Purchase Agreement sets forth the entire agreement between the parties, that no agent or representative of the Seller shall have any authority whatsoever to change or modify this Agreement in any manner, or to make any other agreement or representation on behalf of the Seller, and that if Rio Rancho Estates, Inc. signs a copy hereof this will be a binding contract, which may not be modified or amended except in writing, signed by Buyer and Seller (CX 286A). **[257]**

The Silver Springs Shores and Oakmont Shores versions insert after the word "parties" in line 5 the clause:

> . . . and that no oral representations have been made to induce Buyer(s) to enter into this Agreement (CX 152A, CX 154A).[279]

385. The first clause is really only a little parole evidence rule, the applicability of which would be presumed at law in the case of a true, bargained contract, even if the contract contained no such provision.

> There is . . . a general presumption that a written contract complete on its face integrates the final intentions and embodies the final and entire agreement of the parties. 17 *Am. Jur.* 2d, Contracts, Section 260.

[278] Holmes, O.W., "The Path Of The Law," 10 *Harvard Law Review,* 457-478 (1897), reprinted in Lerner, Max, *The Mind And Faith Of Justice Holmes"* (1954), at p. 71, 83.

[279] The same disclaimer appears in Eldorado's Property Exchange Amendment (CX 105A).

However, in the case of an adhesion contract such as this, where a powerful seller crams all his carefully selected boiler plate down the throat of a little buyer as part of the price of "agreement", it is not reasonable to presume deliberate, bargained assent to the inclusions and exclusions of the contract. Agreements between Respondent's salesmen and their customers in such case are neither more nor less enforceable than if the contract contained no integration clause. [Substantially, similar logic applies to the second clause, warning the buyer that none of Respondent's salesmen have authority to vary the terms of the printed agreement or "to make any other agreement or representation on behalf of the seller."]

386. When we reach the special clause noted above (disclaimer of oral representations at certain locations), a new element of public policy is added. An adherent to Respondent's form contract is here required to agree that "no oral representations have been made to induce Buyer(s) to enter into this agreement." **[258]** In this situation, even if the contract were a true, bargained one, as Professor Williston points out:

> This reason [*i.e.*, presumption that the parties reduced the whole agreement to writing] is obviously inapplicable to a situation where an obligation is imposed by law [*e.g.*, to tell the truth] irrespective of any intention to contract. . . . Therefore if a buyer is induced by positive statements of fact to enter into a written contract for the purchase of goods, there seems no reason why these statements should not be admitted in evidence. False and fraudulent statements inducing the formation of a written contract may, of course, be proved. . . .[280]

387. It is clear that a purchaser-adherent to Respondent's form contract would not generally[281] be precluded at law from proving fraud by Respondent or its agents in the inducement of this contract and, indeed, should not be so precluded, even in the absence of fraud, where, as here, an adhesion contract is involved. That being the case, Respondent's inclusion in its adhesion contract of an integration/disclaimer clause purporting to deprive salesmen's representations and promises of operative effect must no doubt have some tendency to mislead purchaser-adherents insufficiently versed in the law to know Respondent cannot really do such things. As stated by the Commission in *Automobile Owners Safety Insurance Co.*, 53 F.T.C. 956, 961 (1957), ". . . [S]uch provisions . . . might discourage in some

[280] Williston, S. & Thompson, G. J., *Selections From Williston's Treatise On The Law Of Contracts, Revised Edition* (1938), Section 643.

[281] While the older cases frequently refused relief to the victim of fraud if he were negligent, the more modern ones hold that negligence is no defense to a fraud charge and a disclaimer of fraud improvidently entered into will not ordinarily bar proof of fraud either in the execution or inducement of a contract. *See* Calamari, J. D., "Duty To Read—A Changing Concept", in 43 *Fordham Law Review*, 341 at 343 (1974).

instances the making of otherwise valid claims." That is an unfair business practice. [**259**]

V. RESTRAINT ON ALIENATION

388. Respondent's form "Reservation And Purchase Agreement" for Rio Rancho (CX 155B), Eldorado (CX 106B) contain, and that for Oakmont Shores (CX 152B) did contain, another provision which it is hard to conceive a buyer with anything like equivalent bargaining power would accept. Until all payments have been made and a deed obtained from Respondent, Respondent must approve any transfer of the conditional sale contract:

> [T]his Purchase Agreement and any rights or interests hereunder are transferable by Buyer only with written consent of Seller on forms furnished by Seller and upon payment of a transfer fee, provided all payments due under this agreement to the date of transfer shall have been paid.

The attempt to deprive purchasers of Respondent's lots of such an important property right through the mechanism of an adhesion contract is sufficiently oppressive to be deemed an unfair business practice.

CONCLUSIONS OF LAW

I. RESPONDENT

Respondent and its controlled subsidiaries have since 1961 conducted a unitary enterprise to sell largely undeveloped land in interstate commerce. (*See* Findings 2–13)

Comment: A parent corporation is responsible for its subsidiaries' acts in a unitary enterprise. *P. F. Collier & Son Corp.* v. *F.T.C.,* 427 F.2d (6th Cir. 1970), *cert. den.,* 400 U.S. 926. While land itself is local, an interstate network for nationwide sales directed from New York headquarters, with [**260**] advertisements, contracts, payments and other contacts constantly crossing state lines, meets the tests of "commerce" laid down by Supreme Court in *United States* v. *Southeastern Underwriters Association,* 322 U.S. 533 (1944). Note also that since 1975 Section 5 of the FTC Act has reached acts "affecting" as well as those "in" interstate commerce. 15 U.S.C. 45.

II. JURISDICTION

This Commission has jurisdiction over the Respondent, which has appeared generally by counsel throughout all proceedings in this matter, and over the subject matter of the complaint, pursuant to statutory authority (15 U.S.C. 45) for proceeding by this Commission

to prevent the use by corporations of unfair methods of competition and/or unfair or deceptive acts or practices in or (since 1975) affecting interstate commerce. (*See* Chronology of Proceeding)

Comment: We would not ordinarily expect any question about this Commission's jurisdiction over proceedings to prevent unfair business practices, in view of the plain language of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and the history of expansive support which the Supreme Court has given the Commission's efforts to define such unfairness, practice by practice. *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233 (1972).

However, the Fourth Affirmative Defense of Respondent's Answer argued that the Office of Interstate Land-Sales Registration (OILSR) of the Department of Housing and Urban Development (HUD) "has primary jurisdiction over interstate land sales and to the extent that the rules thereof are in conflict with the proposed order and/or rules to be adopted **[261]** in this case by the FTC, the rules of the agency having primary jurisdiction must prevail." In various ways Respondent has made it a principal point throughout its case that this Commission should leave the regulation of practices in the interstate unimproved land business to OILSR where Congress is said to have put it in 1968 by enacting the Interstate Land Sales Full Disclosure Act (ILSFDA), 15 U.S.C. 1701 *et seq.*

We find no authority that gives OILSR "primary jurisdiction" or any other power to prevent this Commission from challenging the fairness of trade practices in the interstate unimproved land business. Congress has never so limited this Commission's jurisdiction, as it has done expressly in the case of certain other businesses, to wit, banks, common carriers and meat packers [15 U.S.C. 45(a)(2)]. Respondent makes some argument that since Congress decided to entrust the enforcement of ILSFDA to a new office in HUD rather than to FTC or SEC, an intent to keep this Commission out of the field is inferable. We do not read the legislative history that way and in any event find no express evidence anywhere of a legislative intent to forbid normal FTC policing of unfair practices in the land business.

In the absence of an express Congressional direction one way or the other, all the rules favor a conclusion of concurrent jurisdiction in both agencies and the Courts will try to give effect to the acts of both. *U.S.* v. *Borden Co.,* 308 U.S. 188, 198 (1939). ILSFDA is not a pervasive regulatory scheme but provides for OILSR to obtain injunctions against fraud in lot sales, bring criminal prosecution and suspend or refuse registrations (thus halting or preventing lot sales) (15 U.S.C. 1703, 1714, 1717). There is no **[262]** repugnancy between this kind of "regulation" and the FTC's "regulation" by challenging unfair busi-

ness practices. In the absence of a basic repugnancy or serious interference with a pervasive regulatory scheme, neither agency will be precluded from operating in the other's regulatory area. *Otter Tail Power Co.* v. *United States,* 410 U.S. 366 (1973); *United States* v. *Philadelphia National Bank,* 374 U.S. 321 (1963); *Silver* v. *New York Stock Exchange,* 373 U.S. 341 (1963).

A claim that regulation of a particular business exempts individuals in that business from the general law of unfair practices is understandably popular among respondents but the Commission has rarely been convinced that it should stay its hand for that reason and the courts have usually upheld it. Congress had expressly provided in the Tariff Act of 1950 that every article of foreign origin imported into the United States be marked as to the name of the country of origin and that the Secretary of the Treasury should regulate such marking. Nonetheless, an order requiring that imitation pearls from foreign countries be labeled as to the name of the country of origin was upheld in the Court of Appeals, which found "no language (in the Tariff Act) expressing an intention on the part of Congress to repeal Section 5 of the Federal Trade Commission Act" and "no repugnancy between the two Acts." *L. Heller & Son, Inc.,* 191 F.2d 954, 957 (1951).

In the Matter of Perpetual Federal Savings and Loan Association, 90 F.T.C. 608, 662 (1977)[282] this Commission's jurisdiction to prevent interlocks between savings and loan associations and competing commercial banks was held not [**263**] defeated because the Federal Home Loan Bank Board regulates savings and loan associations. The Commission found that:

> There is no indication that subjecting S & L's to Section 5 to the extent that it bars interlocking directorates with competing banks will interfere with the Board's supervision over S & L's or subject Perpetual to inconsistent regulation. There being no showing here that Congress intended interlocking directorates of savings and loan associations to be exempt from the antitrust laws nor that such exemption is necessary to make the HOLA work, we hold that the FTC has jurisdiction.

Only recently, in the course of enforcing the Commission's administrative subpoenas for information on the natural gas business, the D.C. Court of Appeals noted that:

> we do not reach the merits of the allegations that the FTC has intruded into the FPC's territory of expertise and is attempting to relitigate an issue definitively settled by the Power Commission.

but added:

[282] Remanded by 4th Cir. Ct./App. 11/14/78 to consider the effect on this Commission's jurisdiction of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub.L.No. 95–630).

We note, however, that this is an era of overlapping agency jurisdiction under different statutory mandates.

* * * * * * *

Under the principles of RCA [*United States* v. *RCA*, 358 U.S. 334, 338–39 (1959)] what the FPC found to be consonant with the public interest **[264]** could still be viewed by the FTC as an unfair method of competition. It therefore appears that a court should approach gingerly a claim that one agency has consciously determined an issue later analyzed from another perspective by an agency with different substantive jurisdiction. *F.T.C.* v. *Texaco, Inc.*, 555 F.2d 862 (D.C. Cir., 1977).

III. HIGH-PRESSURE SALES

The high-pressure marketing techniques employed by the Respondent in the course of its efforts to sell building lots in its several subdivisions constitute unfair methods of competition and unfair and deceptive acts and practices in and affecting interstate commerce, in violation of 15 U.S.C. 45. (*See* Findings 52–95)

Comment: Conclusion #3 deals with a large number of Respondent's marketing techniques which are not deceptive in and of themselves but which tend to contribute to a consumer's ultimate deception by increasing the likelihood that he will accept and act on *other* statements by Respondent which *are* deceptive. Only in this broad sense are these particular practices "deceptive".

The use of the phrase "high pressure selling" to describe this marketing technique leaves something to be desired. We certainly do not mean to suggest anything like harassment, frightening or intimidation, as is not infrequently implied by the term "high pressure sales." *National Housewares, Inc.*, 90 F.T.C. 512 568 (1976). The evil that we see in such practices is the deprivation or reduction of consumer's opportunity to react carefully and rationally to what they are hearing.

For example, a consumer might not otherwise be quite ready to believe and act on Respondent's factual misrepresentations that Rio Rancho **[265]** lots have constantly risen in value (and so are likely to continue to do so in the future). However, the consumer may be led to accept and act on such misrepresentations by the two ounces of alcohol to which Respondent typically treats its guests or by the excitement deliberately generated by carefully staged calling of "holds" at a dinner party or by the cumulative pressure of relay selling ("T.O.") or by any others of the various practices dealt with here under "high pressure" selling. This phenomenon is clearly an unfair practice, as held by this Commission in *Arthur Murray Studio of Washington, Inc.*, 78 F.T.C. 401, 439–440 (1970) (record supported complaint's charges that respondents there used "intense, emotional

and unrelenting sales pressure" to persuade prospects to sign long term, expensive contracts).

IV. DECEPTIVE PRACTICES

Respondent's misrepresentations to customers and prospective customers concerning the growth of its subdivisions (Findings 96–181), their investment potential (Findings 182–310) and the state of their development (Findings 311–359) all constitute unfair methods of competition and unfair and deceptive acts and practices in and affecting interstate commerce, in violation of 15 U.S.C. 45.

Comment: These conclusions—the heart of the case—are amply supported by our Findings 96–359. Moreover, although we have raised no collateral estoppel from the judgment of conviction in the parallel criminal case (*see* Appendices A and B hereto), we note that the salient facts cited by the Second Circuit Court of Appeals in that case as supporting Respondent's conviction of mail fraud and interstate land sales fraud there are virtually duplicative of our chief findings and conclusions here. *United States* v. *AMREP Corporation,* 560 F.2d 539 (1977). **[266]**

Respondent's main attack on the sufficiency of the evidence to support these particular findings is based on the common law's ancient distinction between representations of fact (generally actionable) and representations of opinion (generally not actionable). It argues that its affirmations as to the present value and predictions as to the future value of the barren land it has been selling at such fancy prices are mere expressions of opinion and hence no basis for a finding of violation here. There has unquestionably been a good deal of time spent on arguments about such a distinction, particularly as between express statements of value such as "is worth" (opinion) and statements of market price of a standard product such as "will bring" (fact), *e.g., U.S.* v. *Hannigan,* 303 F.Supp. 750, 753 (1969). However, we waste no time on the distinction for two reasons.

We have seen that in actual practice there is a good deal of fungibility between the word "price" and the word "value" as used by Respondent's salesmen and customers. Moreover, Respondent's dramatization of its list price structure and use of it to show constantly rising values no doubt has contributed mightily to such fungibility. The price/value distinction thus becomes very hard to apply in real life.

Even, however, if we assume more careful speech than we think to be customary, Respondent's supporting case, *Marx* v. *Computer Science Corp.,* 507 F.2d 485 (1974) in fact makes it clear that one must take into consideration any "gross disparity between prediction and

fact" and "other misrepresentations and failures to disclose" (507 F.2d at 489). Here we are talking not about minor differences in value but about differences between Respondent's selling prices and current market value of such **[267]** magnitude as to merit the description "unconscionable". As compared with such standards as the Roman and Medieval rule of *laesio enormis,* under which a seller of land could get his land back if the value turned out to be less than half the selling price,[283] or with the 200–300 percent price/value discrepancies which courts have been finding "unconscionable" in the selling of goods under Sections 2–302 of the new Uniform Commercial Code,[284] the 300–500 percent price/value disparities we have found here leave no doubt that, in the language of *Marx,* this is a case of such "gross disparity between prediction and fact" as to be inherently suspect.

No honest opinion could be so wrong or at least so reckless. As stated by the Second Circuit Court of Appeals on substantially this record:

> Declaration of opinion as to future events which the declarant does not in fact hold may be found by a jury to be fraudulent (citation). Declarations made with reckless indifference for the truth may be viewed in the same light (citation).
>
> * * * * * * * **[268]**
>
> Opinions given with respect to anticipated profits carry with them the representation that they are honestly held (citations). The expression of an opinion not honestly entertained is a factual misrepresentation (citation). *United States* v. *AMREP Corporation,* 560 F.2d 539, 543–44 (1977).

V. EMPLOYMENT REPRESENTATIONS

Respondent's representations to customers and prospective customers concerning employment opportunities for them in the vicinity of Rio Rancho Estates have not been unfair or deceptive. (*See* Findings 360–63)

Comment: As previously explained in making the above findings, we do not infer the deception claimed by Complaint Counsel in connection with Respondent's agents' talk about job possibilities around Rio Rancho.

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[283] "The rules of *laesio* as they appeared in the Corpus Juris of Justinian allowed rescission to sellers of land where the price received was less than half of the value of the property sold. Greatly expanded in the Middle Ages, the doctrine retained the purely arithmetical test of a 50 percent discrepancy in value." Dawson, John P., "Economic Duress—An Essay In Perspective," 45 *Mich. L. Rev.* 253, 276 (1947).

[284] *E.g., Central Budget Corp.* v. *Sanchez,* 279 N.Y.S. 2d 391, 1961 ($400 value vs. $950 cash price); *Jones* v. *Star Credit Corp.,* 298 N.Y.S. 2d 264, 1969 ($300 value vs. $900 cash price).

VI. ADHESION CONTRACT

Respondent's form "Reservation And Purchase Agreement" is an adhesion contract whose credit terms, forfeiture provisions and integration/disclaimer clauses all constitute unfair methods of competition and unfair acts and practices in and affecting interstate commerce, in violation of 15 U.S.C. 45. (*See* Findings 364–387)

Comment: Here the focus is not on deceptive practices but on hard ones. Certain terms of its standard printed land sales agreement are found to be unfair business practices because of their oppressive character. While oppressive practices appear in our cases less frequently than deceptive practices, they nevertheless constitute a well-established head of the Commission's jurisdiction. *Federal Trade Commission* v. *Klesner,* 280 U.S. 19, 28 (1929) ("circumstances which involve flagrant oppression of the weak by the strong"). **[269]**

What is perhaps new to Commission practice, at least by name, is the concept of an "adhesion contract". Classical contract law has generally assumed hard bargaining between parties of roughly equivalent strength. That assumption is manifestly absurd in a real world where big businesses now prepare their own form contracts to give them everything they want in the way of enforcement and other consumers take it or leave it", *i.e.,* "adhere" to the whole contract as prepared or forego the deal entirely.

Plainly the same legal consequences should not attach to formation of an "adhesion contract" as to formation of one closely bargained by parties of roughly equivalent strength and the "adhesion" concept has accordingly been welcomed by the commentators[285] and now the Supreme Court.[286] In a 1972 case involving a contractual waiver of a due process objection to State enforcement of a confession of judgment, a dictum of the Court clearly recognized the doctrine of "adhesion" contracts:

> This is not a case of unequal bargaining power or overreaching. The Overmyer-Frick agreement, from the start was not a contract of adhesion. There was no refusal on Frick's part to deal with Overmyer unless Overmyer agreed to a *cognovit.* **[270]**

And the Court later made the same point again:

> Our holding, of course, is not controlling precedent for other facts of other cases. For example, where the contract is one of adhesion, where there is great disparity in bargaining power, and where the debtor receives nothing for the *cognovit* provision, other legal consequences may ensue.

[285] *See generally* Meyer, A.W., "Contracts Of Adhesion And The Doctrine Of Fundamental Breach," 50 *Virginia Law Review* 1178 (1964) and Kessler, F., "Contracts Of Adhesion", 43 *Columbia Law Review* 629 (1946).

[286] *D. H. Overmyer Co.* v. *Frick Co.,* 405 U.S. 174, 186, 188 (1972).

The reality of a consumer's participation in the formation of a contract has to be a matter of the greatest concern to this Commission and the "adhesion contract" concept should facilitate analysis and determination of the extent to which the consequences normally attached to contract formation should, in fact, attach in particular cases. Hammering out the ultimate shape of the "adhesion contract" doctrine will no doubt take a long time but it seems safe to assume that the three situations dealt with here would come within anyone's delimitation of the doctrine.

VII. VIOLATION AND ORDER

Respondent's unfair methods of competition and unfair and deceptive acts and practices in interstate commerce, as set forth above, have violated Section 5 of the Federal Trade Commission Act [15 U.S.C. 45(a)(1)] and the public interest requires the entry of a corrective ORDER.

Comment: Respondent urges upon us that it has abandoned sundry practices here found to be unfair and that a corrective order is therefore unnecessary. We find that Respondent may have become a little more sophisticated in its advertising to investors once the Commission's hand was on its shoulder but that by and large Respondent is doing business about as usual and that no legal abandonment of its unfair business practices has been shown here. **[271]**

RELIEF

The notice order served on Respondent with the Complaint has been amended by Complaint Counsel in several significant ways and we have therefore attached a copy of Complaint Counsel's proposed order (CCPO) as Appendix E for ease of comparison with the order adopted herein. The differences between Complaint Counsel's proposed order and our own are relatively few.

That is in part because of this Judge's view that an operating bureau of an administrative agency such as this Commission's Bureau of Consumer Protection, being charged with policy-making in its field, must have a large input into shaping the relief appropriate to each case, once a violation has been found. The Judge must, of course, be satisfied that his order is a proper and desirable one, but beyond that he must give the greatest weight to recommendations of the operating bureau responsible for developing a consistent policy necessary to achievement of the agency's statutory mission.

It is important to establish generally before analyzing any particular provisions of the order that the Courts have given this Commission

support for very broad orders to cease and desist from unfair acts and practices, not just the practices actually engaged in but also those similar in nature, *FTC* v. *Mandel Bros.*, 359 U.S. 385 (1959); not just the product involved in the illegal activity but others, *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965); not just in the same place but anywhere that Respondent does business, *FTC* v. *Anheuser-Busch, Inc.*, 363 U.S. 536 (1960). The Supreme Court summed it all up in 1952 by explaining that an order cannot be restricted to the "narrow lane" of the Respondent's past transgressions but must "be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity." *FTC* v. *Ruberoid Co.*, 343 U.S. 470 (1957). And if this sometimes means prohibiting a Respondent from doing things that are entirely lawful when done by most people, this is in the very nature of effective relief. *Vanity Fair Paper Mills, Inc.* v. *FTC*, 311 F.2d 480, 488 (2d Cir., 1962) ("order may permissibly require one who has violated the law to conform to a somewhat higher standard of future conduct than one who has stayed within it"). **[272]**

Complaint Counsel's proposed order (hereafter "CCPO") contains seven major sections.

I

Section I is made up of three subsections which would order Respondent to cease and desist respectively from (1) making 14 specified representations; (2) referring to 7 specified subjects; and (3) engaging in 10 specified acts or practices. Many are quite broad, like the prohibitions against representations that land being offered for sale by Respondent is "a good investment (IA1) or that the list price set by Respondent for its land is equivalent to the market value of the land, unless adequate market data on resales of similar land, similarly developed, substantiates the representations (IA5). The broadness of many of these prohibitions is attacked by Respondent but the Administrative Law Judge deems them justifiable in any attempt to "fence in" the activities of a clever and a sophisticated marketer, convicted of criminal fraud, in whom we can place virtually no trust. Accordingly, with only two minor exceptions,[287] we adopt all of CCPO Section I as proposed by Complaint Counsel.

II

Section II of CCPO begins the affirmative relief and it is important. The first of two elements of Section II makes Respondent deliver to all its customers at least two days before any in-person sales contact

[287] Because we were not convinced that Respondent promised to buy or help sell customers' lots for them, we have excised all but the first clause of CCPO IA3 and because we found against Complaint Counsel on alleged employment representations, we have eliminated CCPO IA-11.

a standard form entitled "Notice to Buyers" which (like HUD's more elaborate "property report") is designed to equip prospects with enough basic factual information (with two days to digest it), so that they can better assess the claims to be thrown at them when the in-person selling starts. [273]

The specific information which must be provided by Respondent in this "Notice to Buyers" includes the following: (1) that the subject is a land sales presentation; (2) the location and average cost of the land being sold; (3) a warning as to the criminal record of the developer vis-a-vis land sales; (4) a warning as to the lack of investment value or resaleability; (5) availability and cost information as to roads, water, sewer, electric service, telephone service and recreational facilities; (6) advice to read the HUD property report and seek professional counsel; and (7) a toll-free complaint/information telephone number. The order then requires physical attachment of the purchaser's copy of the "Notice to Buyers" to the contract.

Complaint Counsel may be overenthusiastic when they call this "Notice to Buyers" "the key protection for future land sales customers" but it is plainly a step in the right direction in that *it insures two days forethought whereas the present HUD rules permit giving a property report to a prospect at the very time the in-person selling is going on.* We adopt this proposal whole-heartedly.

The second element of CCPO Section II is unrelated. In the event that Respondent has failed for six months (plus a 30-day grace period) to provide any contracted-for improvement, utility, recreational facility, etc., its land contract must require it affirmatively to notify any affected purchaser of the failure and of purchaser's right to obtain a refund of all monies paid, unless the purchaser will accept an offer by Respondent to exchange (even) into another lot, meeting all the contract's requirements, including utilities, zoning, recreation, etc. Respondent is also put under order to carry out this new contractual obligation. It seems a healthy thing to make Respondent take affirmative action in this situation and we adopt the proposal. [274]

III

Section III of our order, which tracks CCPO closely, is the longest, most complex and arguably the most important of all the order's mandates. Like the "Notice to Buyers" required by Section II, certain provisions of Section III are designed to make prospects more aware of the economic and other problems *deceptively* minimized by Respondent's advertising and promotion. Other provisions are designed to increase a purchaser's opportunity for an unhurried, thoughtful decision or change of mind in the face of Respondent's *high pressure* selling tactics. Finally, relief is afforded from the most unfair features

of Respondent's *adhesion contract* (to wit, its credit terms, forfeiture provisions integration and alienation clauses).

The first purpose (fuller disclosure of relevant background to counter deception) is implemented by Section III A, which requires Respondent to include "clearly and conspicuously" in all promotional materials and sales presentations the following warning:

> The future value of land is very uncertain. The seller advises you that it is not selling the lots in this subdivision as a financial investment. Therefore do not count on your lot rising in value or even on your being able to resell it.

While the record here makes it clear that disclosure of disadvantages may not prevent an improvident purchase by one under the influence of both sophisticated high-pressure sales methods and material deceptions of fact, the foregoing warning can operate only to improve the existing situation at Respondent's subdivisions. We adopt this proposal.

Section III B requires Respondent to use *only* the words "Contract For The Purchase Of Land" at the head of its land sales contract (now labeled "Reservation And Purchase Agreement"). The purpose is to eliminate the unusual and legally unclear term "reservation", which may suggest to prospective buyers that they will not be legally bound, even after signing this instrument. [**275**]

Subsection III C of CCPO is very important. It orders Respondent to incorporate into its form land contract "clearly and conspicuously" a specified clause giving the purchaser a right to cancel his land purchase contract within ten days after its date and receive back within ten more days any legal documents signed by him, as well as any monies paid under the contract. This proposal for a ten-day cooling off period (without reference to when the purchaser first gets a HUD property report) is a significant advance over HUD's requirement for developers in general: a three-day cooling off period—if but only if—the purchaser has not been given a property report two days before he signs up.[288] Now the purchaser is certain to get this time to think over whether he really wanted the land and the time for "cooling-off" is extended well beyond Respondent's current three days.

Since, however, the purpose of giving the purchaser this extra time to "think it over" could be frustrated by contacts, telephonic or otherwise, such as the record shows Respondent has employed to counter "buyer's remorse", we find need to add to the ten-day cancellation option a prohibition on the initiation by Respondent of any communications between a buyer, telephonic or in-person, during the ten-day cooling-off period after a purchaser's signing of a land contract at any

[288] The OILSR "cooling-off" period was 48 hours until 1974 when it was extended to 72 hours, 24 C.F.R. 1710.110.

of its developments. [A similar provision for the post-inspection cancellation period in Section III H8 is conformed to this provision of Section III C.]

Other provisions of the order implement the ten-day cooling-off scheme by making Respondent provide each purchaser of its land with a form called a "Notice of Right of Cancellation"; by ordering Respondent to honor such a notice or explain to the purchaser what is wrong **[276]** with it; and by giving the purchaser three days to cure any deficiency in the notice. The contract and "notice" both urge the purchaser to consult a lawyer or other professional for advice on this subject.

Subsection III H and its dozen subsidiary provisions all relate to a purchaser's right to obtain contract cancellation and refund of payments if for any reason after a personal inspection of his property, he does not like it. In this matter we have an important difference of opinion with Complaint Counsel. They start with an assumption that Respondent may or may not give buyers an option to cancel out after inspecting their property and attempt to regulate only what happens *if* Respondent grants any such option.[289] We see no reason for not *requiring* Respondent to grant an inspection/refund option to a buyer who has purchased land *site-unseen,* where the record, as here, reveals the unfair and deceptive practices used by Respondent to effect and retain such site-unseen sales. The purchaser should not, of course, be able to keep such a cancellation option open indefinitely and we therefore will limit an inspection for this purpose to six months after purchase, the same period allowed by Respondent voluntarily. CCPO's proposed Section III H will be amended accordingly.

The most important provision of Section III H would give a purchaser a contract right to request a refund anytime within three days after his inspection. To make sure that the purchaser after inspection is not improperly/improvidently jaw-boned by Respondent into foregoing his cancellation/refund option during those three days, a moratorium on communications between Respondent and purchaser (similar to that provided in Section III C) is now provided in Section III H8. **[277]**

The proposed order also provides in Section III H6–7 for a form entitled "Notice of Cancellation After Inspection," to insure that a purchaser is fully informed of his inspection/refund rights and knows how to give proper notice as required. With these and all other ancillary provisions of CCPO Section III H, assuming amendment as ordered above, we are in full accord and adopt them for our own order.

Subsection III I provides for compulsory public recording of Respondent's land contracts as well as the deeds ultimately executed for

[289] CCPO Section III H reads: "*Whenever* respondent extends a refund privilege which is conditioned upon the buyer making a personal visit to the property", etc. (emphasis added).

those purchasers who complete their payments. Respondent calls this an administrative "disaster" and points particularly to the problems of clearing record title when great numbers of purchasers cancel or default. It is also true that even now any purchaser can have his contract recorded if he wants it on record. On the other hand it is relatively easy for Respondent to record all contracts automatically and thereby afford purchasers maximum protection against any third party creditors. On balance we adopt CCPO Section III H for our own order.

With Subsections J through N of Section III, we reach the very important subject of forfeiture. Subsections J and K reform Respondent's adhesion contract to eliminate forfeiture of payments made by a defaulting purchaser.[290] The most that Respondent will be allowed to retain is its actual damages resulting from such default but in any event no more than 40 percent of the land's "cash price" [as defined in Regulation Z of the Truth-In-Lending Act, 12 C.F.R. 226.2(n)]. The 40 percent cap was reasonably derived by Complaint Counsel from testimony by the General Manager of Silver Springs Shores (who was also the Oakmont Shores Manager while that development was operated by Respondent) that sales cost and overhead together ideally represent about 40 percent of Respondent's prices).[291] **[278]**

In view of all that has been said here about the evil of forfeiture—a primitive concept that has no place in any civilized legal system—there is no question about the desirability of eliminating the forfeiture clause in Respondent's adhesion contract and we endorse not only the main prohibition but all other provisions ancillary thereto. Subsection K orders Respondent (*in futuro*) to make refunds of payments (including principal, interest, taxes and assessments) in accordance with the contract provisions just referred to. Subsection N forbids efforts by Respondent to defeat the anti-forfeiture rule by such devices as obtaining a waiver of purchaser's rights. Subsection L forbids Respondent to recover or try to recover any sums still due on contracts in effect but not yet fully performed when this Complaint was brought (3/11/75) or since then. Subsection M forbids Respondent to enforce or threaten to enforce or rely in any way on the forfeiture clause in its existing land contracts.

These provisions unquestionably call for substantial reformation of existing contracts, at least insofar as still executory, and Respondent understandably views this as beyond this Commission's power because retroactive in character:

[290] "Default" for this purpose is defined as an announced intent of purchaser to default or his failure to make a payment for six months after the due date.

[291] TR 16444–47.

The notice order . . . requires respondent not only to discontinue alleged false and misleading representations and alleged unfair and deceptive acts and practices but also seeks partial rescission or reformation of existing contracts, refunds or monies in excess of Commission-approved damages, payment of damages and notification concerning unfair or deceptive acts or practices. These mandates, moreover, are not made applicable prospectively, i.e. to future customers, but are directed retrospectively (sic) to past customers presently or previously under contract with respondent. RPF p. 278

To support its position Respondent relies chiefly on (1) *Heater* v. *F.T.C.*, 503 F.2d 321 (9th Cir., 1974), which held that a Commission order to make monetary restitution [**279**] went beyond its cease and desist power, and (2) the language of the 1975 Moss-Magnuson Act's provision sending the Commission into the courts to obtain "rescission or reformation of contracts, the refund of money or return of property, the payment of damages and public notification respecting . . . the unfair or deceptive act or practice" (15 U.S.C. 57b(b), Supp. V 1955).

Complaint Counsel, on the other hand, point to the language of Moss-Magnuson that "remedies provided in this section are in addition to and not in lieu of any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law" 15 U.S.C. 57b(e). They also argue (CCRB, pp. 41–42) that *Heater* is "easily distinguishable" because the order here does not seek to remedy past acts but to prohibit future acts here declared unfair or deceptive." It is immaterial that the contract clause may have been created prior to issuance of an order; it is the time of the proscribed act that is important, they reason.

This Commission in *Holiday Magic, Inc.*, 84 F.T.C. 748, 1045 (1974) expressly declined to accept the Ninth Circuit position as embodied in *Heater*[292] and it may be that the Supreme Court will eventually see it that way. This Administrative Law Judge believes, however, that the Commission's statutory assignment to "prevent" corporations from "using" unfair business practices [15 U.S.C. 45(a)(2)] cannot reasonably be stretched to include restitution of money or property already lost to deceptive or otherwise unfair practices.

Moreover, we think that the most sensible inference to be drawn from Congress' haste to enact Moss-Magnuson after the *Heater* decision came down was that Congress, too, [**280**] doubted our restitution power and gave us, instead, a power to go into the District Courts as a *prosecutor* after determining that there has been a violation and seek redress in appropriate cases.

Because of these views we decline to order restitution of money or

[292] The restitution provision in *Holiday Magic* was later stricken, however, when the Commission decided not to seek review of *Heater* in the Supreme Court, 85 F.T.C. 90.

property already lost by consumers and have adopted anti-forfeiture provisions operating only *in futuro, i.e.,* on contracts not yet made or at least not yet fully executed. This must by no means be interpreted as indicating that we do not believe Respondent's customers are entitled to redress for past payments. They are. We mean only that Congress has told us how to do it and we ought to do it that way. The judicial redress provided in Section 19 of the FTC Act (15 U.S.C. 57b) should be sought by the Commission forthwith.

A second evil of Respondent's adhesion contract, as we have seen, is its integration clause, disclaiming any oral representations of Respondent or its employees, express or implied, which do not appear in the written contract. Subsection M of Section II orders Respondent to forbear from enforcing or threatening to enforce or relying in any way on this integration clause in the agreement of any purchaser who was under contract when this Complaint issued (3/11/75) or who has entered into such a contract since then. In this case, where numerous unfair/deceptive representations have been established on the record, it is plainly important to free purchasers from such artificial limitations of proof as would otherwise be forced upon them by Respondent's adhesion contract. We adopt Complaint Counsel's proposal.

Subsection (O) of CCPO Section III strikes at another one-sided provision of Respondent's adhesion contract. As noted earlier, a buyer at Rio Rancho and Eldorado cannot sell his conditional sale contract or any interest in it without getting Respondent's consent until he is paid up and has his deed. CCPO III's Subsection O would order Respondent to include in all its contracts a provision extending the contractual rights and privileges of the buyer to subsequent purchasers or assignees from buyer. We think this would follow simply from the elimination of the present provision barring alienation without Respondent's consent but to insure normal alienability we will adopt both remedies. Accordingly, we will insert in Subsection O [281] after the words "provision" the phrase "insuring free alienability of the purchaser's interest under the contract."

We are puzzled as to why Complaint Counsel have omitted any proposed relief from a fourth evil of Respondent's adhesion contract: its brazen insistence on charging installment purchasers interest or an interest equivalent on the unpaid balance of the purchase price, even though Respondent retains not merely a security title (as is common and not unreasonable) but the exclusive possession and use of the land while purchaser is accumulating his payments (which is uncommon and unconscionable). Accordingly, we shall add to CCPO Section II a new Subsection P (making old P into Q) as follows:

P. Forbear from charging or collecting from any installment purchaser of land in any of its developments any payment in the nature of "interest" (or providing for such payment in Respondent's land contract) unless and until Respondent gives such purchaser possession and use of the lot of land purchased.

Section III concludes with a proposed authorization by the Commission in Subsection Q (P in CCPO) for Complaint Counsel to send to all of Respondent's land customers, whether deeded or only contracted (so long as they had not defaulted before issuance of this Complaint on 3/11/75) a document attached to CCPO as "Appendix A". This unusual but useful document is basically a letter of explanation for laymen on "all you ought to know about" this lawsuit, the main facts it has established and what options are now open to Respondent's customers. Although we think it likely to require substantial rewriting by the time it is used—appeals to the Commission and the Courts being as common and as lengthy as they are—it seems worthwhile to have such a model under consideration and for that reason we have preserved CCPO's order (III P) and draft letter (Appendix A) in our order (III Q) and draft letter (Appendix A). [282]

IV

Subsection A(1) of CCPO IV forbids Respondent to sell undeveloped land as a "homesite" or "building lot" unless it is immediately usable for such purpose without further development (of specified kinds). Subsection (2) supplements this negative commandment with an affirmative order for Respondent to disclose (in specified form), how much more money (in addition to the purchase price of the land), will be required to make such land "immediately available" for building. This seems a very salutary idea and we adopt both provisions in the corresponding Section of our own order.

Subsections B and C of Section IV of CCPO present an ambitious and innovative plan to relieve consumers who have bought into one of Respondent's developments and want to but cannot get their money out. Complaint Counsel hope it would create a "viable resale market" for the vacant lots they now find it impossible to get rid of. The principal elements of this scheme would be threefold.

(1) Respondent would be ordered to set up a "clearinghouse" for vacant land owners who want to list their lots for resale and would also establish liason with the local multiple-listing service. There is nothing very bad about this idea but there is nothing very good about it, either. If there is one thing this record demonstrates, it is that conventional local multiple-listing services have not been effective sellers of the same lots that Respondent, with its dinner-parties, tours

and other high-pressure and/or deceptive marketing techniques, has been able to sell by the tens of thousands. If only for that reason, we cannot get up much enthusiasm for a bigger and better multiple-listing service.

(2) To avoid any necessity for would-be resellers to compete with Respondent in selling lots at its subdivisions, Complaint Counsel would prohibit Respondent from selling any more vacant land until the number of lots improved or exchanged for building lots[293] (and thus back in Respondent's inventory) equal the number of remaining unimproved lots [**283**] (by which time, Complaint Counsel feel, they would have established "a viable resale market").

(3) To speed this result at Rio Rancho CCPO IV would simultaneously require that Respondent take back consumer-owned vacant lots which are listed for resale as part-payment (at 1975 list prices) for every building lot sold by it, as long as any undeveloped lots be listed for resale.[294] When no more vacant lots are listed for resale this requirement would cease.

It is unnecessary for us to consider Respondent's doubts about whether the Commission's cease and desist power extends to such a complex scheme of affirmative regulation, because we are satisfied that the scheme would never accomplish what its well-meaning sponsors seem to think it would. It rests on an assumption that, if Respondent can be excluded from the market, resellers of its land will become the beneficiaries of the demand for vacant lots involuntarily foregone by Respondent.[295]

But without Respondent to create its own special brand of demand by dinner-parties, tours, etc. there would be little or no demand to be satisfied—at least not by such conventional sales techniques as consumers or even local multiple-listing services can muster. Since we are not inclined to insist that Respondent's unfair sales techniques be continued by others to create the artificial demand that might enable Respondent's consumer victims to get their money (or some part of it) back by way of resale, [**284**] we decline to incorporate Subsections B and C of CCPO Section IV into our own order. If most of these consumers are going to get most of their money back, it will not be by way of resale but by way of legal action by this Commission for redress to such consumers under Section 19(b) of the Federal Trade Commission Act, as amended, an action which the Administrative Law Judge again unequivocally recommends.

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[293] This would include both lots with houses on them and lots immediately available for building.

[294] If a builder or other buyer of a building lot has no undeveloped vacant lot to trade-in he must obtain one from a listed consumer and turn it in. As a last resource Respondent must find one for him.

[295] "Paragraph C allows the consumer to share with Respondent in whatever demand there is for Rio Rancho building lots. . . ." CCPF, p. 285

V

CCPO's proposal (Section V) to work out for Oakmont Shores a resale listing system such as was proposed in Section IV B falls with our decision not to adopt the overall scheme outlined in Subsections IV B and C.

VI and VII

Sections VI and VII of CCPO are merely boiler-plate provisions for the enforcement of Commission orders. Reference is made to their text for details. They seem entirely proper.

The Administrative Law Judge now issues the following ORDER: [285]

ORDER

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

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

Land, property or *lot* shall mean any real property located in one of respondent's subdivisions, unless otherwise modified herein.

Vacant land, property or *lot* shall mean any land which is not immediately usable as a homesite, as homesite is defined herein.

Homesite or *building lot* shall mean any land which is immediately usable for such purpose as set forth in Section IV, paragraphs A1 and 2 of this Order. [286]

Contract shall mean any binding legal instrument for the purchase of an interest in real property.

Purchaser or *buyer* shall mean any individual who is a potential or actual vendee of the property being offered by respondent.

Resale market shall be as defined in Section IV, Paragraph B herein.

Developed land, property or *lot* shall mean land which has been improved with the roads and utilities necessary to make it a *homesite* or *building lot,* as those terms are defined herein.

Market value or *value* shall mean the price expectable when the buyer and seller are typically motivated and not under undue pressure to buy or sell, each is acting in his own best interest, reasonable time is allowed for exposure in the open market, the price represents

a normal consideration unaffected by any outside interests, and the sale is on cash or typical terms. [287]

I

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

A. Representing, directly or by implication, through the use of any means, that:

1. The purchase of land which respondent is offering or has offered for sale, has been, is or will be a good, profitable or sound investment, or that the principal of "leverage" may be employed in the purchase of this land;

2. There is little or no financial risk involved in the purchase of respondent's land;

3. The resale of vacant land purchased from respondent is not difficult;

4. The value of any land, wherever situated, whether or not marketed by respondent, has risen, is rising, or will rise; [288]

5. The list price set by respondent for the land is equivalent to the market value of the land, unless adequate market data on resales of similar land (land with same degree of development) by previous buyers substantiates this representation;

6. The purchase of land from respondent is a way to achieve financial security, to deal with inflation or to make money;

7. The purchase of land in general is a good, profitable or sound investment;

8. The demand for any land, including that offered for sale by respondent, has increased, is increasing, or will increase;

9. Land being offered for sale by respondent will soon be unavailable because of the pace of sales or dwindling supply, or that the supply of any other land is decreasing;

10. Buyers must purchase immediately in order to ensure that a particularly desirable location will be available;

11. The signing of a contract does not immediately create a binding legal obligation on the part of the buyer including, but not limited to, representations that the buyer is only making a deposit, is only re-

serving the land, is only taking the first step, or is not making a final decision, or in any manner [289] whatsoever obscuring or misrepresenting the legal or practical significance of signing a contract; *provided,* that respondent may accurately recite the terms and conditions of a refund privilege, if any, or of a cancellation right, if applicable;

12. The Property Report is prepared or approved by the Secretary of HUD, OILSR, the Department of Housing and Urban Development or any other federal government entity, or that the Offering Statement is prepared or approved by the respective state or any state entity, or that either the Property Report (as defined in the definitions section) or the Offering Statement in any way indicate endorsement of the offering or judgment of the merits or value, if any, of the land being offered;

13. Any advertising or promotional material has been produced independent of respondent if in fact such material has been in any way edited, altered or changed by or at the behest of respondent, or if respondent in any way advised, counseled, subsidized in whole or in part, or influenced the content of the material. [290]

B. Making any reference, directly or by implication, through the use of any means, to:

1. The past or future prices of land offered by respondent, or the past or future increases in prices, including reference by actual dollar amount, percentage increase, or by any other means;

2. The direction of geographical growth or amount of population increase, past, present or future, of any geographical or political area wherever situated;

3. The present, planned, proposed or potential development, improvement or facilities of the particular land being offered or of the subdivision or project in which the offered land is located that differs in any material respect from the relevant language of the most current Property Report or from the "Notice to Buyers" (set forth in Part II of this Order); *provided,* that respondent may employ accurate pictorial representations that comport with the requirements of Section I, paragraph C3 herein;

4. Investments of any sort, including any reference to stocks, the stock, commodity or options markets, savings accounts or certificates, annuities, or land as an investment; [291]

5. The purchase, reservation, contracting or consideration by any individual other than the immediate buyer, of any land being offered by respondent, including but not limited to, any reference to anyone else "holding" a piece of property or "deleting" a listing;

6. Respondent's reputation, size, assets or listing on any stock ex-

change; *provided,* that respondent may make such references as are required by statute or regulation in the place and manner required by such statute or regulation;

7. The present, planned, proposed or potential development of any land by anyone other than respondent.

C. Engaging in the following acts or practices, directly or by implication, through the use of any means:

1. Disparaging or discouraging buyers from obtaining the assistance of counsel or other professional or personal advice in connection with the purchase decision or the purchase of respondent's land;

2. Not providing any required property report sufficiently in advance of signing a contract so as to permit the buyer to read it completely without interruption or distraction by respondent's representatives or employees; [**292**]

3. Using any motion pictures, still pictures or other graphical depictions of any type that have been in any way retouched, staged with props, or created through the use of any illusion, artificial embellishment or device, unless each such alteration of reality is clearly and conspicuously noted in conjunction with the depiction;

4. Filling out a contract with the buyer's personal information prior to the buyer signifying, by affirmative statement, that buyer desires to purchase the land being offered;

5. Subjecting a buyer who has evidenced a desire not to purchase to continued sales effort from any sales representative or other employee other than the original salesperson, *i.e.,* any continuation of the "T.O." or "takeover" system;

6. Including in any contract or in any other documents shown or provided to buyers, language stating that no express or implied representations have been made in connection with the sale of respondent's land, or that any particular representation has not been made in connection therewith; [**293**]

7. Making any statement or representation concerning the rights or obligations of respondent or the purchaser which differs in any material respect from the rights or obligations of the parties as stated in the contract, the Notice to Buyers (*see* section II of this Order) and the Property Report;

8. Including in any contract language permitting respondent to retain all sums previously paid by buyer upon the failure of buyer to pay any installment due or to otherwise perform any obligation under the contract;

9. Hindering or preventing any independent builder or contractor from freely competing with respondent for house construction work or procurement of building lots at any of respondent's subdivisions;

10. Misrepresenting the true nature and purpose of any event or activity, including, but not limited to dinner parties or other similar gatherings, contests, awards of free or reduced price gifts or vacations, and sightseeing tours. **[294]**

II

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

A. Distribute to all purchasers a copy of the following "Notice to Buyers" at least two days prior to any in-person sales contact. (1) In cases where the buyer is invited by mail to attend a meeting sponsored by respondent, the Notice shall be included with the invitation. (2) In cases where respondent arranges to meet with the buyer in the buyer's home, or other location, respondent shall mail the Notice to the buyer allowing sufficient time for the Notice to arrive two days prior to the meeting. (3) In cases where the initial contact with the buyer is in-person (as, for example, at a booth located in a public place) respondent shall, after identifying briefly the purpose of the contact, give the Notice to the buyer, request that the buyer read it, and provide ample uninterrupted time for the buyer to read it completely before continuing with any sales presentation. (4) In cases where the sale is to be completed entirely through the mail, the Notice shall accompany the initial mailing to the buyer. **[295]**

The Notice shall be on a separate sheet of paper not attached to any other paper and shall contain only the required information and no other writing unless approved in advance by the Staff of the Commission. The Notice shall be in the following format and content:

NOTICE TO BUYERS

NAME OF SUBDIVISION
NAME OF DEVELOPER
EFFECTIVE DATE OF NOTICE

THE PURPOSE OF [DESCRIBE THE TYPE OF MEETING OR CONTACT] IS TO PERSUADE YOU TO SIGN A CONTRACT FOR THE PURCHASE OF LAND IN [NAME OF STATE] AT AN APPROXIMATE COST OF [AVERAGE LIST PRICE FOR THE LOTS BEING OFFERED], OF AN AVERAGE SIZE OF _____ ACRE(S), WHICH IS A COST PER ACRE OF $_____.

WARNING

IN 1977, AMREP CORPORATION, WHICH OWNS (INSERT SUBDIVISION NAME), AND A SUBSIDIARY CORPORATION OF AMREP, THE PRESIDENT OF AMREP, AND THREE OTHER OFFICIALS OF THESE COMPANIES WERE FOUND GUILTY OF MAIL FRAUD AND OTHER CRIMES IN CONNECTION WITH THE SALE OF LAND TO CONSUMERS. THEREFORE, YOU SHOULD USE EXTREME CAUTION BEFORE DECIDING TO BUY A LOT FROM THIS SELLER.

THE SELLER ADVISES YOU THAT IT IS NOT SELLING THE LOTS IN THIS SUBDIVISION AS A FINANCIAL INVESTMENT. THEREFORE, DO NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT. THE FUTURE VALUE OF LAND IS VERY UNCERTAIN. **[296]**

Even if the development proceeds on schedule, you will face the competition of the seller's own sales program if you offer your lot for sale. This usually involves an extensive sales campaign and marketing commissions which you may not be able to match. You may also face the possibility that real estate brokers may not be interested in listing your lot.

[State the number of lots sold in the subdivision by the developer from the initial sale to the date of this Notice. State the number of unsold lots currently available for sale. State the number of lots that the developer intends to offer in the future to complete sales in the subdivision.]

[PROVIDE the following development information for the unit(s) being offered:]

ROADS

(INFORMATION TO BE APPLICABLE TO THE ROADS FRONTING PURCHASER'S LOTS)

State who is currently responsible for construction and maintenance and whether the roads will be maintained by a public authority, a property owners' association or some other entity at some time in the future. State the cost to buyer for construction/maintenance, if any, during interim and after turnover.

State whether there is adequate financial assurance in the form of an escrow or trust account, or surety bond, to assure completion of the roads as represented. If not, include the **[297]** following warning: WARNING: TOO LITTLE MONEY HAS BEEN SET ASIDE TO ASSURE THE COMPLETION OF THE ROADS; THEREFORE, THERE IS NO ASSURANCE THAT THEY WILL BE COMPLETED.

Provide the following roads information:

Unit	Starting date	Percent now complete	Estimated completion date*	Present surface	Final surface**

* If not known, insert the following warning: WARNING: THE PLANS FOR THE ROADS ARE SO INDEFINITE THEY MAY NOT BE COMPLETED.
** If unpaved then must state "UNPAVED" and describe the surface.

WATER

If water is to be supplied by an individual private system, state the estimated cost to the buyer of installation, treatment facilities, necessary equipment and any other required costs. If individual wells are to be used, state whether or not a refund or exchange will be issued in the event a productive well cannot be installed. If yes, state the terms and conditions thereof. If no, insert the following warning: WARNING: A SUCCESSFUL PRO-

DUCING WELL IS NOT GUARANTEED. NO REFUND OR EXCHANGE WILL BE GRANTED IF YOU ARE UNABLE TO DIG A SUCCESSFUL WELL.

If water is to be provided by a central system, state whether the purchaser is to pay any construction costs, one-time connection fees, availability fees, special assessments or deposits for the central system. If so, what are the amounts? If the buyer will be responsible for construction costs of the **[298]** water mains, state the cost to install the mains to the most remote lot covered by the Notice. State whether there is adequate financial assurance in the form of an escrow or trust account, or surety bond, to assure completion of the central system and any future expansion. If not, include the following warning: WARNING: TOO LITTLE MONEY HAS BEEN SET ASIDE TO ASSURE THE COMPLETION OF THE CENTRAL WATER SYSTEM; THEREFORE, THERE IS NO ASSURANCE THAT IT WILL BE COMPLETED.

Provide the following water information:

Unit	Starting date	Percent now complete	Service Available date*

* If not known, insert the following warning: WARNING: THE PLANS FOR THE CENTRAL WATER SYSTEM ARE SO INDEFINITE IT MAY NOT BE COMPLETED.

SEWER

State method of sewage disposal to be used. If by septic tank or other individual system, what is the estimated cost of the system and any necessary tests? State whether a permit is required. If so, and if each and every lot has not been already approved, insert the following warning: WARNING: THERE IS NO ASSURANCE PERMITS CAN BE OBTAINED FOR THE INSTALLATION AND USE OF SEPTIC TANKS OR OTHER INDIVIDUAL ON-SITE SEWAGE SYSTEMS. State whether or not a refund or exchange will be issued in the event a permit is denied for the particular lot purchased, and the terms and conditions thereof. If neither will be issued, **[299]** insert the following warning: WARNING: NO REFUND OR EXCHANGE WILL BE GRANTED IF YOU ARE UNABLE TO INSTALL A SEPTIC TANK OR OTHER ON-SITE SEWAGE SYSTEM.

If a central sewage treatment and collection system is being installed, state who is responsible for construction of the system. State whether buyer will pay any construction costs, special assessments, one-time connection fees, availability fees, use fees or deposits. What are the amounts of these charges? If the buyer is to pay the cost of the sewer mains, state the cost of installation of the mains to the most remote lot in this Notice. State whether there is adequate financial assurance in the form of an escrow or trust account, or surety bond, to assure completion of the central system and any future expansion. If not, include the following warning: WARNING: TOO LITTLE MONEY HAS BEEN SET ASIDE TO ASSURE THE COMPLETION OF THE CENTRAL SEWER SYSTEM; THEREFORE, THERE IS NO ASSURANCE THAT IT WILL BE COMPLETED. Provide the following sewer information:

Unit	Starting date	Percentage of completion	Service Availability date*

* If not known, insert the following warning: WARNING: THE PLANS FOR THE CENTRAL SEWAGE SYSTEM ARE SO INDEFINITE IT MAY NOT BE COMPLETED.

ELECTRIC SERVICE

If the primary service lines have not been extended in front of, or adjacent to each lot, will

the buyer be responsible for any construction costs? If so, state the utility company's policy **[300]** and charges for extension of primary lines. Based on that policy, what would be the cost to the buyer for extending primary service to the most remote lot in this Notice? Provide the following electric service information:

Unit	Starting date	Percentage complete	Service Availability date*

* If not known, insert the following warning: WARNING: THE PLANS FOR THE ELECTRIC SERVICE SYSTEM ARE SO INDEFINITE IT MAY NOT BE COMPLETED.

TELEPHONE SERVICE

If the service lines have not been extended in front of, or adjacent to, each lot, will the buyer be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of service lines? Based on that policy, what would be the cost to the buyer of extending service lines to the most remote lot in this Notice?

Provide the following telephone service information:

Unit	Starting Date	Percentage complete	Service Availability date*

* If not known, insert the following warning: WARNING: THE PLANS FOR THE TELEPHONE SYSTEM ARE SO INDEFINITE IT MAY NOT BE COMPLETED.

RECREATIONAL FACILITIES

Identify each recreational facility. For each facility, provide the following information: **[301]**

Facility	Percent complete	Date of start of construction	Date Available for use*	Financial Assurance of completion**	Buyer's cost and assessments***

* If not known, insert the following warning: WARNING: THE PLANS FOR THE (identify the facility) ARE SO INDEFINITE IT MAY NOT BE COMPLETED.
** If none, state "none". If such exists, state the type and amount.
*** State any construction or use costs to the buyer including any applicable property owner's association assessment, maintenance assessment or use fee.

At the conclusion of the Notice shall appear the following warning set off by a box outline: IMPORTANT: OBTAIN AND READ THOROUGHLY THE FULL PROPERTY REPORT BEFORE SIGNING ANYTHING. THE PROPERTY REPORT CONTAINS ADDITIONAL INFORMATION THAT YOU SHOULD KNOW AND UNDERSTAND BEFORE CONTRACTING TO PURCHASE THIS LAND. IT IS DESIRABLE TO SEEK THE ASSISTANCE OF COUNSEL OR A QUALIFIED REAL ESTATE PROFESSIONAL FOR ASSISTANCE IN EVALUATING THE TERMS OR MERITS OF THIS PURCHASE *BEFORE* SIGNING ANYTHING. RETAIN THIS NOTICE—REPRESENTATIONS CONTAINED IN IT BECOME A PART OF ANY CONTRACT YOU MAY SIGN WITH SELLER.

If you wish to obtain more information or if you wish to cancel any appointment we may have arranged with you, you may call this toll-free number: 800 _____.

– (End of Notice) –

B. Include in all contracts the following provision: "The representations and statements made by seller in the Notice to Buyers and in the Property Report regarding roads, utilities, [302] improvements and recreational facilities are hereby incorporated into, and made a part of this contract as if set forth fully herein."

C. Attach to the contract a copy of the Notice to Buyers that was given to the buyer when buyer was first contacted by respondent.

D. Include in all contracts the following provision: "In the event the subdivision or the lot which is the subject of this contract has not been provided with or does not have available any contracted-for improvement or utility, or there has been a material failure to provide or make available any contracted-for recreational facility, amenity or structure, within six months of the time specified in the contract the seller will, within 30 days after the expiration of the six-month time period, provide the buyer by certified mail, return receipt requested, with notice of such failure to provide or such unavailability, and of the buyer's right to a refund of all moneys paid (including, but not limited to principal, interest, taxes, and assessments) under the contract plus interest at the rate of 7 percent per annum computed from the date of seller's default; *provided,* however, that at the time the buyer is notified of such refund, the buyer may also be offered the option of selecting, instead of such refund, an exchange of the buyer's lot, at no additional cost to the buyer for another lot to which all contractual obligations of seller have been met, which was or would have been of at least equal price on the date the buyer's contract was signed, which is located in the same [303] subdivision, has the same zoning classification, has the same utilities and improvements as seller was obligated to provide under the original contract, and is located no further from the same or substantially similar recreational and commercial facilities and amenities as the original lot."

E. Carry out the notification and refund provisions as set forth in Paragraph D above.

III

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

A. Include clearly and conspicuously in all sales presentations, promotional materials, printed advertisements and radio and television commercials, the following statement: THE FUTURE VALUE OF LAND IS VERY UNCERTAIN. THE SELLER ADVISES YOU THAT IT IS NOT SELLING THE LOTS IN THIS SUBDIVISION AS A FINANCIAL INVESTMENT. THEREFORE, DO NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT.

B. Set forth on the top of the first page of the contract used to sell respondent's land in 24-point boldface type, "CONTRACT FOR THE PURCHASE OF LAND." No other heading or description of the purpose of the document shall appear. [304]

C. Include clearly and conspicuously in each contract for the sale of respondent's land the following statement in 12-point boldface type:

YOU, THE BUYER, HAVE THE RIGHT TO CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

SHOULD YOU CHOOSE TO CANCEL WITHIN THIS TIME, ANY PAYMENTS MADE BY YOU UNDER THIS CONTRACT WILL BE RETURNED AND ANY LEGAL DOCUMENT SIGNED BY YOU WILL BE CANCELLED AND RETURNED, WITHIN TEN BUSINESS DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS CONTRACT, YOU MUST MAIL OR DELIVER A SIGNED COPY OF THE "NOTICE OF RIGHT OF CANCELLATION" (THAT WILL BE FURNISHED BY THE SELLER), OR SEND A TELEGRAM, OR SEND ANY OTHER WRITTEN NOTICE OF CANCELLATION TO SELLER AT SELLER'S PLACE OF BUSINESS. A MAILING MUST BE POSTMARKED, OR A TELEGRAM MUST BE FILED FOR TRANSMISSION, NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT. [305]

During this ten day cooling-off period after the signing of a land purchase contract all communications, personal, telephonic or otherwise, between Respondent and purchaser are forbidden and the initiation of any such communication by Respondent shall be ground for rescission of the purchase contract and recovery of all payments thereunder at purchaser's option, exercisable anytime before the purchased land is fully paid for and deeded to purchaser.

D. Print the following in 12-point boldface type as a separate paragraph of the contract immediately preceding the space provided for the buyer's signature: ATTENTION: WHILE YOU HAVE 10 BUSINESS DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT, *BEFORE SIGNING,* YOU CONSIDER YOUR NEEDS CAREFULLY AND HAVE BOTH THIS CONTRACT AND THE

PROPERTY REPORT REVIEWED BY A LAWYER, REAL ESTATE AGENT OR OTHER QUALIFIED PROFESSIONAL.

E. Furnish each buyer, at the time the buyer signs a contract for the sale of land, with two copies of a form, captioned in 12-point type "NOTICE OF RIGHT OF CANCELLATION," which shall contain in 10-point boldface type the following information and statements:

_____
Date of Transaction

_____
Lot Identification(s)

_____
Contract Number **[306]**

NOTICE OF RIGHT OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT. USE THIS TIME TO EXAMINE WITH CARE THIS CONTRACT AND THE PROPERTY REPORT. YOU SHOULD ALSO USE THIS TIME TO HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, REAL ESTATE AGENT OR OTHER QUALIFIED PROFESSIONAL.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY DOCUMENT YOU SIGNED WILL BE RETURNED WITHIN TEN BUSINESS DAYS AFTER THE SELLER RECEIVES THIS CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent], AT [address of respondent's place of business] POSTMARKED (if mailed) OR FILED FOR TRANSMISSION (if telegraphed) NOT LATER THAN MIDNIGHT OF_____[Date]_____.

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

_____ _____
[Date] [Signature of buyer(s)]

– (End of Notice) – **[307]**

Respondent shall, before furnishing copies of this "Notice of Right of Cancellation" to the buyer, complete both copies by entering the name of respondent, the address of the respondent's place of business, the date of the transaction, the contract number and lot identification(s), and the date, not earlier than the tenth business day following the date of the signing by the buyer, by which the buyer may give notice of cancellation.

Respondent shall, where the signature of a buyer is solicited during the course of a sales presentation, inform each buyer orally, at the time buyer signs the contract, of buyer's right to cancel as stated in this Paragraph of the Order.

F. 1. Honor any signed and timely notice of cancellation by buyer, and within 10 business days after the receipt of such notice, (a) refund all payments made under the contract, and (b) cancel and return any contract or other legal document executed by the buyer;

2. Where a timely notice of cancellation is received and said notice is not sufficient or proper in any manner, and respondent does not intend to honor the notice, immediately notify the buyer by certified mail, return receipt requested, enclosing the notice, informing the buyer of his error and stating clearly and conspicuously that a proper notice [308] signed by the buyer must be mailed by midnight of the third business day following the buyer's receipt of the mailing, if the buyer is to obtain a refund.

G. Whenever respondent extends a privilege or right arrangement whereby the buyer may exchange buyer's undeveloped land for building lot, respondent shall:

1. Include in all materials, including the contract, which discuss the privilege or right, or if such privilege or right is described orally, include in such oral discussion, and in a concurrently delivered written notice, the following statement: BUILDING EXCHANGE LOTS EQUAL IN SIZE AND COST TO THE LOT YOU ARE PURCHASING MAY BE LOCATED SUBSTANTIAL DISTANCES FROM THE ESTABLISHED DEVELOPED AREAS, AND THEY MAY HAVE LESS DESIRABLE ROADS, UTILITIES AND APPEARANCE SO THAT YOU MAY WISH TO EXCHANGE FOR OTHER MORE ATTRACTIVE BUILDING LOTS THAT THE SELLER MAY OFFER. THESE OTHER LOTS MAY BE SMALLER IN SIZE AND MAY REQUIRE YOU TO PAY MORE MONEY THAN YOU ARE NOW CONTRACTING TO PAY; and [309]

2. State the specific financial terms or formula for exchange of the buyer's equity in the original lot into the building lot, in the same place and manner as the statement in subparagraph 1 above.

H. Whenever respondent sells property site unseen it will extend a refund privilege conditioned upon the buyer making a personal visit to the property within six months after purchase and notifying Respondent within three days after inspection that a refund is desired. Respondent shall:

1. Provide the buyer with a copy of the following "INSPECTION AND REFUND PRIVILEGE NOTICE" at the time the contract is signed. The Notice shall be on a separate sheet of paper containing no other writing. The Notice shall be worded as follows:

INSPECTION AND REFUND PRIVILEGE NOTICE

Personal inspection of any land purchase is highly desirable. If you should decide to inspect your purchase in accordance with the requirements of the refund privilege, you should be aware that it will be in seller's interest during the visit to encourage you to retain your

property and to perhaps purchase additional land or trade for a more expensive parcel. Therefore, you may encounter additional sales presentations. **[310]**

You should take the time during your inspection to visit the local area and examine the real estate market where the property is located. You should, on your own, contact local independent real estate agents for information.

In the event you decide to cancel this purchase, you will not be reimbursed by seller for your travel expenses.

THIS INSPECTION AND REFUND PRIVILEGE DOES NOT TAKE AWAY YOUR 10-DAY CANCELLATION RIGHT. SEE YOUR CONTRACT.

(END OF NOTICE)

2. Provide the buyer three (3) business days *after* making the personal inspection within which to request a refund;

3. Include in any contract, in immediate proximity to the provision setting forth the availability of this refund, the following statement: YOU, THE BUYER, HAVE UNTIL MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE CONCLUSION OF YOUR IN-PERSON INSPECTION IN WHICH TO NOTIFY THE SELLER OF A DECISION TO CANCEL. YOU MAY CANCEL THE ORIGINAL PURCHASE AS WELL AS ANY PURCHASE MADE DURING THE INSPECTION VISIT. NO REPRESENTATIVE OF THE SELLER SHOULD **[311]** CONTACT YOU IN ANY WAY DURING THIS 3-DAY PERIOD;

4. Ensure that every buyer who seeks to make this inspection visit sees the precise lot identified in buyer's contract;

5. Orally inform the buyer of this post-visit 3-day cancellation right at the time the contract is signed and again at the conclusion of the inspection visit; the visit shall be deemed to conclude:

a) after the buyer has inspected the precise lot contracted for; and,

b) at the end point in the visit or tour when all contact with the buyer by any employee or representative of respondent terminates;

6. Furnish each purchaser, at the conclusion of the inspection visit (as determined in Paragraph H.5 above), with a dated and completed form, in duplicate, captioned "NOTICE OF CANCELLATION AFTER INSPECTION" which shall contain in boldface type of a minimum size of 10 points the following statements: **[312]**

NOTICE OF CANCELLATION AFTER INSPECTION

Date of conclusion of inspection tour of property
Lot Identification(s)
Contract number(s)

YOU MAY CANCEL YOUR CONTRACT(S) WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE. NO REPRESENTATIVE OF SELLER SHOULD CONTACT YOU IN ANY WAY DURING THIS THREE DAY PERIOD. IF ANY REPRESENTATIVE OF SELLER

DOES CONTACT YOU, PLEASE NOTIFY SELLER AT THIS TOLL-FREE NUMBER: 800 _____.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY LEGAL DOCUMENTS YOU SIGNED WILL BE RETURNED TO YOU WITHIN 10 BUSINESS DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT(S), MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO: (Name of Respondent), at (*address of respondent's place of business*), POSTMARKED (IF MAILED) OR FILED FOR TRANSMISSION (IF TELEGRAPHED) NOT LATER THAN MIDNIGHT OF _____.

I (WE) HEREBY CANCEL THE ABOVE-DESCRIBED CONTRACT(S). (EACH BUYER MUST SIGN THIS NOTICE.)

_____
(Date)

_____ _____
(Buyer's signature) (Buyer's signature) **[313]**

7. Before furnishing the buyer copies of the "NOTICE OF CANCELLATION AFTER INSPECTION" set forth in paragraph H.6 above, complete both copies by entering the name of the respondent and the address of its place of business, the conclusion date of the inspection of the property, the identifying contract numbers and the date, not earlier than the third business day following the conclusion of the inspection (as determined in Paragraph H.5 above), by which the buyer may cancel buyer's purchase(s);

8. During the post-inspection cancellation period all communications, personal, telephonic or otherwise, between Respondent and purchaser are forbidden and the initiation of any such communication by Respondent shall be ground for rescission of the purchase contract and recovery of all payments thereunder at purchaser's option, exercisable anytime before the purchased land is fully paid for and deeded to purchaser;

9. Investigate any notification received from buyers of contact violating the provisions of paragraphs H.3 or H.8 above, and comply with the requirements of Section VI, paragraphs F and G herein; **[314]**

10. Honor any signed and timely NOTICE OF CANCELLATION AFTER INSPECTION by a buyer, and within 10 business days after the receipt of such notice (a) refund all payments made under the contract, and (b) cancel and return any contract or other legal document executed by the buyer;

11. Where a timely NOTICE OF CANCELLATION AFTER INSPECTION is received purportedly in accordance with the requirements of this section, but where said notice is not sufficient or proper in some manner and respondent does not intend to honor the notice, immediately notify the buyer by certified mail, return receipt requested,

enclosing the notice, informing the buyer of buyer's error and stating clearly and conspicuously that a proper notice signed by the buyer must be mailed by midnight of the third day following the buyer's receipt of the mailing if the buyer is to obtain a refund.

I. Unless otherwise requested by buyer, promptly record, with the appropriate authority of the county in which the land is located, all contracts for the purchase of respondent's land, and take such steps as may be necessary to advise such county authority from time to time of the last known mailing **[315]** addresses of the buyers under such contracts, but in no case later than the end of the calendar month following that in which respondent becomes aware of any change in such mailing addresses.

J. Include in all contracts for the sale of land a provision limiting the amount of moneys to be forfeited by a buyer in the event of buyer's default under the contract to an amount not greater than respondent's actual damages from such forfeiture; *provided,* that the amount forfeited in no event is to exceed 40 percent of the "cash price" of the lot, as "cash price" is defined in Truth-In-Lending Regulation Z (12 CFR 226.2 (n)).

K. Refund to buyers who are deemed in default, in accordance with the contract provision set forth in paragraph J above, all moneys paid under the contract, including but not limited to principal, interest, taxes, and assessments which in the aggregate exceed (1) respondent's actual damages or (2) 40 percent of the "cash price", whichever is less, within 60 days after the buyer is deemed to have defaulted; *provided,* that this paragraph shall not preclude respondent from offering a defaulting buyer additional alternatives which may be selected at the buyer's option, in lieu of a refund.

For purposes of this section of the Order, a buyer shall be deemed to have defaulted when either of the following occurs:

1. buyer notifies respondent of intent to default; or **[316]**

2. buyer has failed to make a payment for a period of six months from due date of such payment.

L. Forbear from seeking to recover, or recovering by any means, from buyers who were under contract for purchase of respondent's land as of the date the Commission's complaint in this matter was issued (March 11, 1975) or who entered into such a contract between that date and the date this Order becomes final, who have defaulted or who become in default (as defined in paragraph K above), any sums remaining due on their contracts.

M. Forbear from relying upon or enforcing in any manner, or representing that respondent will rely upon or enforce in any manner, against any buyer who was under contract for the purchase of re-

spondent's land as of the date the Commission's complaint in this matter was issued (March 11, 1975) or who entered into such a contract between that date and the date this Order becomes final, the following contract clauses:

1. Respondent's contract clause which provides that the seller may retain all sums previously paid by buyer in the event that buyer fails to pay any installment due or otherwise to perform any obligation under the contract; and

2. Respondent's contract clause to the effect that no express or implied represen[317]tations have been made in connection with the sale other than those appearing in the contract.

N. Not misrepresent, nor solicit or obtain the buyer's assent to or otherwise impose any condition, waiver or limitation upon, the right of a buyer to cancel a transaction or receive a refund under any provision of this Order or any applicable statute or regulation.

O. Include in all contracts a provision insuring free alienability of the purchaser's interest therein and extending the contractual rights and privileges of the buyer to subsequent purchasers or assignees from buyer.

P. Forbear from charging or collecting from any installment purchaser of land in any of its developments any payment in the nature of "interest" (or providing for such payment in Respondent's land contract) unless and until Respondent gives such purchaser possession and use of the land purchased.

Q. Mail to all buyers of respondent's land, both those who are deeded and those who were under contract for the purchase of such land as of the date the Commission's complaint in this matter was issued (March 11, 1975) or who entered into such a contract between that date and the date this Order becomes final, regardless of whether or not they are in default, the Notice attached to this Order as Appendix A. [318]

IV

It is further ordered, That respondent AMREP Corporation, its successors and assigns, shall:

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

B. Provide each person so described in paragraph (A) above with a form to be returned to respondent, clearly stating that person's inten-

tion to conform his or her business practices to the requirements of this Order;

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

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

E. So inform the persons described in paragraph (A) above that respondent is obligated by this Order to discontinue dealing with those persons who engage on their [319] own in the acts or practices prohibited by this Order or who fail to adhere to the affirmative requirements of this Order;

F. Institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in paragraph (A) above conforms to the requirements of this Order, and promptly investigate and resolve any complaints about such persons received by respondent, and maintain records of such complaints, investigation and disposition for ten years from the date of the complaint;

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

H. Create, maintain and staff a toll-free telephone number service that consumers may employ during regular business hours to request information, to cancel an appointment or to notify respondent of a complaint. Provide this number in the space provided in the NOTICE TO BUYERS (Section II herein) and in the NOTICE OF CANCELLATION AFTER INSPECTION (Section III, paragraph H.6 herein). [320]

V

It is further ordered, That in the event respondent transfers all or a substantial part of its business or its assets to any other corporation or to any other person, including a transfer of all or part of the ownership interest of any or all of respondent's wholly-owned subsidiaries, respondent shall require said transferee to file promptly with

the Commission a written agreement to be bound by the terms of this Order; *provided,* that if respondent wishes to present to the Commission any reasons why said Order should not apply in its present form to said transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this Order to each of its subsidiaries.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this Order. [**321**]

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order. [**322**]

APPENDIX A

FEDERAL TRADE COMMISSION

Los Angeles Regional Office
11000 Wilshire Boulevard
Los Angeles, CA 90024

IMPORTANT NOTICE TO LOT BUYERS IN (insert RIO RANCHO, or SILVER SPRINGS SHORES, or ELDORADO AT SANTA FE, or OAKMONT SHORES)

The Federal Trade Commission is sending this letter to all (insert subdivision) lot buyers. It contains facts you should know about your purchase and about the seller.

In 1977, AMREP Corporation, Rio Rancho Estates, Inc., the president and three other officials of these companies were found guilty of mail fraud and other crimes in connection with the sale of Rio Rancho lots.

In 1975, the Federal Trade Commission brought a lawsuit against AMREP Corporation, the parent company of (insert subdivision). This letter is part of the order issued when the lawsuit was decided.

Please read this letter carefully and consider the alternatives suggested in Part III. The Commission cannot advise you as to what decision is best for you.

I. LOT VALUE AND RESALE

There is virtually no resale market for (insert subdivision) lots which have not been developed with utilities. If your lot is presently undeveloped, it is unlikely that you would be able to resell it now except at a substantial loss. The [**323**] extent of community development and population growth in the particular area of (insert subdivision) where your lot is located will determine whether or not you could resell your lot once