it is developed. The population growth and community development necessary to enable you to sell your lot at or near the price you paid or are paying for it may not occur for many years, if at all. If the lot may be exchanged for a developed lot, there may be some small demand by builders for a limited amount of such lots at the present time.

You should be aware that neither AMREP nor (insert subdivision) will buy back your lot or help you resell it except for providing a resale listing service, as described in II below.

II. RESALE LISTING SERVICE

In accordance with the provisions of the Commission's Order, AMREP will provide a resale listing service for purchasers of its undeveloped lots in (insert subdivision). AMREP will provide a clearinghouse for all purchasers who desire to resell their property, but is not required to act as a traditional broker in seeking buyers.

AMREP will maintain a list of all property that is placed for resale, with a description of the unit, block and lot number, the size of the lot, the price that you, the owner or contract holder, desire to sell it for, and your name, address and telephone number. You should remember, in determining your price, that you will be competing with other lotowners for buyers. [324]

AMREP will notify the local realtors' multiple listing service (MLS) that lots are for sale, but will not individually list your lot with the MLS. Prospective buyers may then contact AMREP and select a lot from the master list. As the lots are relatively similar in characteristics, it is expected that the lowest-priced lots will be sold first, if at all (*See* I above).

If you desire to list your lot in this manner, write to AMREP at the following address:

( )
(Insert Respondent's Address)
( )

Include the following listing information: your name, current address, telephone number, contract number, lot identification (unit, block and lot), size of lot and the price at which you want to list your lot.

III. OPTIONS AVAILABLE TO PURCHASERS

There are a number of options available to you at this time which you should review based on the information provided in this notice:

1. You can continue making your payments.

2. You can refuse to make any further payments and perhaps take a tax loss. According to the FTC Order you *cannot* be [325] required to pay any more money, but if you elect this option, you will lose your land and all the money you have paid. However, if you purchased your lot as an investment and not for your own use as a homesite, you might be able to declare the money you lost as a tax loss, deductible from your income on federal and state tax returns. It is suggested strongly that you contact your local District Director of the Internal Revenue Service *before* deciding whether to stop payments, if your decision is based on the possibility of taking a tax loss. Whether your loss is deductible will be based on your specific situation and you should *not* rely on this letter as authority for a deduction.

3. You can stop making payments and seek satisfaction against AMREP in a private

lawsuit. You should consult an attorney before electing this option. The Commission's Order may be relevant in such a suit and your attorney should obtain a copy.

4. You can list your lot as described in Section II above. [326]

5. You can relocate to (insert subdivision) and, if possible, build on your lot or exchange for a building lot if so permitted by your contract or by company policy. You may, however, be required to pay more money for this exchange lot. Check with the company for details.

If you have any questions about the contents of this letter, write to me. Please do not telephone.

If you have questions about your account, the development of your specific lot, or the procedures for listing your property, call AMREP toll-free at ( ). A representative will return your call. Instead of calling, you may wish to write to:

( )
(Insert Respondent's Address)
( )

In any letter, you should include your name as set forth in your contract, your account number, your lot identification number, your current address and telephone number, and the name of the subdivision in which your lot is located.

Sincerely,

Perry W. Winston
Attorney

APPENDIX A1

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation.	DOCKET NO. 9018

RULING ON EFFECT TO BE GIVEN HERE TO JUDGMENT IN *U.S. V. AMREP CORP. ET AL.*

In the course of argument over other matters, under date of 4/18/77 Respondent submitted copies of the original indictment, a superceding indictment and the Judge's instructions to the jury in *U.S.* v. *AMREP Corp., et al.,* S. 76 Cr., S.D.N.Y., a criminal mail fraud and interstate land sales fraud case paralleling this one (for the trial of which hearings here were, in fact, enjoined during the last half of 1976 and early months of 1977). Thereupon, under date of 4/25/77 Complaint Counsel moved to have the Court "take official notice that the jury (in *U.S.* v. *AMREP Corp. et al.*) found Respondent's claims as to the investment value of its land and the direction and extent of growth of Albuquerque to be false," asserting that such a "finding" would support allegations in Complaint Pars. 11, 12, 14, 15, 20, 21 and 54 here. Attaching uncertified copies of the judgments of conviction in *U.S.* v. *AMREP Corp. et al.,* Complaint Counsel noted that certified copies would be offered into evidence "at the hearings."

Under date of 5/12/77 Respondent submitted a brief objecting to the taking of official

notice here of the instructions and convictions in *U.S.* v. *AMREP Corp. et al.* on grounds that (1) the criminal case was (and is) still on appeal, and (2) "to make out a [2] case against respondent by simply resting upon a decision in a prior proceeding would do violence to fair play and due process", noting further that official notice is really designed for facts of a generally recognized nature.

On 5/25/77 oral argument was held. During the course of such argument the propriety of official notice as a vehicle for Complaint Counsel's goal was eliminated as an issue, in view of the Administrative Law Judge's opinion that certified copies of relevant portions of the record in *U.S.* v. *AMREP Corp. et al.* should be offered for the record here and Complaint Counsel's statement of intention to offer such certified copies here in any event. The issue under consideration is thus no longer whether official notice should be taken of the proceedings in *U.S.* v. *AMREP Corp. et al.* but whether certified copies of portions of the criminal case record should be received in evidence here.

During this same argument Complaint Counsel advised the Court that their motion of 4/25/77 was not intended to seek collateral estoppel effect for the criminal case judgment but merely to permit its use as one "piece of evidence" to be considered along with all other evidence in the case. Counsel cited in support new Federal Rule 803(22) which overcomes any hearsay objection to introduction of a judgment of previous conviction of felony to prove any fact essential to sustain such judgment. The comment of the Judicial Conference's Committee on Rules of Practice and Procedure published in the March 1971 "Revised Draft of Proposed Rules of Evidence for the United States Court and Magistrates" (at p. 122 of West Edition) indicates, however, that the use of such a judgment "in evidence for what it is worth" would normally occur only "when . . . the doctrine of res judicata does not apply to make the judgment either a bar (i.e. claim preclusion) or a collateral estoppel (i.e. issue preclusion)." [3]

Complaint Counsel's proposed limited use of the judgment in *U.S.* v. *AMREP Corp. et al.* as just another piece of evidence "for what it is worth" is thus most unusual and puzzling. Complaint Counsel explain—and Respondent's Counsel not too surprisingly agree—that they see great difficulties in actually applying the doctrine of collateral estoppel, primarily because a general jury verdict is inherently ambiguous as to the facts on which it is based. The difficulties suggested, however, would seem to apply as much to use of a judgment as a "piece of evidence" as to its use as a "collateral estoppel" and, in any event, such difficulties are by no means insuperable.

A primary difficulty stressed by both parties is that Judge Metzner's instructions to the jury in the criminal case, while recognizing that the indictment alleged two different false claims ["investment value of the purchase of land at Rio Rancho" *and* "direction and extent of growth of Albuquerque" (Tr. 7814)] went on to tell the jury it could not convict unless it found *either* one *or* the other of these two allegations was true [Tr. 7818]. Thus, it is argued, it is now impossible to tell which of these two allegations the jury adopted.

A similar predicament faced the court in *Emich Motors Corp. et al.* v. *General Motors Corp. et al.*, 340 U.S. 558 (1951). There Respondents contended (p. 567) that since the Government did not offer evidence to support all of the 26 different acts charged in a prior criminal case on the same facts and was required to prove only one of them, it was impossible upon a general verdict of guilty to determine on which of the various acts the jury based its verdict and that consequently the judgment had no relevance in a subsequent civil suit.* The Supreme Court [4] recognized the problem but did not think—as some older cases might suggest—that this was fatal. It explained:

* *Emich* was based on the special provision of Sect. 5(a) of the Clayton Act, which made criminal antitrust convictions *prima facie* evidence in a subsequent civil suit even without identity of litigating parties. For present purposes the *Emich* case is nevertheless precisely in point.

> What issues were decided by the former Government litigation is, of course, a question of law as to which the court must instruct the jury. It is the task of the trial judge to make clear to the jury the issues that were determined against the defendant in the prior suit and to limit to those issues the effect of that judgment as evidence in the present action. As to the manner in which such explanation should be made, no mechanical rule can be laid down to control the trial judge who must take into account the circumstances of each case . . . . He is not precluded from resorting to such portions of the record, including the pleadings and judgment, in the antecedent case as he may find necessary or appropriate to use in presenting to the jury a clear picture of the issues decided there and relevant to the case on trial. (pp. 571–2)

In this case it seems to the Administrative Law Judge, who is charged by *Emich* with resolving such ambiquities, that there can be no serious doubt that the jury in the criminal case must at least have adopted Judge Metzner's instruction that they might find a scheme to defraud based on "a false claim as to the investment value of the purchase of land at Rio Rancho" (whereas it is not clear at this juncture whether or not they further adopted his instruction that they might also find "a false claim as to the direction and extent of growth of Alburquerque") This is simple common sense. **[5]**

The proposition regarding the direction and growth of Albuquerque would not, standing alone, support the ultimate inference of a scheme to defraud; it operates only thru the other proposition (a false claim as to the investment value of Rio Rancho land). It would thus be quite illogical for the jury to have found a scheme to defraud based solely on the Albuqurque-growth misrepresentation. Contrariwise, the investment-value proposition stands on its own legs; from it one may deduce directly—without reference to the Albuquerque-growth proposition—the ultimate proposition asserted: the fraudulent scheme. In summary, if the jury's verdict was not based on adoption of *both* the investment-value and Albuquerque growth propositions—as further study of the criminal record and evidence may well reveal—the jury could logically have adopted the investment-value proposition without the Albuquerque-growth proposition but it could not logically have adopted the Albuquerque-growth proposition without the investment value proposition.

A second difficulty is alleged because the Indictment pleaded a fraudulent scheme devised between 1961 and 1975 and Judge Metzner instructed the Jury that "(t)he Government is not required to prove that the alleged scheme to defraud existed over the whole course of time set forth in the indictment. It is sufficient if you find that at any time within that period all of the elements of the alleged scheme to defraud have been proven to your satisfaction beyond a reasonable doubt" (Tr. 7817). It is not clear why such an instruction would be any less satisfactory as far as Section 5 of the Federal Trade Commission is concerned. With reference to the asserted defense of abandonment, that is an affirmative defense (involving much more than the simple passage of time) which Respondent is free to prove, if it can, **[6]** whether or not estopped from challenging the fraudulent scheme allegation. Correspondingly, we would certainly permit Complaint Counsel a reasonable leeway to rebut an abandonment charge which seemed to have any substance to it, whether or not the basic fraudulent scheme may be questioned.

Finally, the question of possible consumer redress—previewed in the notice order—is said by Complaint Counsel to require specific findings as to guilty knowledge. Certain it is that new Section 19(a)(2) of the FTC Act requires a showing by this Commission in the subsequent redress action that "the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent . . ." However, the Commission has made it crystal clear that discovery (and thus proof) of matters relevant only to a subsequent redress

action are not to be litigated in a proceeding like this. *Electronic Computer Programming Institute, Inc.*, D. 8952, Commission Order of 11/11/75. There is thus no real difficulty now as respects matters to be taken up *de novo* in a subsequent redress action.

The Administrative Law Judge is quite aware that our litigation is still geared primarily to an adversary rather than an investigative system, although a trend toward the latter in recent years is manifest. Be that as it may, the Commission has charged us with responsibility not only "to conduct fair and impartial hearings" but "to take all necessary action to avoid delay in the disposition of proceedings." Commission Rule Section 3.42(c). While the case-in-chief here is nearly complete, as things stand, there is a long defense ahead, stretching into 1978. The prospect of materially shortening that period of litigation by judicious use of collateral estoppel leads us to take affirmative action to achieve that goal. We now ORDER Complaint Counsel to abandon their "piece of evidence" approach; to prepare any necessary amendment to the pleadings (*see* 46 Am. Jur. 2d, Judgments, Section 602 et seq.); and to establish as their last proof in the case-in-chief that Respondent is estopped to question such facts [7] relevant to this matter as Complaint Counsel may show have been litigated and decided in *U.S.* v. *AMREP Corporation, et al.* This order will not take effect, however, until 6/21/77, prior to which time the Administrative Law Judge will hear argument contra by either or both parties at such time as may be requested.

/s/ Paul R. Teetor
Administrative Law Judge

June 10, 1977

APPENDIX A2

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation.	)	DOCKET NO. 9018

FURTHER RULING ON EFFECT TO BE GIVEN HERE TO JUDGMENT IN *U.S. V. AMREP CORP. ET AL.*

Under date of 6/10/77 we issued a tentative order to Complaint Counsel in order to effect a major economy of time and effort in this matter to prepare any necessary amendment to the Complaint and as the last proof in their case-in-chief here to introduce enough of the record in *U.S.* v. *AMREP Corp. et al.*, S. 76 Cr., S.D.N.Y., to raise a collateral estoppel as to any issue of fact litigated and determined there which is also an issue here. The effective date of the order was simultaneously stayed until 6/21/77, however, to permit statements of objections by either or both parties.

Argument was, in fact, held on 6/21/77, as will appear in more detail from the transcript of proceedings on that date. Both parties vigorously opposed the Administrative Law Judge's proposed plan.[1] Among [2] other things, Respondent, as earlier,

[1] The leading case cited by the Administrative Law Judge for use of a criminal conviction to raise a collateral estoppel in a subsequent civil suit by the same Government was *Local 167* v. *U.S.*, 291 U.S. 293 (1934). That (footnote cont'd)

stressed the instruction of Judge Metzner to the jury in *U.S.* v. *AMREP Corp., et al.* that in order to find a fraudulent scheme it must find a misrepresentation either as to the investment value of land purchased at Rio Rancho Estates or as to the trend of Albuquerque's growth, so that, it was argued, it cannot be known from the jury's verdict on which ground or grounds the case was decided. Complaint Counsel, for their part, stressed, inter alia, the practical uselessness of a broad finding of a fraudulent scheme (of any kind) since that would leave a host of specific practices still to be established in order to justify the proposed provisions of the lengthy and complex cease and desist order sought here.[2] At the close of said argument, in open court we further stayed the effective date of our order of 6/10/77 for reconsideration thereof. As a result of an extensive review of the authorities and an intensive consideration of the special situation here we are now persuaded to ABROGATE the proposed order.

We do not by this action adopt Respondent's argument that a collateral estoppel is foreclosed by Judge Metzner's charge to the jury. It is no doubt good law that as to an "ultimate fact" the existence of an alternative basis for the jury's finding might prevent a collateral estoppel by making it impossible to know on which ground the jury decided the case. *Russell* v. *Place,* 94 U.S. 606, 608 (1876). But there was no such dilemma as to the "ultimate fact" here. The "ultimate fact" in issue[3] (or "ultimate inference", as we called it in our 6/10/77 order) was the [3] existence of a scheme by defendants (including Respondent here) to defraud Rio Rancho purchasers by making false claims. As to that simple finding there can be no ambiguity. There seems, accordingly, little question that it could well be the subject of a collateral estoppel here, regardless of whether, as we intimated in our tentative order, a similar estoppel might also arise as to the "mediate" allegation that such claims were, in general, concerned with the investment value of the land.

Assuming that a collateral estoppel could be raised, Complaint Counsel argue, however, (and Respondent's counsel expressly concur) that a collateral estoppel at this "ultimate fact" level is not worth very much in a case like this which is brought to justify an order to cease and desist from a large number of very specific trade practices.

Insofar as Complaint Counsel's position is based on an assumption that a respondent must be shown to have actually engaged in each practice from which it is ordered to cease and desist, we do not believe this to be the law. The proper test is whether there is a real possibility that an unfair practice may be followed in the future. Past practice is only one indication of such a possibility and not even a necessary one at that.

As explained by the Supreme Court in *N.L.R.B.* v. *Express Publishing Co.,* 312 U.S. 426 (1941) an agency's authority to restrain an unfair practice in which a respondent has been engaged may extend to practices in which he has *not* been engaged if they are reasonably related to the proven unfair practice. Similarly, said the Court, an order restraining violations of the statute other than the one found is justified when those violations bear some resemblance to that which the respondent has committed or when danger of their commission in the future is to be anticipated from the course of conduct in the past. [4]

In *F.T.C.* v. *Mandel Bros.,* 359 U.S. 385 (1959) the Supreme Court, applying *Express Publishing's* "other like or related unlawful acts" test to this Commission's orders approved one to cease and desist from violating six disclosure requirements of the Fur Products Labeling Act, even though the Commission had *affirmatively found no viola-*

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government agencies are in privity with each other he cited *Sunshine Coal Co.* v. *Adkins, Collector of Internal Revenue,* 310 U.S. 381 (1940).

[2] The notice order contains this statement: "Specific provisions ordered by the Commission will be based upon the record facts developed in adjudicative proceedings in this matter."

[3] For attempted definitions of such terms as "issue", "ultimate fact" and "mediate fact", *see Paine & Williams Co.* v. *Baldwin Rubber Co.,* 113 F.2d 840 (6th Cir., 1940) and *The Evergreens* v. *Nunan, Commissioner of Internal Revenue,* 141 F.2d 927 (2d Cir., 1944).

tions of three of the six: "Where the episodes of misbranding have been so extensive and substantial in number as they were here, we think it permissible for the Commission to conclude that like and related acts of misbranding should also be enjoined as a prophylactic and preventive measure." (p. 393).

In *F.T.C.* v. *Ruberoid Co.*, 343 U.S. 470 (1951) the Supreme Court approved a Commission order prohibiting *all* price differentials between competing customers, although differentials of no more than 5% had actually been found. Since it was unquestioned that very small differences in price were material factors in competition the Commission was not required to limit its prohibition to the specific differential shown to be adopted in past violations of the statute. In much quoted language the Supreme Court said:

> Orders of the Federal Trade Commission are . . . intended to . . . prevent illegal practices in the future. In carrying out this function the commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. . . . (I)t must be allowed effectively to close all roads to that prohibited goal so that its order may not be by-passed with impunity.
>
> * * * * * * * [5]
>
> Congress expected the Commission to exercise a special competence in formulating remedies. . . . (and) the Courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practice found to exist. (p. 473)

One of the most striking examples of an order which extended far beyond the proven violation was *General Transmissions Corporation of Washington et al.*, 73 F.T.C. 399 (1968). There the Examiner had limited his order to prohibit deceptive practices only "in connection with the advertising, offering for sale and sale, repair and servicing of *automobile transmissions and related parts*" (emphasis added) but Commissioner Elman, for a unanimous Commission, wrote:

> It is true that the practices giving rise to this proceeding concern the sale and repair of transmissions but it would be relatively easy for respondents to utilize their present illegal tactics in connection with the sale and repair of other automobile parts . . . . or in connection with the sale and repair of radios, television sets, home appliances and a number of other products. Nor is it unrealistic to fear that respondents might switch to one of these related fields in an effort to evade the Commission's order. . . . We are therefore modifying the order to give it broader applicability, thus preventing evasion of the order or recurrence in any other guise of the fraudulent activities revealed in this record. (pp. 426–7) [6]

Such authorities make it clear that it is not essential to find the existence of past practices to support an order to cease and desist from similar practices in the future, so long as there is any good reason for such a prohibition. Thus, even a broad finding by collateral estoppel that Respondent has been engaged in a scheme to defraud purchasers of land at Rio Rancho by making false claims might well be enough to support prohibitions of specific practices, whether or not Respondent has heretofore engaged in those specific practices. The logical end of such reasoning would, of course, be a reaffirmation of the order of 6/10/77 directing Complaint Counsel to invoke a collateral estoppel based on the indictment, verdict and judgment in *U.S.* v. *AMREP Corp. et al.* The reasons why we now abrogate instead of re-affirming that order are as follows.

The fact that in some instances an order to cease and desist from a specific kind of

deceptive practice *may* prohibit conduct never previously engaged in does not, of course, mean that in all or perhaps even most such instances a showing of need for such relief based solely on the jury's finding of a fraudulent scheme would be felt sufficient either by the Administrative Law Judge or the Commission. As a result, such a substantial quantity of evidence might well be required for an intelligent assessment of the need for particular provisions of a proposed order—even if a finding of a scheme to defraud Rio Rancho buyers be assumed by virtue of collateral estoppel—that whether there would be any significant saving of trial time becomes problematical. This consideration is augmented by the fact the result of the criminal case did not become known until well into Complaint Counsel's case here and as a practical matter the case-in-chief, based on *de novo* proof, is now virtually complete.

We note finally the fact that Complaint Counsel and Respondent's Counsel stand shoulder to shoulder in opposition to substituting a collateral estoppel for *de novo* proof on the issue of violation. Under such circumstances we would feel bound to allow an [7] interlocutory appeal which might well consume several months time. Moreover, in an adversary system involvement by the Judge in a normal function of counsel is most unusual.[4] On mature reflection we have now concluded to abrogate our order of 6/10/77.

Counsel are advised that if and when certified copies of the judgment and other relevant parts of the record in *U.S.* v. *AMREP Corp. et al.* are actually offered here, counsel will be expected to cite clear and convincing federal authority for the use of such matter other than to establish a collateral estoppel.

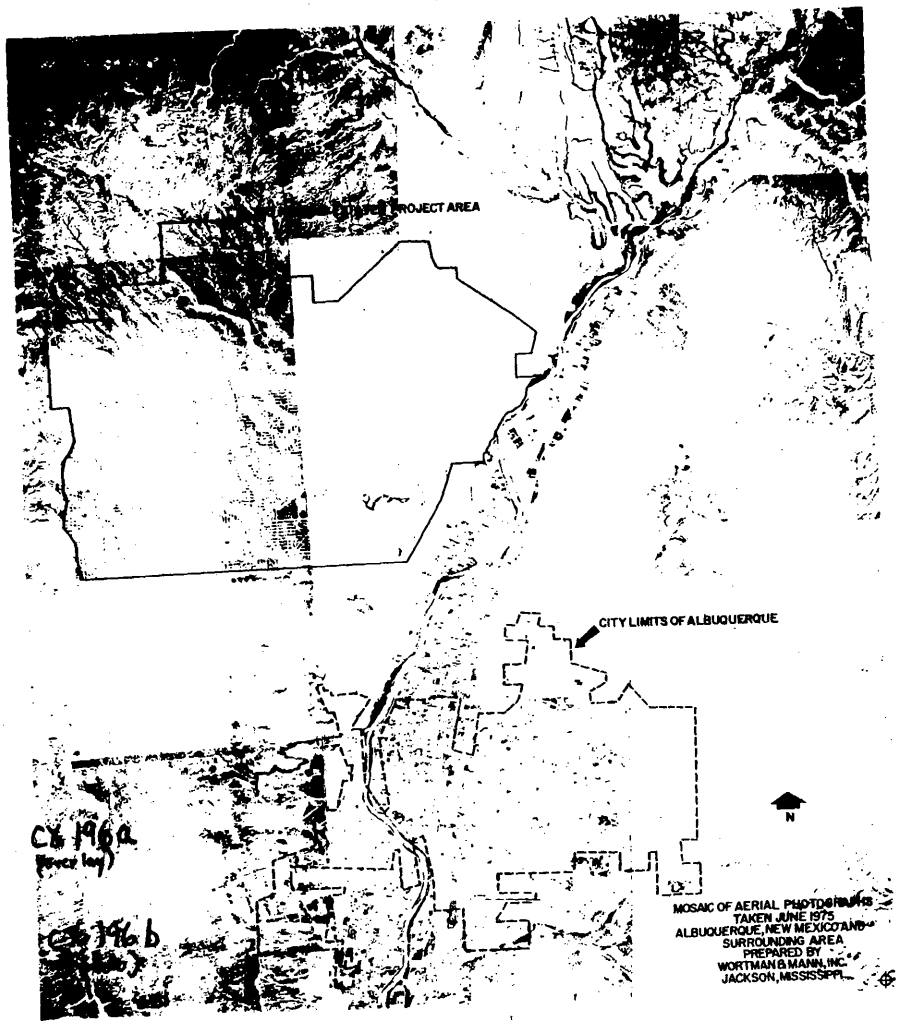
/s/ Paul R. Teetor
Administrative Law Judge

June 30, 1977

[4] Miller, R.W., "The Premises Of The Judgment As Res Judicata In Continental And Anglo American Law", 39 Mich. L.R. 1, 7–8 (1940).

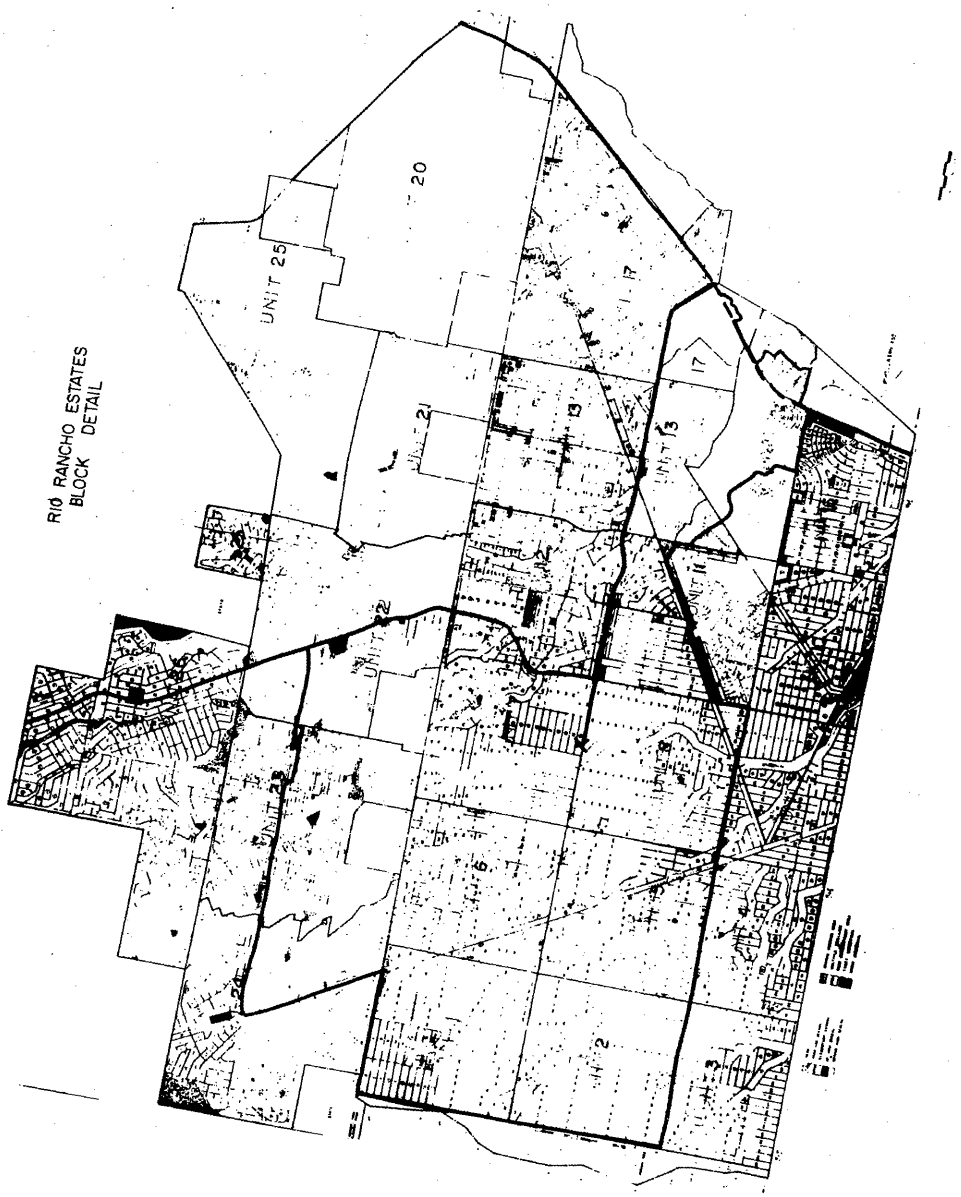
APPENDIX B

(Aerial Map of Rio Rancho)



APPENDIX C

CX 263, p. 68 (*See also* CX 561)



APPENDIX D

Excerpts from the testimony of Luciano J. Scirica (TR 5516–41)

LUCIANO SCIRICA, having been duly sworn, took the stand and testified as follows:

JUDGE TEETOR: The witness is sworn.

DIRECT EXAMINATION

BY MR. SCHULMAN:

Q. Would you please state your name and address for the record?

A. I am Luciano J. Scirica. I live at 355 North Long Beach Road, Rockville Center, New York.

Q. That is pronounced Scirica?

A. Scirica, yes.

Q. Mr. Scirica, when did you first come to hear of AMREP Corporation?

A. Oh, we had received a postcard in the mail inviting us to a dinner party.

Q. Do you recall about when that was?

A. Oh, I guess it was some time in February of 1973.

Q. Did you attend that dinner?

A. Yes, I did.

Q. Do you recall when that dinner was?

A. When?

Q. When the dinner was?

A. It was February 13th, 1973.

Q. Do you recall where that dinner was?

A. Not really, because I attended so many. I'm confused at this point exactly which one and where it was at that date.

Q. Do you remember what city or county it was in?

A. Oh, yes. It was in Nassau County.

Q. And that's in New York?

A. Yes.

Q. Did you go with anybody?

A. No. It was just the wife and I.

Q. What happened when you first arrived at the location where the dinner party was?

A. Well, you arrived there and you came in with a card and you tell the receptionist or the door, they have at the door your name. And she calls over a salesman and you are introduced to the salesman and he takes you to a table and you sit down at a table. And he tells you he'll be right with you.

Q. Do you recall the name of the salesman?

A. Yes.

Q. What was his name?

A. Bernie Lombardi.

Q. And how many people were sitting at your table?

A. One other couple.

Q. Do you know how many other tables were there at that dinner party?

A. Oh, I would—I didn't count them but I would say maybe at least 20 tables.

Q. What happened first after you were seated at the table?

A. We were seated at the table. And we were introduced to the people that were there, the couple that were there, and introduced. You have a lot to talk to these people because these people own property and make yourself comfortable. And he says I'll get back to you because he was pretty busy. This was Mr. Lombardi.

Q. Did he return to the table?

A. Later on, yes.

Q. What happened when he returned to the table?

A. He just made small talk until the meeting, so to speak, got started, and we had a little speech and then it started to go on because they said they would give us a little speech or a little talk because Mr. Estrema would get up and give us a little background about the AMREP Corporation and then we would have dinner.

Q. Do you recall what Mr. Estrema said?

A. Yes. He said that—he welcomed us all to the dinner and he was sure we would enjoy ourselves, and he said, giving us a little background about the AMREP Corporation. The AMREP Corporation was an important Company. He says it had—it was listed on the Stock Exchange. They have been in this business a long, long time. Rio Rancho is not only the only area they are developing. They are developing areas throughout the United States. And he says that a little later on they would show us movies about Rio Rancho.

Q. What happened when Mr. Estrema was done with this talk?

A. I think after he was done I think we started to have dinner.

Q. And after dinner what happened?

A. Well, after dinner they started to show this movie about Rio Rancho.

Q. Do you recall what was in the movie?

A. Yes. A good portion of it I believe.

Q. Can you tell us what you saw in the movie?

A. Yes, in the movie it was showing, you know, I think it showed that Albuquerque was located in the golden triangle area of the country, of the United States. I believe it was Albuquerque, Phoenix. All I know it was the shape of a triangle. And told us about the City of Albuquerque, that it was a fast-growing community. There was a great deal of building going on. It was doubling itself.

And it showed us pictures of Rio Rancho, the golf course area.

And it also had people who, I guess they visited people at their homes in Rio Rancho. I believe one was having a picnic there. And each one of these people who were residents of Rio Rancho stated how happy they were in their investment and how happy that they did make the change to come down into Albuquerque.

Q. Do you recall anything else in the film?

A. I believe—you know, so much, it gets a little confusing.

I remember seeing, I believe, how the dollar was broken up, something like that. It's not very clear whether I saw it at that movie or some other time.

Q. Okay. Is there anything else in the film that you saw that you recall?

A. Yes. The most outstanding thing in the film was that I was tremendously impressed with was to see an outstanding political figure praise what AMREP was doing for New Mexico by developing this Rio Rancho area.

Q. And do you recall who that man was?

A. I've seen him. It was either at that time or it was either Senator Montoya or was it the governor of the state? Clark or what is the name? I forget.

But he was, at that time of the year he was quite prominent in the paper, and I was very impressed to hear an outstanding political figure was praising the Rio Rancho development.

A. Right offhand—

Q. Do you remember anything in the film about—excuse me. Go ahead.

A. Go ahead.

Q. Do you remember anything in the film about the direction of the growth of Albuquerque?

A. Oh, yes, definitely.

It explained the direction of the growth of the city of Albuquerque and the city was

growing, that the only direction that the city could grow towards would be to the Rio Rancho development area.

And the reason for that was that I believe to the east was the Sandia Mountains. I believe to the south was either government land and Indian reservation, orientation—I know it was completely boxed in. And the only area that was open as they explained to us was in a north direction, towards the Rio Rancho area.

Q. After the movie, what happened?

A. Well, after the movie, we, I guess, and Mr. Estrema got up again and he said that the salesmen were at each table, he says, and they would talk to people who came and who wanted to know a little bit more about Rio Rancho, and that they did have a limited number of lots for sale and that the sale of the lots was very brisk and they were doing very, very well, and we were fortunate to come in and to talk to the salesmen. The salesmen would surely satisfy anything that you wanted to know or any particular piece of property you think you would be interested in.

Q. Do you recall anything else that Mr. Estrema said?

A. Not really. Not at the moment.

Q. What happened after he was done with his talk?

A. Well, once he got finished with his talk we had, I believe, one of the salesmen—I assume he is a salesman because he came up to the microphone and he said "Parcel so-and-so and so is sold."

And as you are trying to talk to the—I was trying to talk to Mr. Lombardi because I wanted to get more information as to what is the facilities and how soon will the place be developed and all that.

As this goes on, each time a piece of property is sold, that salesman would run up to the microphone and tell them, "Cross out lot so-and-so. It's sold."

And this is going on as you are trying to talk and have a conversation with your salesman.

Q. What did Mr. Lombardi tell you?

A. Mr. Lombardi, he told me, he says to me, "Well, you know, I have something real great for you. Now, we are both Italians and I have something for you that I'm pretty sure you would be very, very happy with."

He says, "Don't forget, we just don't sell any piece. We make sure whatever we sell is good."

He says, "Because we want to treat our customers good because we want them, you know, to remember us with other people and their friends."

And he told me he had this piece of property that he thought would be ideal for me.

Q. Do you recall anything else that he said?

A. Yes. He said, "Just remember, you can never really lose money on the land because at the price we are giving it to you tonight," he says, "next week it goes up 10%. How could you lose with that? You are buying something today and next week it's worth 10% more."

Q. Do you recall anything else that Mr. Lombardi said to you?

A. Right offhand, not at the moment.

Q. OK.

Now, with reference to a speech by Mr. Estrema and the talk that Mr. Lombardi delivered at the table, do you recall anything that was said with regard to investment?

A. Oh, yes. As far as investment was concerned, that they said, No. 1, that it was a tremendous investment, the value of the property was going up continuously. The demand for the land was unbelievable, he said. The demand is surprising them and the values are going up and even into today's market—oh, I think that's where it was. Probably in the movie or something, where it showed that the value of your dollar is decreasing because of inflation. And here you will be buying property at a reasonable price and then as the years go on, as you make payments with this increased inflation,

that you will be buying it all with cheaper dollars and it was a tremendous investment opportunity.

Q. Do you recall anything that Mr. Estrema or Mr. Lombardi said with reference to comparing Rio Rancho to other communities?

A. Well, they did say that the Rio Rancho community was one of the fastest-growing communities in the country, that the AMREP Corporation was doing their utmost to make it one of the best developments they had. They had already established model homes they wanted to build. They were going to put in all the facilities and everything else on the land, into the areas as they were developed.

He told us what areas they were developing at the time and that everything was just big and rosy.

Q. Do you recall where the property was that Mr. Lombardi was talking about to you, what unit it was in?

A. At that time it was unit 17.

Q. Do you recall anything that Mr. Lombardi said with respect to that particular piece of property, or with respect to that particular unit?

A. He said to me at that time, he said that this would would be the next unit that would be developed because "you are not that far away from the Panorama Inn." That's their golf course area.

Q. Did he tell you how long it would take before it was developed?

A. He said within five years it would be developed. That was the time limit that I was interested in, five years.

Q. Did he tell you what would be in the unit when it was developed?

A. He says it would be complete with everything you want and that your utilities and everything else would be there.

Q. And that would all be done in that five years?

A. Yes. He said that was their projected plan.

Q. Did he tell you anything more about any of the utilities?

A. I think—yes—well, one thing also impressed me very much. He said that all the utilities would be underground. He says it is not going to be like you see out here on Long Island. You see utility poles all along the streets. They said they don't want that in Rio Rancho. Everything will be underground.

All the properties that would be required for parks and for schools would be—have been already set aside and deeded to the state for the school lands. And he says so this way it is going to save you taxes and what have you.

Q. With respect to utilities, did he tell you anything about water?

A. Well, they did say—and Mr. Estrema, in his speech, told us, he says he knew everybody was concerned about water because since we are going into a semi-arid state of land, he said that Rio Rancho and the city of Albuquerque were more or less sitting right on top of a tremendous reservoir of fresh water. He says that the water that they have tested to see that it is there and everything else, and the quantities that they contemplate would be required; he said that there is hundreds of years of water there because you must have 50 miles of water or something like that, reservoir. There was actually no water problem. It was there.

Q. Now, do you recall anything else that was said by Mr. Estrema or Mr. Lombardi?

A. I don't know. It comes back to me in dribs and drabs.

Q. I would like to show you Commission Exhibit 312 and ask you if you can identify it for us.

A. Yes. This is the original purchase, on February 26, 1973.

Q. Was that the date that appears on the contract?

A. Yes, 1973. You are talking about this date up here?

Q. Yes.

A. Yes, February 26.

Q. And did you sign this document?
A. Yes, I did.
Q. Can you tell us what the unit block and lot number are?
A. Unit 17, block 39, lot No. 18.
Q. Does the contract indicate what size the lot is?
A. Yes. It is 1.75 acres.
Q. Can you tell us what the purchase price is?
A. The purchase price was $9,855.
Q. Did you pay the entire purchase price at that time?
A. No. I gave them a down payment of $1,005.
Q. Now, directing your attention to an area that appears just above your signature, it says that "Each buyer must initial where applicable 'I do' – 'I do not expect to use the above property as my principal residence.' "
Do you see that on the exhibit?
A. Yes.
Q. Could you tell me where your initials appear?
A. My initials were "I do not."
Q. Did you intend to use this property as your—
A. Oh, yes.
MR. WILLIAMSON: Objection, your Honor.
JUDGE TEETOR: It is leading. Rephrase it.
By Mr. Schulman:
Q. What was your intention when you purchased this property?
A. I definitely—my intention was not as an investment, that it definitely would be a place where to live because we were preparing to retire in the future and I was looking for a place to retire to. And that was my intention.
Although you do see that I signed it "I do not," and that was only because of the insistence of Mr. Lombardi. He said "Sign it there. Everybody signs it there." He says, "You will find it to your advantage when taxes come around."
So taking his advice, I signed it.
Q. Now, directing your attention again to Commission Exhibit 312, to the last full paragraph in the document.
Receipt for certain documents. Do your initials appear after that paragraph?
A. That's the last paragraph, yes.
Q. Yes.
A. It does.
Q. Did you receive a property report before you signed the contract?
A. I did not.
Q. Do you know what a property report is now?
A. Yes, I do. Now I do.
Q. I would like to direct your attention to Commission Exhibit 312, to the middle of the contract, where it states "Refund Guarantee," and there is a paragraph. Was this paragraph explained to you by the salesman?
A. He did not explain it to us. All he said is that, he says, they have such a good setup, he says, that you really don't have to worry about it because you are not risking anything. You do have six months to visit the property and cancel out and you get all your money back if you want to.
Q. Now, Mr. Scirica, when you signed this contract, did you think that it was a binding obligation on you?
A. Not really, because he impressed upon us, he said, "Look, you are not really buying. All we are doing is reserving." And he showed it to us. He said this is a reservation to reserve your property for you. He says because you go down there and you visit it. He says, "You have a terrific trip." He said, "We have tremendous flights

going out every week. We make a charter flight for you. It's reasonable." You go there, he says, and if you don't like it you get your money back so what do you got to lose?

Q. Now, after that dinner party, Mr. Scirica, what was your next contact with AMREP corporation?

A. Well, after that dinner and I signed up I was called almost every week and invited to the dinners that would be locally within my area and he would always suggest, "Why don't you come out. We don't want to sell you any more land or anything like that," he said. "Bring your wife out. It will be a nice evening out for your wife. Come." So we did go to quite a few of them.

Basically not for the dinner but basically what I wanted to know, to find out whether there is any new developments in what AMREP was doing within the area. And that what he said, "You come to the dinner and keep abreast of what is going on.

Q. How many additional dinners did you go to?

A. Oh, my gosh. I would say anywhere from 8 to 12. We were continuously asked to go.

Q. Was there anything about the additional dinners that you went to that was different from the first one you described for us?

A. Not really. They were held at different places. It was different groups. But each time we went to a dinner they treated us very well, very friendly, especially Mr. Lombardi. And he would bring us to a table and then the next couple that would be there would be another couple that were coming for the first time and be coming down to find out what Rio Rancho was all about.

Q. At any of these dinner parties, did you buy any additional property?

A. Yes, I did. I bought another piece of property because, as it was explained, he told me, "I'm doing you a favor. I have a piece of property that is outstanding." He says, "Buy it. It is very reasonable." He says, and again, he says, "You still have the opportunity if you don't want it when you go down there, you can just say no and they'll give you back your money."

Q. Do you recall when that dinner party was?

A. The exact date I really don't have but it has to be—I think it is in March.

Q. Do you have a copy of a contract for that purchase?

A. To tell you the truth, that's what I'm looking for.

No. It must have been one of the evenings between February and March. It must have been misplaced.

I know I bought another piece of property.

Q. I'm going to show you a copy of Commission Exhibit 310, and ask you if that refreshes your recollection about the location and the price of that property that you purchased?

A. Yes. It was unit 11 and it was supposed to be—it was $2,800. Here it is.

But this here is—

Q. Does this document refresh your recollection as to the location and the price of the property?

A. Yes, it does.

Q. What is the location of the property?

A. The location is in unit 11, block 8, lot 17.

Q. And what was the purchase price?

A. The purchase price is $2,825.

MR. SCHULMAN: Now, for the record, Your Honor, the document that I showed him, Commission Exhibit 310, is a Property Exchange Amendment on which that particular piece of property is listed, but it is not a contract for the purchase of that piece of property.

BY MR. SCHULMAN:

Q. Now, Mr. Scirica, with regard to the second purchase of property, did you sign a contract that night for that second piece of property?

A. You are talking about for reservation?

Q. In unit 11.

A. Yes. I must have because I have the listing that I owned at that time when we went down for the visit and the property is listed in there. I don't have a copy right here. It must have been misplaced.

Q. With regard to those two dinner parties, the one that you purchased unit 17 and the one that you purchased in unit 11, do you recall if the salesman or the speaker made any comparison between Rio Rancho Estates and an area in New York?

A. He did say something that, he says, "The Rio Rancho—" the exact words I really don't know. I think I'm trying to say that Rio Rancho was not going to be like Levittown was, something like that. That's the essence of it.

Q. After you purchased that second piece of property—

JUDGE TEETOR: Did I understand you to say that they said it would not be like Levittown?

THE WITNESS: That's right, not be.

BY MR. SCHULMAN:

Q. Can you explain that?

A. The reason they said it was not going to be like Levittown, Levittown, you go through Levittown, it was one particular type of house, block after block after block. And how they explained that Rio Rancho would be developed, it wasn't just one model of a house that you had to buy. You had several models that you could pick from and this way it would give a better appearance to the area.

JUDGE TEETOR: Thank you.

BY MR. SCHULMAN:

Q. After the purchase of the two lots, the one in unit 11 and the one in unit 17, what was your next contact with AMREP Corporation?

A. The next contact with AMREP Corporation was we had at that time we thought it best that we should take a trip down, that here we have two pieces of property and we didn't want the six months to elapse and we figured that we better go take a trip. And we were curious. We wanted to see exactly what it was like and whether we did make a good move or not.

Q. Did you go on a tour?

A. Yes, we went on a tour.

Q. Who did you go with on this tour?

A. My wife and my daughter.

Q. And was this a tour that you arranged yourself?

A. No. We arranged it through AMREP. It's an AMREP charter or Rio Rancho charter.

Q. Do you recall how many people were with you on the charter?

A. Oh, the plane was full. That's for sure. There was quite a few people. I would say, what does an airplane take, 100, 120 people, better.

Q. Okay. Do you recall when this trip was?

A. Yes, in March, 1973.

Q. What happened when you arrived at Albuquerque?

A. Well, the plane was brought down to the end of the runway. There was a bus there to pick us up and brought us over to the Holiday Inn in Albuquerque. They told us the first afternoon would be a rest afternoon and then in the evening they were going to take us out to dinner.

The first night we went to the Stadium, Stadium Club. It's near the ballpark. And had dinner and a little nightclub there.

And then we came back and they brought us back home.

The following day we took a tour of, oh, I think the following day they brought us up to Santa Fe. We spent the whole day in Santa Fe.

The next day which I think was Saturday—Saturday was our day to see the property.

Q. And did you go see your property?

A. Yes. We were brought to the Panorama in the area and they said that we would stay there. We would have lunch. And our names would be called for the tour, to bring us down to the property office.

Q. And were you called to go down to the property office?

A. Yes. We were called in the afternoon to go to the property office because it was our turn to go out and see our property.

Q. And what happened when you got to the property office?

A. When we got to the property office we were introduced to a salesman and he invited us into a car.

Q. Do you recall what the salesman's name was?

A. Not really. The only thing I could do is look at a sheet here.

Q. Well, if you have something that would remind you of what his name was, could you look at it, please?

A. Cy Alpin.

Q. What document are you looking at?

A. I am looking at the record of the property visitation, the 317.

Q. Did Mr. Alpin take you out to see the property?

A. Yes. I think you must understand that my daughter and son-in-law came from Kansas.

Q. So your—I was about to ask you who was there with you when you went to see the property?

A. Yes.

Q. And what is your son-in-law's name?

A. Abraham Pallas. They came down.

Q. They met you at Rio Rancho?

A. No. They came down the night before and they had met us in, at the hotel.

And because they said that if we intended to retire there that they would be interested and they wanted to see it. Possibly they would relocate themselves into the Albuquerque area and would be interested in property also.

Q. Did Mr. Alpin take you out to see your property?

A. Yes, he did.

Q. And which property do you recall seeing first?

A. I believe he took us into I believe 17 must have been first, or 11, one of the two.

But when we saw each one we were tremendously disappointed.

Q. What did you see when you saw the property?

Let me ask you, is there a difference between what you saw between the two properties?

A. No. They are basically the same.

Q. Can you tell us what you saw when you saw the property?

A. Actually, just a lot of scrub brush, sand cactus, and just a tremendous expanse of nothing. And the roads were dirt all dirt roads. It had a stake at the corner of each street.

You really had to look hard to find the lot stakes.

And we were very, very, tremendously disappointed.

Q. Did you tell this to Mr. Alpin?

A. Yes. And he says, well, he says, this is it. This is what it is. And he says, "I can't see what else would you want. You have to visualize what it is going to look like once it gets developed."

He says, "You know how things happen in New York. One year it's farms and the next year it's a whole development."

He says, "This is what is going to happen here."

Q. What happened after that?

A. Well, we told him that we are not happy with what we saw but in the meantime, in meetings that we had in New York we were hearing about Unit 20, Unit 20, Unit 20. This is the area that is going to be developed. It's going to have—they are going to build a tremendous lake in the area. It's going to give us water sports, swimming, everything you would want right in the section. And this was going to be the boom spot he says.

So having this in the back of your mind—

Q. Let's go back to that. Where did you hear about Unit 20 in New York?

A. From Mr. Lombardi. And he says to me, when you go down, make sure you take a look at Unit 20.

So we did hear talk from Mr. Lombardi and the other salesmen.

And with this in our mind, we said, "Well, what about Unit 20?", to the salesman.

So the salesman said, "I'll call back. He had a radio in his car. And he went in there and asked what was available in Unit 20. And they told him on the radio and he got in the car and we drove to Unit 20.

Q. What happened when you arrived in Unit 20?

A. It wasn't much different. The lot that they had given him, one right one there, that was in an arroyo actually, big tremendous arroya right there. I don't want any lots near an arroyo. Haven't you got any better?

He said what are you worried about, this place hasn't really developed yet, he says. An arroyo is not going to stay there. As they develop and rework everything, he says that an arroyo will be filled in because on the plot plan here, here it is, there is a lot designated for that. And he said that will be a building lot. He said don't let it bother you because you see an arroyo.

So I believe we just shifted down the street just to get away from that arroyo, and he had lots.

In the meantime we were talking to my son-in-law and his wife. I was talking to my son-in-law and we both agreed it seemed to be a fairly good location. The view was nice and we were much higher.

And I asked the salesman as to what the size of the lots were and he says a hundred by—80 $\times$ 300 and some odd feet or something like that. I forget what the exact depth of it was.

I told him, well, if I bought these I would buy two because I didn't want to build a house on 80-foot width. I would rather have 160 width. This way I'd have my home in the center and I would have plenty of side yards so I don't care what anybody build on either side of me, I would have plenty of room. Because if I am going to move down there I want the wide open spaces. That is why I am moving.

Q. Did the salesman tell you anything about that?

A. No, not at all.

Q. Did Mr. Alpin say anything else while you were out there viewing your lot?

A. Yes. I had the sense of feeling that possibly he may have thought we were wasting his time or something. But he did tell us, I don't see why you are so fussy. He says you don't have to be that fussy out here. He said this land will be sold ten times over.

I said not mine. If I'm buying it, I'm not going to give it up because if I'm down here to pick a piece of property, this is what I want.

So he just didn't go any further with it.

Q. And what happened after that?

A. My son-in-law said, well, if you are buying two lots, I'm going to buy two lots. So I said okay, then we'll get two blocks of two lots.

And we came back and the salesman called in on the radio telling them exactly what lots we have accepted and were going to buy.

Q. And where did you go from there?

A. We went right to the property office.

JUDGE TEETOR: I think we'll take a ten-minute recess.

(Ten minutes recess taken.)

APPENDIX E

(Complaint Counsel's Proposed Order and Supplementary Letter)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP Corporation, a corporation.	)	DOCKET NO. 9018

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.

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.

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, or that respondent will buy back the land from buyer, or that respondent will resell or assist in reselling the land;

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

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. Jobs will be obtainable for buyers who decide to move to the property being offered; *provided,* that respondent may, after adequate and up to date inquiry, report exactly what specific jobs are currently available that comport with the buyer's qualifications, salary requirements, and resident status;

12. 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 reserving the land, is only taking the first step, or is not making a final decision, or in any manner 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;

13. 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;

14. 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.

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;
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 exchange; *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;
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;
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.

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.

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.

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 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 PRODUCING 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 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, 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 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:

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, 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% 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 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.

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.

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

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) –

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 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

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 extends a refund privilege which is conditioned upon the buyer making a personal visit to the property, wherein *personal contact* by buyer with any employee or representative of respondent at the property or elsewhere is required in order to exercise the refund privilege:

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.

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 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:

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)

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. Not initiate any contact with the buyer during the post-inspection cancellation period;

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;

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 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% 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% 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
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 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, 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 representations 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 extending the contractual rights and privileges of the buyer to subsequent purchasers or assignees from buyer.

P. 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.

IV

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, do forthwith cease and desist from advertising for sale, offering for sale, contracting to sell, or selling any interest in:

A. Any land represented in any manner as being usable now or in the future as a homesite or building lot, unless:

1. Said land is immediately usable for such purpose without any further improvement or development by the buyer including, but not limited to, that an adequate potable water supply is available; that the lands have been approved for installation of septic tanks or that an adequate sewage disposal system is installed; that electric power and telephone service are available without line extension fees or aid-in-construction charges; that no further major draining, filling, or sub-surface improvement is necessary to construct dwellings, except for reasonable preparation for construction;

that the individual homesites or building lots are accessible by conventional automobile without additional expense to the buyer, over existing and maintained right-of-way, and that no other fact or circumstance exists to prohibit the use of the lots as a homesite or building lot; *and*

2. Respondent determines, updates quarterly, and discloses in the contract for purchase of such land, the following information:

In addition to the purchase price of your lot, there are other expenditures which must be made. Listed below is a summary of the major items.

ONE-TIME CHARGES

(i) Water connection fee/installation of private well .....$.....
(ii) Sewer connection fee/installation of private on-site sewage system .....$.....
(iii) Other (identify) .....$.....

MONTHLY/ANNUAL CHARGES

(i) Taxes (average lot of this size).....$.....
(ii) Dues/Assessments (including any required homeowner's association).....$.....
(iii) Recreational use fees .....$.....
(iv) Other (identify) .....$.....

B. Any vacant land at Rio Rancho Estates, Silver Springs Shores or Eldorado at Santa Fe before such time as a viable resale market shall have come into existence. A viable resale market shall deemed to exist at any of the three subdivisons only at such time as one-half of all lots sold by respondent in such subdivision as of the date that this order becomes final, both those deeded and those under contract of sale, are improved with a dwelling or commercial building or have been exchanged for a building lot and returned to respondent's inventory. Building lot shall be as defined in paragraph A above. To facilitate the creation of a viable resale market, respondent shall, at its own expense, and free of charge to sellers, buyers, brokers and builders:

1. Notify buyers of the existence of a resale listing service in the form and manner set forth in Appendix A to this Order;

2. Accept, maintain and provide to inquiring buyers, brokers and builders, listing information (as set forth in Appendix A to this Order) for vacant lots at each of the three projects that are placed for resale by the original buyers from respondent (or any subsequent transferee of the original buyers);

3. Place a block notice listing with the multiple listing services of Albuquerque (for Rio Rancho lots), Ocala (for Silver Springs Shores lots) and Santa Fe (for Eldorado at Santa Fe lots) describing the number of lots available, the range of prices asked and instructions for contacting respondent's resale listing service;

4. Maintain the listings until advised by the listing buyer to cancel the listing or until sold;

5. Annually notify all existing buyers, deeded or under contract, of this listing service, including notification of where to send their listing, that the listing will be maintained free of charge, that they are free to ask any price they desire, and the range of prices received in the past year for lots that were resold (of the most common-sized lot in the subdivision).

Provided, That whenever respondent is permitted under the terms of this Order to sell land for which respondent is required to file a statement of record and issue a property report pursuant to the regulations of the Office of Interstate Land Sales Regulation, respondent shall send a copy of the new property report and any subsequent amend-

ments or revisions to all previous buyers of land in the subdivision covered by the property report, including those who have been deeded and those still under contract; *further provided, however,* that only those amendments or revisions that modify or materially affect the previous buyer's contractual rights or the value of the previous buyer's lots shall be subject to this provision.

C. Any building lot or bulk acreage intended for building purposes at Rio Rancho Estates unless the purchaser of said building lot tenders, and respondent accepts, a Rio Rancho vacant lot in full or partial exchange for the purchase price of each building lot or each 1/2 acre of the bulk acreage. If the buyer does not have a vacant lot to exchange then respondent shall:

1. Direct the buyer to the resale listings as described in Paragraph B above for purchase of a resale lot for use in exchange; or

2. Purchase a lot from the resale listings on buyer's behalf before selling the building lot.

For purposes of this Paragraph C, the value allowed as a credit towards the purchase price of the building lot shall be equal to or greater than the "MKT PRICE" of the vacant land that appears in respondent's master inventory list dated April 30, 1975 (CX 207, Vols I–IV), which is hereby incorporated herein by reference.

If there is no vacant land listed for resale respondent may sell building lots without restriction until such time as vacant land is so listed; *provided,* that respondent may not so sell without restriction until 90 days after establishing the resale listing provisions of Paragraph B above. The provisions of this Paragraph C shall terminate at such time as a resale market, as defined in Paragraph B above, shall exist at the subdivision.

V

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. Create and carry out a similar listing and multiple listing arrangement (as set forth in IV B above) with the Branson, MO., area multi-list service, for buyers of lots from respondent in the subdivision which was known as Oakmont Shores; and

B. Notify all of its buyers in the Oakmont Shores subdivision, including those deeded and those under contract, of the resale listing arrangements in the form and manner set forth in Appendix A to this Order.

VI

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 intention 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 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).

VII

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 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.

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.

APPENDIX A TO COMPLAINT COUNSEL'S PROPOSED ORDER

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 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 it is developed. The population growth and community development necessary to enable you to sell your lot at or near the price you paid or are paying for it may not occur for many years, if at all. If the lot may be exchanged for a developed lot, there may be some small demand by builders for a limited amount of such lots at the present time.

You should be aware that neither AMREP nor (insert subdivision) will buy back your lot or help you resell it except for providing a resale listing service, as described in II below.

II. RESALE LISTING SERVICE

In accordance with the provisions of the Commission's Order, AMREP will provide a resale listing service for purchasers of its undeveloped lots in (insert subdivision). AMREP will provide a clearinghouse for all purchasers who desire to resell their property, but is not required to act as a traditional broker in seeking buyers.

AMREP will maintain a list of all property that is placed for resale, with a description of the unit, block and lot number, the size of the lot, the price that you, the owner or contract holder, desire to sell it for, and your name, address and telephone number. You should remember, in determining your price, that you will be competing with other lotowners for buyers.

AMREP will notify the local realtors' multiple listing service (MLS) that lots are for sale, but will not individually list your lot with the MLS. Prospective buyers may then contact AMREP and select a lot from the master list. As the lots are relatively similar

in characteristics, it is expected that the lowest-priced lots will be sold first, if at all (see I above).

If you desire to list your lot in this manner, write to AMREP at the following address:

( )
(Insert Respondent's Address)
( )

Include the following listing information: your name, current address, telephone number, contract number, lot identification (unit, block and lot), size of lot and the price at which you want to list your lot.

III. OPTIONS AVAILABLE TO PURCHASERS

There are a number of options available to you at this time which you should review based on the information provided in this notice:

1. You can continue making your payments.

2. You can refuse to make any further payments and perhaps take a tax loss. According to the FTC Order you *cannot* be required to pay any more money, but if you elect this option, you will lose your land and all the money you have paid. However, if you purchased your lot as an investment and not for your own use as a homesite, you might be able to declare the money you lost as a tax loss, deductible from your income on federal and state tax returns. It is suggested strongly that you contact your local District Director of the Internal Revenue Service *before* deciding whether to stop payments, if your decision is based on the possibility of taking a tax loss. Whether your loss is deductible will be based on your specific situation and you should *not* rely on this letter as authority for a deduction.

3. You can stop making payments and seek satisfaction against AMREP in a private lawsuit. You should consult an attorney before electing this option. The Commission's Order may be relevant in such a suit and your attorney should obtain a copy.

4. You can list your lot as described in Section II above.

5. You can relocate to (insert subdivision) and, if possible, build on your lot or exchange for a building lot if so permitted by your contract or by company policy. You may, however, be required to pay more money for this exchange lot. Check with the company for details.

If you have any questions about the contents of this letter, write to me. Please do not telephone.

If you have questions about your account, the development of your specific lot, or the procedures for listing your property, call AMREP toll-free at ( ). A representative will return your call. Instead of calling, you may wish to write to:

( )
(Insert Respondent's Address)
( )

In any letter, you should include your name as set forth in your contract, your account number, your lot identification number, your current address and telephone number, and the name of the subdivision in which your lot is located.

Sincerely,

Perry W. Winston
Attorney

OPINION OF THE COMMISSION*

BY PERTSCHUK, *Commissioner:*

I. BACKGROUND

The respondent, AMREP Corporation, is a land sales company incorporated under the laws of the state of Oklahoma. Its principal place of business is New York, New York. AMREP and its 37 wholly-owned subsidiaries in 24 states have acquired and subdivided several large parcels of undeveloped land. Core areas within each subdivision have been developed with residential homes while the vast majority of lots remain undeveloped with the exception of unpaved roads. At the time of the issuance of this complaint, respondent and its subsidiaries were in the business of selling these undeveloped lots to the public, sight unseen, to be held primarily for investment purposes.

The subdivisions involved in this action are: Rio Rancho Estates, near Albuquerque, New Mexico; Silver Springs Shores near Ocala, Florida; Eldorado at Santa Fe, New Mexico; and Oakmont Shores in southwestern Missouri. These subdivisions include a vast amount of territory. Rio Rancho Estates, by far the largest of respondent's subdivisions, contains 91,000 acres of land, approximately 142 square miles, an area nearly twice the [2] size of the City of Albuquerque. (I.D. 15)[1] The other three subdivisions contain respectively: Silver Springs Shores, 18,500 acres (I.D. 33); Eldorado at Santa Fe, 6,000 acres (I.D. 42); and Oakmont Shores, 3,500 acres. (I.D. 47) Respondent had sold approximately 95,000 lots by April, 1976. More than 75,000

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* Prior to his resignation on October 14, 1983, Commissioner Clanton recorded his vote in the affirmative for the Commission's Opinion, and issued the following statement:

I completely agree with the result in this case. There is little doubt that respondents have violated the law. On the issue of the proper deception standard, I share the Chairman's view that the better approach to interpreting ad claims is one of reasonableness. The Commission has applied this concept in several recent advertising cases, *e.g., American Home Products,* 98 F.T.C. 136 (1981), *aff'd,* 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers,* D. 8917 (July 5, 1983) [102 F.T.C. 21]; *Sterling Drug, Inc.,* D. 8919 (July 5, 1983) [102 F.T.C. 395], and I believe that concept provides an objective understandable standard for future application.

[1] The following abbreviations will be used in this opinion:

I.D.	– Initial Decision findings number
I.D.p.	– Initial Decision page number
Tr.	– Transcript page number
CX	– Complaint Counsel's exhibit number
RX	– Respondent's exhibit number
CTX	– Court exhibit number
RAB	– Respondent's appeal brief
CAB	– Complaint Counsel's appeal brief
R. Ans	– Respondent's answering brief
C. Ans	– Complaint Counsel's answering brief
R. Rep	– Respondent's reply brief
C. Rep	– Complaint Counsel's reply brief
RPF	– Respondent's proposed findings
CPF	– Complaint Counsel's proposed findings

of those lots were sold at Rio Rancho Estates alone. (I.D. 18, 35, 43, 48)

Respondent marketed its properties principally in cities and towns far from the sites of its subdivisions, by use of national advertising and dinner parties given for prospective buyers in their home towns. Most purchasers bought their property based on point of sale representations made by respondent in promotional pamphlets, slides, movies, speeches and sales presentations. The complaint alleges that during its marketing presentations respondent engaged in unfair or deceptive acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 (FTC Act or Section 5), by making false and misleading representations to prospective buyers, by failing to disclose material facts and by using unfair contractual provisions in its land sales contracts. The gravamen of the complaint is contained in paragraphs 11 and 12 which allege that respondent represented directly and by implication that the lots it offered for sale were investments which would realize significant monetary gain and which involved little or no financial risk, when, in fact, the lots were poor investments which involved substantial financial risks to purchasers. The remaining paragraphs of the complaint allege that respondent made numerous specific misrepresentations in marketing its property as a high-yield, low-risk investment, used unfair contractual provisions, and engaged in other unfair and deceptive sales practices. [3]

The complaint was issued on March 11, 1975. Hearings were begun on June 1, 1976, and continued through July 30, 1976, when they were suspended on order of the Second Circuit Court of Appeals pending completion of the criminal trial against respondent and several of its officers in the U.S. District Court for the Southern District of New York. *AMREP Corp.* v. *United States,* 405 F.Supp. 1053 (S.D.N.Y.), *aff'd,* 535 F.2d 1240 (2d Cir. 1976). On March 10, 1977, following a jury verdict, a judgment of conviction for mail fraud and interstate land sales fraud was entered against respondent and certain of its officers. That judgment was affirmed on appeal. *U.S.* v. *AMREP Corp.,* 560 F.2d 539 (2d Cir. 1977), *cert. denied,* 434 U.S. 1015 (1978).

Hearings in the Commission proceedings resumed in May 1977 and continued through May 1978. The record was closed on May 31, 1978, after hearings were conducted in Albuquerque, New York City, Los Angeles, Ocala, Florida, and Springfield, Missouri. The record in this proceeding is extensive, including approximately 25,000 pages of testimony and 1500 accepted exhibits. (I.D. p. 20) On July 18, 1979, Administrative Law Judge Paul R. Teetor issued an Initial Decision finding that respondent's misrepresentations concerning the growth,

development and investment potential of its properties were unfair methods of competition and unfair and deceptive acts and practices in violation of Section 5. (I.D. pp. 265–68) In addition, he found that respondent's high pressure sales techniques, employed in the context of respondent's misrepresentations about the value of the property it was marketing, constituted unfair methods of competition and unfair and deceptive acts and practices in violation of Section 5. (I.D. pp. 264–65) Finally, Judge Teetor found that four of the provisions of respondent's standard form sales contract constituted unfair methods of competition and unfair acts and practices in violation of Section 5. (I.D. pp. 268–70)

The ALJ's order provides for broad relief. Among other things, it prohibits respondent from making representations that its land is a good financial investment and from engaging in certain "hard sell" tactics. It requires respondent to make affirmative disclosures prior to any sales presentation warning potential customers that several of its officers were convicted in federal court for mail fraud in connection with the sale of land, and informing them of the existence of future plans, if any, for installation of roads, water, sewer, electric, telephone, and recreational facilities. The order also requires a ten-day cooling-off period after any sale during which no company-initiated contacts are permitted. Finally, the ALJ ordered respondent to stop using and enforcing several clauses in its sales contract which he found to be unfair. [4]

Respondent appealed from the Initial Decision on numerous grounds, including arguments that: the Commission lacked jurisdiction; Judge Teetor had demonstrated personal bias by failing to consider evidence favorable to respondent; the weight of the evidence was insufficient to support a finding of liability; Judge Teetor had made numerous improper procedural and evidentiary rulings; the scope of the order was unduly restrictive and burdensome; and compliance with some of the order's requirements would conflict with respondent's legal duties under the Interstate Land Sales Full Disclosure Act.[2] Complaint counsel cross appealed, arguing that the Commission should expand the Order to include a conditional ban on respondent's future sales of undeveloped lots and a requirement that respondent establish a resale program for current lot owners.

Having reviewed the record as a whole, the Commission upholds Judge Teetor's finding that respondent has violated Section 5 in several respects. While on some limited points we reverse the ALJ, we generally concur in the Initial Decision.[3] In particular, we find the

[2] Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1700 *et. seq.* (1979).

[3] Paragraph 56 of the complaint alleged that all of the various acts and practices enumerated in the complaint injured respondent's competitors and constituted unfair methods of competition in or affecting commerce in violation of Section 5. Without discussion, the ALJ concluded that respondent's misrepresentations, high-pressure

(footnote cont'd)

record evidence sufficient to support his critical holding that respondent marketed its undeveloped lots as excellent, low-risk investments[4] when in fact those lots were poor investments and represented substantial financial risks to the purchasers. [5]

Below, the Commission rejects respondent's argument that we lack jurisdiction. We then discuss various representations made by respondent that relate to the investment value of its properties,[5] and explore whether those representations were true. We find that respondent misrepresented the investment value of its properties, engaging in deceptive and unfair practices which violated Section 5. Next, we discuss respondent's "high pressure" sales techniques and find that certain of these techniques constitute deceptive and unfair practices when, as here, they are used in the context of a sales scheme employing deceptive representations. We also address the finding in the Initial Decision that respondent's standard form sales contract was an "adhesion contract" and that four of its provisions were unfair and deceptive. While the Commission finds that respondent's contract has elements of an adhesion contract, it reverses Judge Teetor's finding of liability as to three of the provisions—the interest charging clause, the integration clause and the alienability of land clause. The Commission sustains his finding of unfairness as to the forfeiture clause.

We also consider respondent's substantive defenses and numerous allegations of procedural and evidentiary errors in the administrative proceeding. While the Commission finds for the respondent on some of these assignments of error, none of these rulings individually or collectively bar our finding of liability and entry of an order against respondent.

Finally, the Commission rejects complaint counsel's appeal seeking further order provisions because we find that the suggested provisions are unnecessary to stop present deception or to prevent future deception. We also revise the Judge's proposed order to reduce the compliance burden by making its provisions more consistent with the

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tactics, and unfair contractual clauses all constituted unfair methods of competition in violation of Section 5. (I.D. pp. 264–270.)

Neither respondent nor complaint counsel have briefed the issue of how respondent's conduct is alleged to have injured competition. The ALJ's opinion is devoid of any discussion on the issue. In the absence of sufficient evidence in the record and discussion in the briefs, we cannot sustain the ALJ's holding that respondent's conduct also constituted unfair methods of competition and accordingly we dismiss those portions of the complaint.

[4] While respondent did not, in most cases, use the specific term "excellent" in describing the investment value of its properties, the Commission in the complaint and in this Opinion uses the term "excellent investment" to mean an investment that has the characteristics of high yield, certainty, safety and liquidity.

[5] While the Initial Decision divided the representations made by respondent into three categories (growth representations, development representations, and investment representations), we have chosen to analyze all of these types of representations together as investment representations. Because the majority of respondent's customers were purchasing their property for investment purposes (I.D. 183), respondent's representations as to growth potential and state of development of its subdivisions were made primarily to convince potential buyers that the lots it was selling would indeed make good investments, and not to convince buyers that its subdivisions would be a good place for them to live.

requirements of the Interstate Land Sales Full Disclosure Act and the implementing regulations of the Department of Housing and Urban Development's Office of Interstate Land Sales.[6] [6]

II. JURISDICTION

Respondent argues that, in enacting the Interstate Land Sales Full Disclosure Act ("ILSFDA"), Congress intended to bestow exclusive jurisdiction over land sales practices upon the Office of Interstate Land Sales Regulation ("OILSR"). Thus, respondent asserts, we are without jurisdiction to consider this matter.

Respondent's arguments play several variations on this theme. First, respondent asserts that ILSFDA is a pervasive and comprehensive statute directed precisely at the type of practices at issue in this case, and that enactment of ILSFDA consequently "preempted" or "impliedly repealed" the more general provisions of the prior FTC Act.[7] (RAB at 26–27) Second, it argues that ILSFDA created an implied immunity from, or an implied repeal of, Section 5 with respect to land sales, since application of that Act would conflict with (or be repugnant to) the statutory scheme set out in ILSFDA. (RAB at 27–29)

The argument that Congress somehow intended to exempt land sales practices from FTC scrutiny in enacting ILSFDA was thoroughly explored—and rejected—in the Commission's recent opinion in *Horizon Corporation*.[8] After an extensive analysis of ILSFDA and its legislative history, including its amendments, as well as the implementing regulations adopted by OILSR, we concluded there that Congress did not intend ILSFDA to be a pervasive statute covering all activities relating to land sales. We also concluded that application of the FTC Act is not in conflict with, or repugnant to, ILSFDA. There, we stated: [7]

> [R]egulation of fraudulent land sales practices under both ILSFDA and Section 5 is a complementary but not coterminous process. Review of land transactions is complementary because the ultimate regulatory goal—protection of consumers from fraudulent business practices—is the same under both statutes. Yet, the scope of each agency's review authority and its ability to rectify abusive practices are vastly different. *Horizon Corporation,* 97 F.T.C. 464, 864 (1981).

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[6] 24 C.F.R. 1700.1 *et seq.* (1982)

[7] While respondent raises its "preemption" argument as a separate and additional ground from its "implied repeal" argument, "preemption" (in the sense that respondent is using the term) is not really a distinct theory separate from implied repeal. While the term preemption is used in a number of decisions, the claimed overriding of one statute by later enactment *sub silentio* is a claim of repeal by implication. *Environmental Defense Fund* v. *EPA,* 598 F.2d 62, 76 (D.C. Cir. 1978).

[8] *Horizon Corporation,* 97 F.T.C. 464 (1981). While the Commission's opinion in *Horizon* was the product of the Commission's independent review of the record, the terms of the order largely reflected provisions which were agreed to by both complaint counsel and respondent. The Commission expressly noted that "since the remedial scheme was developed in the context of respondent's offer to withdraw its appeal if the Commission adopted complaint counsel's proposed modification of the ALJ's order, the Commission will not necessarily view this remedial scheme as a model for relief in future land sales cases." *Horizon, supra,* at 803.

Therefore, since the repeal of Section 5 as to land sales practices is not necessary for ILSFDA to work as Congress intended, we reject the argument that ILSFDA "impliedly repealed" our jurisdiction or granted an implied immunity to land sellers from Section 5. *See Cantor* v. *Detroit Edison,* 428 U.S. 579, 597 (1976); *Gordon* v. *New York Stock Exchange,* 422 U.S. 659, 685 (1975); *Silver* v. *New York Stock Exchange,* 373 U.S. 341, 357 (1963).

AMREP also claims that we are without jurisdiction under the doctrine of "primary jurisdiction." According to respondent's argument, the Commission must first defer to OILSR as the agency with primary jurisdiction in the land sales area. Since respondent has allegedly complied with all applicable OILSR regulations and requirements, it asserts that the Commission is without power to prosecute it under Section 5. (RAB at 30–32)

The doctrine of "primary jurisdiction," however, is a judicially-created doctrine developed to apply in those situations where both an agency and a court have jurisdiction to decide in the first instance and thus is not applicable here. *United States* v. *Western Pacific R.R. Co.,* 352 U.S. 59, 64 (1956); *Sunflower Electric Co.* v. *Kansas Power & Light Co.,* 603 F.2d 791 (10th Cir. 1979). *See also Consolidated Rail Corp.* v. *National Association of Recycling Industries, Inc.,* 449 U.S. 609 (1981). The purpose of the doctrine is to enable a court to postpone exercising its jurisdiction in order to obtain the benefits of agency expertise in the area being contested and to maintain uniformity. *Id.* at 64. That rationale does not apply where two agencies, each with expertise, share "complementary, but not coterminous" jurisdiction over the challenged practices.[9] In any event, the doctrine, even if applied here, [8] would not (as respondent argues) pose a jurisdictional bar to our action, since the doctrine stands only for the proposition that a court (or, as respondent argues, one agency with limited expertise) should *postpone* exercising its jurisdiction until it obtains guidance from the agency with superior expertise. Given the Commission's significant involvement with the land sales industry and its expertise in defining unfair and deceptive trade practices with respect to land sales practices,[10] it is evident that the Commission need not first obtain the

[9] Since the doctrine is primarily concerned with the proper relationship between a court of general jurisdiction and an agency with specific expertise, much like the "exhaustion of administrative remedies" doctrine, it is doubtful that the doctrine applies at all in the situation where only agencies are involved. The cases cited by respondent, *American Air Lines, Inc.* v. *Air Line Pilots Association,* 91 F.Supp. 629 (E.D.N.Y. 1950) and *Food Fair Stores, Inc.,* 54 F.T.C. 392 (1957), do not apply the doctrine of primary jurisdiction to a situation where two agencies are regulating the same subject matter. However, that doctrine was cited in *Brown-Forman Distillers Corp.* v. *Mathews,* 435 F.Supp. 5 (W.D. Ky. 1976), involving the Food and Drug Administration and the Bureau of Alcohol, Tobacco and Firearms. That case is distinguishable, however, because the two agencies involved had entered into a Memo of Understanding which gave one agency the power to regulate.

[10] *See, e.g., Bankers Life and Casualty Co., et al.,* 94 F.T.C. 363 (1979); *Cavanagh Communities Corp., et al.,* 93 F.T.C. 559 (1979); *Australian Land Title, Ltd., et al.,* 92 F.T.C. 362 (1978); *Flagg Industries, Inc.,* 90 F.T.C. 226 (1977); *Las Animas Ranch, Inc., et al.,* 89 F.T.C. 255 (1977); *International Telephone and Telegraph Corp.,* 88 F.T.C. 933 (1976); *Turkey Mountain Estates, Inc., et al.,* 84 F.T.C. 698 (1974); *GAC Corporation, et al.,* 84 F.T.C. 163 (1974); *Harney County Land Development Corp., et al.,* 71 F.T.C. 12 (1967).

guidance of OILSR before resolving the issues in the instant case.

Respondent's argument may also be understood to mean that, as a matter of policy rather than law, the Commission should defer to OILSR in this case. Since OILSR has not suspended respondent's registration, respondent urges that we should defer to OILSR's apparent judgment that respondent's practices are satisfactory. Aside from the observation that OILSR's failure to act does not necessarily mean that OILSR has found AMREP's disclosure statements to be satisfactory, assuming that respondent has complied with OILSR regulations simply does not afford respondent immunity from Section 5 scrutiny.[11] As we stated in *Horizon, supra,* at 863: **[9]**

> Compliance with OILSR's requirements cannot be construed as immunizing a company's overall sales techniques from scrutiny under Section 5. The OILSR regulations are meant to be preventative safeguards against improper sales tactics. Situations will exist, as in the instant case, where the overall sales plan is such that consumer injury results despite technical compliance with requirements.

At the same time, respondent raises legitimate concerns about a number of provisions in the Judge's proposed order which conflict with OILSR requirements. Such concerns, however, go to the question of the appropriate remedy, and not to our power to act. As discussed in a later section of this decision, we have modified the proposed order in several respects to avoid possible conflicts.

Finally, respondent argues that it is immune from Commission prosecution under the state action immunity defense. *See e.g., California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum,* 445 U.S. 97 (1980); *Goldfarb* v. *Virginia State Bar,* 421 U.S. 773, 790–1 (1975); *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 360 (1977); and *Parker* v. *Brown,* 317 U.S. 341, 350 (1943). The Parker doctrine is inapplicable to the present case. That line of cases deals with an implied exemption from the federal antitrust laws where there is a conflict between the federal policy favoring competition and a state regulatory scheme which deliberately displaces competition. No question of conflict with federal antitrust laws is involved here. Nor do the broader principles of federal preemption and comity between the federal government and state governments which form the basis for the *Parker* doctrine apply here. The states, in enacting their own land sales disclosure and registration statutes, are not evincing an intent *contrary* to the intent of federal consumer protection laws; indeed, such regulations are complementary to federal consumer protection efforts. In the absence

[11] *Cf. U.S.* v. *Pocono International Corp.,* 378 F.Supp. 1265, 1267 (S.D.N.Y. 1974) (compliance with ILSFDA is not a defense to a suit under the mail fraud statute for fraudulent interstate land sales executed through the mails). *See also Reilly* v. *Pinkus,* 338 U.S. 269, 277 (1949) (Post Office approval of challenged advertisements is no defense to a Section 5 proceeding); *U.S.* v. *RCA,* 358 U.S. 334, 342 (1959) (FCC approval of a change in radio station ownership is no defense to a Sherman Act violation).

of any clear repugnancy between the state law and the federal law, the question of an implied exemption from federal law does not arise. *Cantor* v. *Detroit Edison,* 428 U.S. 579, 597 (1976). Federal law therefore applies, and compliance with state law is not a defense either to a federal prosecution, *Cantor, supra,* at 594, *United States* v. *Sylvanus,* 192 F.2d 96, 106 (7th Cir. 1951), or to a Section 5 proceeding. *Royal Oil Corp.* v. *FTC* 262 F.2d 741 (4th Cir. 1959), *Speigel, Inc.* v. *FTC,* 540 F.2d 287, 292 (7th Cir. 1976).

Respondent claims, however, that it was unable to prove its state action immunity defense because Judge Teetor improperly refused to permit numerous state regulators to testify or to admit into evidence documentary materials from state regulators. (RAB at 32) However, as discussed above, the *Parker* defense is inapplicable in this case. Thus, even assuming that respondent [10] could have shown that there was active state regulation of land sales and that respondent complied with applicable state laws, such a showing would have provided no defense to this action. Accordingly, we see no error in the Judge's refusal to admit the evidence for the purpose of demonstrating that the states actively regulated the land sales industry and that AMREP had complied with state laws or had received state approval for its activities.

For the above reasons, we reject respondent's contention that the Commission lacks jurisdiction of this case, and affirm the ALJ's findings on the issue of jurisdiction.

III. RESPONDENT'S INVESTMENT REPRESENTATIONS

A. *AMREP's Marketing Strategy*

In 1961, respondent purchased a large 54,000 acre tract of land in Sandoval County, New Mexico, northwest of Albuquerque. After the tract was platted, respondent named it Rio Rancho Estates and began selling undeveloped lots to the public through the mail and direct selling to tourists. (I.D. 54) During the second half of the 1960s, however, respondent developed a new marketing plan for selling its undeveloped lots at Rio Rancho. With minor variations, the same marketing strategy and sales presentations were later used in respondent's other three subdivisions involved in this matter.

The heart of the marketing strategy involved inviting consumers who lived far from respondent's projects to a free dinner party, where a carefully staged sales presentation of films, slides, testimonials and enthusiastic speeches generated such excitement that many consumers would sign contracts to buy lots at respondent's subdivisions, sight unseen, before the night was over. To help counter any reluctance, respondent also offered a subsidized "vacation" tour of the subdivi-

sion and the right to cancel the purchase after seeing the purchased lot within six months. (I.D. 54)

While most of the sales presentations were handled by small sales subsidiaries, the unified marketing plan—what the ALJ called "respondent's organized offense" (I.D. 63)—was thoroughly crafted and controlled by respondent's headquarters in New York. Respondent's headquarters produced sales training materials, reviewed or prepared all advertisements, wrote standard dinner scripts, printed glossy brochures, supplied all forms and contracts, and produced the highly effective movies for each subdivision. (I.D. 3; I.D. 56–79) The respondent also set prices for the land to be sold through the sales subsidiaries. It also audited sales practices and dinner party presentations to ensure conformity with its marketing strategy. (I.D. 3) [11]

The basic theme of respondent's standard sales presentation, used at all four of its subdivisions, was that the purchase of a lot at one of respondent's subdivisions was an excellent, low-risk investment. Promoting the lots as a present or future homesite, or as a vacation home, was subordinate to the main investment message. Throughout the 1960s, the investment theme was conspicuously trumpeted in respondent's Rio Rancho brochures (I.D. 190–192), national and regional advertisements (*see, e.g.,* CX 232), dinner presentations (I.D. 193), and training sessions for salesmen (I.D. 186). As one salesman put it quite plainly in a dinner presentation:

> 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 110 D).

In 1972, respondent began to tone down the overt investment promises in prepared brochures and films. (I.D. 194–199) Instead of directly making claims about the handsome profits buyers could expect from future increases of land prices at respondent's subdivisions, respondent instead stressed examples of appreciation of land located in its subdivisions, in the same geographic area as its subdivisions, or in other areas of the country. (I.D. 178–179; 205; 196–199) At the same time, respondent increased the use of themes promoting its subdivisions as sites for relocation, vacation, or retirement homes. While explicit investment claims in respondent's brochures and films were somewhat tamed (at least in comparison to the blatant investment promises of the 1960s), there was less change in the dinner speeches and sales presentations made orally at dinner parties during the 1970s. As Judge Teetor found, the sales representatives were adept at making explicit the theme that had now become more implicit in AMREP's prepared materials—that respondent's land was an excel-

lent, low-risk investment. (I.D. 200–209) The same investment pitch appeared in sales presentations for Silver Springs Shores (I.D. 205), Eldorado at Santa Fe (I.D. 206), and Oakmont Shores (I.D. 207) throughout the 1970's.

Despite the increased promotion of respondent's land as being suitable for homesites during the 1970's, the evidence strongly suggests that few buyers were in fact buying it for present or future homesite use. About eighty percent of buyers of Rio Rancho lots indicated at the time of sale that they were not buying the lots as homesites for their principal residence. [12] (I.D. 24)[12] While that fact does not exclude the possibility that the lots were bought for future use (*i.e.*, as a vacation or retirement home), respondent's experience with Rio Rancho and other subdivisions, as well as its general knowledge about the land sales industry, gave it reason to know that few buyers would ever actually settle on the land they had bought. In respondent's first development, Rainbow Lakes in Florida, no more than seven percent of the buyers there had ever built on their lots, more than twenty years after all the lots had been sold. (I.D. 185) In Rio Rancho, after more than fourteen years of selling lots, only 2500 lots had been improved out of the more than 75,000 sold. (I.D. 17) Further, a consultant's report prepared for respondent in 1966 warned respondent not to expect more than about five percent of the buyers to actually settle in Rio Rancho. (CX 231, p. 34) The conclusion is evident that the great majority of buyers of respondent's land were indeed buying primarily for investment purposes.

B. *Investment Representations*

The heart of the Initial Decision is Judge Teetor's finding that respondent sold its land for investment purposes by making representations about the nature of investment in general and the particular attributes of the land it was marketing which were misleading and deceptive. (I.D. pp. 265–268) In the following sections, we first review the general investment representations made by respondent and then turn to the representations made about its properties which were designed to convince potential buyers that AMREP property was one of the best land investments available.

1. General Representations about Land as an Investment

Much of respondent's marketing scheme was designed to convince prospective buyers that, as a general proposition, buying land was an excellent investment. Quotes about the "inevitability" of profit in

[12] This fact is hardly startling, considering (as discussed later) the fact that the vast majority of lots at Rio Rancho had no utilities, and that the cost for an individual to install utilities was prohibitive. Such lots would be suitable for homesites only when (and if) the pace of development justified extension of utilities to those lots.

land investment and testimonials from famous financiers and public figures citing the superiority of land as an investment are liberally sprinkled throughout respondent's sales brochures and films. (*E.g.*, CX 61 L–M) Respondent's sales personnel and promotional literature represented that land values everywhere in the United States were constantly going up. (CX 110 J; CX 8; I.D. 284–286) [13]

Respondent's sales presentations also painted a tantalizing picture of extraordinary profits realized in various land booms. (I.D. 287–289; for example, Staten Island property after the Verrazano-Narrows Bridge was completed between Brooklyn and Staten Island, CX 38 G–H and Cherry Hill, New Jersey across the Delaware River from Philadelphia, CX 111 D.)

After convincing prospective buyers that land in general was a good investment, respondent's sales presentations went on to demonstrate that land was in fact an investment superior to any other available to the average investor. Dinner speakers compared an investment in real estate to investments in savings accounts, bonds, stocks, and insurance. (CX 37 F–H; CX 38 U–V; Salesman Wilson, Tr. 9662; I.D. 293–294) The presentations stressed the low rates of return on savings accounts and insurance and bonds, and the risks associated with stocks, contrasting them with the certain appreciation of land at rates of 10 to 30 percent. (Salesman Wilson, Tr. 9663). In addition, the sales presentations stressed the availability of "leverage" in real estate investment, by which a low down payment could "control" the full appreciation on the property. (I.D. 290–291) Using the principle of leverage, which was represented as being unique to land investment, potential buyers were told that their rate of return on their land investment could easily be 150 percent. (CX 112 J; CX 110 M; CX 37 F–H; consumer Bechoff, Tr. 4274, 4305). As an investment, land was touted as the best means of beating inflation, a theme hammered away at in films, dinner presentations, and brochures. (I.D. 299)

After persuading potential buyers on the superiority of land as an investment vehicle, respondent's sales presentations turned to demonstrating the advantages of its subdivisions as an excellent, risk-free investment. While the land sales generalities discussed above were used in connection with the sale of lots at all of respondent's subdivisions, respondents also made separate investment representations about each of the land projects, discussed below.

2. Investment Representations about Rio Rancho Estates

a) *Representation about Investment Value*

Rio Rancho Estates consists of 91,000 acres of arid rangeland, locat-

ed northwest of Albuquerque, New Mexico, in Sandoval County.[13] Nearly 85,000 of those acres have been platted into 100,186 lots. As of 1976, respondent had sold 75,134 lots; only 1800 residential units were occupied by 1975. (I.D. 16–18) Beyond the small developed core, utilities were virtually unavailable. (I.D. 313–318) [14]

Respondent's sales presentations for Rio Rancho, including films, brochures, and prepared scripts for dinner presentations, emphasized the theme that buyers were being given a last chance to invest at a low price before Rio Rancho was hit with a "land boom" which would cause a spectacular rise in land prices. Sales presentations compared Rio Rancho to land in other parts of the country which had experienced rapid appreciation due to speculation in a land sales boom. In referring to a number of bridges that had recently been constructed over the Rio Grande leading to Rio Rancho, for example, sales representatives pointed to the explosion in property values in areas such as Staten Island and Cherry Hill, New Jersey, after the opening of bridges to those areas had made them accessible for the first time to urban areas. (I.D. 287; CX 35 D; CX 38 G; CX 111 D; CX 169 G). As one sales representative noted after making the comparison:

> If tonight I told you nothing more about our program than the documented story of the 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 38 G)

Respondent's sales presentations also drew comparisons to examples of appreciation in the Albuquerque area, leading potential buyers to believe that they could expect similar appreciation at Rio Rancho. Specific examples were cited in respondent's standard brochure (CX 32 I) and sales scripts (CX 36 A–B) throughout 1973. One illustration noted a profit of $18,000 in a little more than eight months, while another showed $2,000 for one year.[14] (CX 32 I)

Respondent's sales presentations also stressed that land at Rio Rancho *itself* had been rapidly increasing in market value. Respondent regularly announced price increases for unsold lots at Rio Rancho, usually annually and sometimes semi-annually, on the order of a 10 to 15 percent increase each year. (I.D. 27–28; CTX 34). The history of price increases was often communicated to prospective buyers (I.D. 302–303) and advance notice of future price increases was routinely

[13] Albuquerque is located in Bernalillo County.

[14] The examples in the brochure were accompanied by a disclaimer which stated that the examples "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." In the context of respondent's total presentation, we find that this disclaimer was ineffective in dispelling the only relevant message such case histories were plainly intended to convey: that respondent's land possessed the same tantalizing potential for quick profits.

communicated to existing lot owners. [15] (I.D. 304, 309) Potential buyers clearly understood this history of price increases to mean that the *market value* of Rio Rancho land had increased, equating AMREP's selling price with market value,[15] and existing owners were led to believe that the value of their lots had increased. (I.D. 302–303) Such actions had the tendency or capacity to lead consumers to believe that lots at Rio Rancho were appreciating in market value at between 10 to 15 percent per year, and that such appreciation was likely to continue.

Respondent also promoted Rio Rancho as an investment by representing that the sales price for the lots was below fair market value, implying, in turn, that buyers would realize a profit immediately upon buying the land. (I.D. 188) Early versions of Rio Rancho promotional materials flatly asserted that the offering price was below market value. (CX 237 B, CX 393 E) Later versions, used after 1972, made the same representation, albeit in a more guarded way. (CX 30 M, W) The same point is made in brochures, films, and dinner scripts, which compare the selling price of a lot at Rio Rancho with the higher market value of land located near Rio Rancho. (CX 36 L; $12,000 per acre for community "just across a 50-foot road from Rio Rancho"; CX 30 G; CX 24 I; improved land "1/4 mile from our doors" is $6,000 per acre.) Such comparisons had the tendency or capacity to lead potential buyers to believe that the sales price of Rio Rancho land was below the fair market value of the land.

Respondent also represented that a land investment in Rio Rancho involved little or no risk. (I.D. 211; "as guaranteed and protected a program as you will find anywhere", CX 37 N; a "safe, sound, sensible, prudent real estate investment", CX 456 H.) Such claims had the tendency or capacity to lead potential buyers to expect, not only that they would not lose their capital invested, but also that there were no significant risks, such as illiquidity, which would prevent them from selling and taking a profit at any time. This impression was significantly heightened by representations made by respondent's sales representatives that a lot at Rio Rancho would not be difficult to resell. (I.D. 212, 213) Respondent did not, however, represent that it would assist buyers in resale or guarantee resale. (I.D. 214) [16]

It is also clear that respondent failed to disclose that land at Rio Rancho might be illiquid or difficult to resell. The company's former president admitted that "company policy was not to discuss resale." (Friedman, Tr. 24208) If potential buyers asked, Friedman testified that the policy was to tell them not to expect a resale market until

[15] Indeed, respondent apparently does not dispute that consumers could reasonably have understood the selling price to be about equal to the fair market value, since it contends that the selling price in fact, represented fair market value. (RAB 55–56; Respondent's Answer to Complaint Counsel's Proposed Findings of Fact, Conclusions of Law, and Order 104–112)

after the company had substantially stopped selling the land. (Friedman, Tr. 24208) However, in many cases, respondent's salesmen indicated that, considering the rapid rate of sales, respondent would soon be out of available land. (CPF 104)

As discussed in detail below, the main theme used to convince prospective buyers that buying land at Rio Rancho would be a profitable investment was that Rio Rancho was destined to become a thriving suburb of Albuquerque in the near future. Respondent pictured Albuquerque as a city "bursting at the seams," with only one direction in which residential growth could go: toward Rio Rancho. With insatiable demand and limited supply, the price of Rio Rancho lots could only go rapidly up.

Respondent represented Albuquerque as an area of explosive growth.[16] In addition to subjective descriptions of the growth (*e.g.*, "bursting at the seams" CX 35 C–D; "growing at an unprecedented pace" CX 81; CX 203; I.D. 98), respondent made specific predictions about Albuquerque's population in the ten to twenty year time frame. During the 1960's, respondent predicted that Albuquerque's population would double in the next ten years, which would result in an increase of about 275,000 people in that time. (I.D. 101, 102, 105)[17] After the 1970 census figures became available, when it became clear that such projections were too optimistic, AMREP revised its predictions for the next 10 [17] year period, projecting various population figures for 1980 which would have resulted in population increases of 70,000, 170,000 and 270,000.[18] (I.D. 110–111)

In conjunction with the representation that there would be very strong demand for residential space to accommodate this anticipated population boom, respondent also represented that, because of constraints to development on three sides of Albuquerque, the great majority of the residential growth would be in the direction of Rio Rancho, and that Rio Rancho was directly in the path of Albuquerque's suburban development. (CX 38 O) The so-called "frame theory," present from respondent's earliest brochures, portrayed the geo-

[16] Judge Teetor treated growth and development representations apart from investment representations. (I.D. 97–158) Here, we treat them together as they were part of the investment equation and part of the overall investment claim. Respondent's growth projections were predictions about the demand for residential land in the Albuquerque region. Combined with the representation that there was only a limited supply of residential land, the growth claims led consumers to believe that residential development around Albuquerque would quickly move towards (and through) Rio Rancho. The development representations further enhanced the implication that Rio Rancho would be a thriving, residential suburb of Albuquerque in the near future. As other available land was rapidly put into residential use, demand for land at Rio Rancho would soar, taking property values with it.

[17] In 1961, respondent predicted that Albuquerque's 1970 population would be 550,000. (CX 393 B) In 1968, it projected the 1975 population as 600,000. (CX 38 O)

[18] These inconsistent projections were all made at the same time. In the 1972 revision of its Rio Rancho brochure, "This is My Land", 1980 populations of over 600,000 and over 500,000 were variously mentioned. (CX 32 G; CX 32 M) The contemporaneous revision of AMREP's other Rio Rancho brochure, however, predicted a 32% increase over Albuquerque's 1970 population, which yields a population projection of 400,000 for 1980. (I.D. 111) Subtracting the actual 1970 population of 330,000 gives the figures cited in the text. (I.D. 99)

graphical and legal constraints on three sides of Albuquerque which respondent said would block development. (I.D. 117–123) As succinctly stated in a 1972 Rio Rancho brochure:

> Mountains to the East, and federal, state and reserved lands along the northern, southern and part of her western borders are now virtually "containing" Albuquerque's future growth. According to experts, *Albuquerque's future growth pattern is largely determined.* Expansion is destined to take place in the general direction of Rio Rancho Estates. (CX 32 H) (Emphasis in original)

Some of respondent's earlier representations were stronger, stating that the Northwest was the *only* direction in which development would go. *See, e.g.,* I.D. 123.

With strong demand and limited supply, respondent predicted that the pressures of suburban development would engulf Rio Rancho in under ten years. While respondent's prepared brochures and prepared sales materials made no predictions as to the timing of development, numerous sales representatives told potential buyers that, because of the expected brisk pace of development, utilities could be expected to reach their lots within three to five years. (Other estimates ranged from a low of two years to a [18] high of eight years.) (I.D. 327–328)[19] While respondent generally did not misrepresent its contractual obligations to develop Rio Rancho,[20] and did not mislead buyers as to Rio Rancho's present state of development or as to the present [19] availability of utilities on their lots,[21] Judge Teetor found, and we affirm, that consumers were misled as to the pace of residential development and how fast utilities could be expected to reach their lots. By further referring to lots as "homesites", respondent

[19] Respondent's attempt to rebut this testimony was unsuccessful. (I.D. 331) Respondent does not defend such statements as being accurate, but rather argues (1) that other sales representatives did not make such predictions and (2) that it instructed sales representatives not to make such promises or predictions. (RPF 134–136; I.D. 326) While some sales personnel may not have made such claims, the record shows that despite the purported company policy, a substantial number of its sales personnel nevertheless made specific time predictions for the arrival of utilities. As we noted in *Horizon, supra,* at 815:

> [E]ven if [respondent's] management chose to remain ignorant of the time frame representations made by its sales force, its ignorance constitutes a failure to exercise reasonable diligence in controlling sales practices in the field, and does not serve as a defense to Section 5 liability.

Respondent raised this issue in its proposed findings of fact, but does not appear to press it in its appeal brief.

[20] AMREP was not obligated under the contract to install any utilities. (CX 155) It was contractually bound to pay for the building of roads to Sandoval County specifications, and to give a buyer a lot of "comparable value" in the building area in exchange for the buyer's lot if, when the buyer was ready to build, utilities had not yet reached the buyer's lot. (CX 155 B) (This "exchange privilege" is discussed in more detail later in the opinion.)

Complaint paragraphs 34 and 35 charged, however, that respondent represented that it would build certain facilities in the near future in Rio Rancho. Complaint counsel produced evidence that some consumers were told that there would be a lake and a golf course at Rio Rancho. (CPF 188–189) The ALJ, however, did not discuss this evidence and made no findings on this complaint allegation. We decline to find on the basis of the record before us that respondent represented that it would build any facilities at Rio Rancho.

[21] There is no dispute that utilities (water, sewer, telephone, and electricity) were all available only in the building areas and in some of the adjoining units (specifically, units 11, 16, 17 and 7, which the ALJ refers to as the "Unit 16 complex"). (I.D. 313) Beyond this small fraction of Rio Rancho lots, utilities were virtually unavailable. (I.D. 318) The cost of having utilities installed was prohibitive for any individual owner to undertake. (I.D. 314–318)

enhanced the image of a subdivision ready to meet the expected influx of population[22] over the next several years. **[20]**

Putting all of these claims together, respondent portrayed Rio Rancho as an excellent short-term[23] investment opportunity. Express comparisons to profits realized annually or in only a few years on other real estate investments, in Albuquerque and in other areas of the country, implied that Rio Rancho had similar potential for rapid development and appreciation. By raising its sales price for Rio Rancho lots frequently, respondent could point to a sustained history of successive price increases on the magnitude of ten to fifteen percent a year, leading potential buyers to believe that the market value of Rio Rancho lots had been rising and would continue to rise substantially every year. (I.D. 200–204) Respondent also represented that its sales price was below fair market value, virtually guaranteeing an immediate return of investment, and further emphasized that the investment involved little or no risk. Most of all, respondent represented that the heavy demand for, and limited supply of, residential land around Albuquerque would inevitably force development towards Rio Rancho, pushing up the market value of Rio Rancho land. Sales representatives assured numerous consumers that the pace of development would bring utilities to their lots within three to five years.

We conclude on the basis of the record that the respondent represented the purchase of vacant land at Rio Rancho as a short-term investment with the characteristics of high yield, certainty, and little or no risk.

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[22] Judge Teetor found that respondent's references to vacant lots in the non-building areas as "homesites" had the capacity to mislead buyers into believing that their lots already had utilities installed or that utilities could be installed at a reasonable price. (I.D. 319–324) Had AMREP used the term standing alone, we would have agreed that the use of the term was deceptive. That conclusion is fortified by the fact that AMREP's use of the term violates OILSR regulations restricting the use of the term. OILSR's present definition (24 CFR 1715.20), promulgated in 1980, is more generous than the definition in force during the mid-1970's (*see* I.D. 319, note 212), but would still preclude the use of the term "homesite" in describing Rio Rancho lots because potable water is not available at a reasonable cost at most Rio Rancho lots. According to respondent, the cost of drilling a well and installing a pump made individual wells "impractical." (RX 160 J)

However, AMREP's brochures and property reports made it fairly clear that utilities were not available outside of the building area. (I.D. 323–324; 314–317). Further, no consumers testified that they were misled as to the availability of utilities on their property. While respondent's use of the term was undeniably "loose" (in Judge Teetor's words), we find that the use of the term "homesite" did not mislead consumers as to the present availability of utilities, in light of the additional disclosures made in the brochures and property reports.

[23] As the Commission noted in *Horizon*, we do not intend to rigidly define "short-term" or "long-term" investments. *Horizon, supra*, at 804, n.4. There, we accepted for the purposes of the opinion respondent's definition of a "long-term" investment as one that is greater than twenty years. In the present case, neither side produced much evidence as to the period of time that would be appropriately characterized as "short-term" or "long-term."

As discussed in the opinion, however, it is clear that respondent, through a variety of representations, led consumers to expect that they would realize substantial appreciation in a period of ten years or less. Giving the respondents the benefit of the doubt, and for the purposes of ensuring consistency with our opinion in *Horizon*, for the purposes of this opinion we will consider a "short-term" investment as one which would mature in twenty years or less.

b) *The Investment Value of Rio Rancho*

Judge Teetor concluded, after a thorough review of the evidence, that there was sufficient land immediately available for residential development in and around Albuquerque to accommodate expected population growth for the remainder of the century, and that there would be no local demand for Rio Rancho [21] land until well into the next century, if ever. (I.D. 103, 105, 155–56) He also found that, contrary to respondent's representations, the market value of land at Rio Rancho had not been and was not increasing, and that the price set by respondent for Rio Rancho lots was in fact up to five times higher than the fair market value of the property. (I.D. 226–229) He also found respondent's use of comparisons between Rio Rancho land and profitable investments in land located in or near Albuquerque or in other "boom" areas to be deceptive. (I.D. 197–199, 287–289) He also found that, contrary to respondent's representations, there was no resale market for Rio Rancho lots, and as a consequence, that the purchase of Rio Rancho lots involved substantial investment risk. (I.D. 240–265) Judge Teetor concluded that the purchase of Rio Rancho land was, in fact, a poor investment involving significant risk.

On appeal, respondent disputes the ALJ's findings, and contends that the purchase of lots at Rio Rancho was and is a good investment, and that the various claims made by respondents were reasonable in light of what respondents knew at the time the claims were made. (RAB 35, 43)

We affirm the ALJ's findings, although our own analysis differs to some extent from his. For the reasons discussed below, however, we affirm his basic finding that the purchase of Rio Rancho lots is not, as represented, an excellent, low-risk investment, in light of the substantial likelihood that there will be no local demand for Rio Rancho land, and consequently a very limited resale market, until the turn of the century, if ever.

i) Rate at Which Available Land will be Developed and Growth Directed towards Rio Rancho

As we have seen, the central argument in respondent's investment value theme is that Rio Rancho would rapidly become developed because of the heavy demand for, and limited supply of, residential land near Albuquerque. The critical question—how fast such development will occur, if ever—depends on the interplay of a number of factors, including: (1) the rate of population growth; (2) the amount of residential land which is available for development in areas which are likely to be developed before Rio Rancho; and (3) the density at which

the land will be settled.[24] [22]

a) *The Basis for Development and Growth Claims in the 1960's*

Respondent asserts that, based on assumptions that were reasonable to make during the 1960's, it was justified in representing that there would be substantial residential development in Rio Rancho. Respondent's main expert witness in this segment of the case, Mr. Arthur Fawcett, testified that during the 1960's respondent would have been reasonable in projecting the population of Rio Rancho to be 170,000 by the year 2000.[25] (Tr. 12283; 12287)

The evidence persuades us to disagree. Throughout the 1960's, respondent was making population projection claims which were unreasonably high in light of the projections being made during the same period by the official city agency responsible for planning for expected growth, the Albuquerque City Planning Department, which was the only source of population projections for the Albuquerque area during the 1960's. At the same time that respondent was representing that Albuquerque's population would double between 1960 and 1970, a projected increase of about [23] 275,000 persons, the City Planning Department in 1962 was predicting the most likely increase to be about 100,000.[26]

Respondent's claim that much of the expected growth between 1960 and 1970 would go toward Rio Rancho was plainly unreasonable in light of the amount of land more suitable for residential development in areas closer to Albuquerque. Respondent's expert witness, Fawcett,

[24] This type of analysis is called an absorption study. (Lusteck, Tr. 2630) *See Horizon, supra,* at 816, where we used a similar analysis.

[25] Since the complaint in this case did not allege that respondent violated Section 5 by failing to have substantiation demonstrating a reasonable basis at the time the claims were made, neither side produced much evidence concerning what respondent *actually* relied upon (if anything) in making its growth, development and investment claims. Instead, respondent offered the testimony of Mr. Fawcett, which purported to demonstrate that, based on data that would have been available and assumptions that would have been reasonable to make during the 1960's, respondent's claims were reasonable. Both sides and the ALJ apparently agreed that this "reasonableness" standard was the appropriate standard to use in this case. (*See, e.g.,* I.D. 101) Generally, of course, the intent or good faith of a seller is not a defense to a Section 5 cease and desist proceeding. *Chrysler Corp.* v. *FTC,* 561 F.2d 357 (D.C. Cir. 1977). The Commission has the authority under Section 5 to stop false claims even if the claimant is acting "reasonably" in making the claim. The good faith of the claimant, however, may be relevant to the scope and terms of a cease and desist order.

In any event, as discussed in the opinion, it is evident that respondent did not act reasonably in making the challenged investment claims, and, under any standard, violated Section 5. *See* discussion under Part III.C.4, regarding respondent's "opinion" defense.

[26] The 1962 "AMA X-Ray Report" (CX 251) used population projections prepared for the Albuquerque City Planning Department by Stanley Brasher, an economics and planning consultant. He projected a range of population figures, depending on certain assumptions. For 1970, Brasher projected a "low" figure of 322,944, a "middle" figure at 372,576, and a "high" figure of 420,096—increases of about 47,000, 96,500, and 144,000, respectively, over the city's 1960 population of 276,000. (I.D. 99; CX 251 z 89)

In 1964, the City Planning Department, together with the Albuquerque Transportation Study, released the "1985 Land Use Plan" which contained population projections developed for transportation planning purposes. (CX 546) The 1985 Land Use Plan projected Albuquerque's 1970 population to range from a low of 336,400 to a high of 418,000—the latter figure based on "a more liberal, but not unreasonable, estimate of future immigration." (CX 546 O)

The ALJ found respondent's "puerile theory" that population would simply continue to double to be unreasonable. (I.D. 103–105)

testified that despite constraints on the development of land around Albuquerque,[27] there was enough land [24] "reasonably available for development" in and around Albuquerque to accommodate a population of 650,000, and that there would be no need for growth to go out of Bernalillo County and toward Sandoval County and Rio Rancho until that population point was reached. (Tr. 12286) During the 1960's, the City Planning Department did not expect Albuquerque's population to reach 650,000 until at least the mid-1980's, even using the highest reasonable population projections.[28] [25]

Further, the City Planning Department believed that future development would occur at slightly higher densities than in the past.[29] Consequently, both the 1962 and the 1964 City Planning Department studies saw *no* growth into Sandoval County, in the direction of Rio Rancho, by the turn of the *century,* even using the highest reasonable population projections. The 1985 Land Use Study concluded that "[e]ven the most optimistic growth projections would not utilize this land within the current century." (CX 546 z 14) Indeed, the report noted that "[t]here is sufficient developable vacant land within the study area to accommodate a population of more than two million." (CX 546 z 6)

In addition, it is clear that the very nature of the land at Rio Rancho

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[27] The evidence shows that during the 1960's and 1970's, there were, in fact, geographical and legal constraints on the future expansion of Albuquerque. To the north of the city lies the 23,000 acre Sandia Indian Reservation. To the east lie the Sandia Mountains. To the south lie the city airport and the Kirkland Air Force Base, while further south lies the 211,000 acre Isleta Indian Reservation. To the west, south of Rio Rancho Estates, lie the 91,000 acre Pajarito and Atrisco land grants which are not currently developable because of title problems stemming from the original Spanish land grants. (I.D. 127–150)

Nevertheless, it is evident that there was a substantial amount of available land *within* that "frame." The ALJ, after a careful review of the record, estimated conservatively that 45,600 acres were immediately available for residential development in and around Albuquerque. (I.D. 155, figure 11) We adopt those findings with one exception: the ALJ should not have included the 15,000 acres of vacant land in the city. (I.D. 152) The preponderance of the evidence shows that the vacant land in the city was not immediately available for development. (Carruthers, Tr. 11131–39) In addition, by using the city's vacant land in his absorption calculation, the ALJ inadvertently changed one of his assumptions, namely, that gross density remained the same.

The remaining 30,000 acres is a highly conservative estimate, a fact apparently conceded by respondent's expert witness, Fawcett, who estimated that a total of 125,000 acres (including the present developed area) in Bernalillo county could readily accommodate population growth. (Fawcett, Tr. 12823)

It is important to note Judge Teetor's conclusion, with which we concur, that some of the constraints may not, in fact, be constraints by the time development reaches the edge of the "frame." (I.D. 158) He notes, for example, that the Sandia and Isleta Indians have already prepared a master plan to develop part of their land, and further notes that with approval from the Interior Department, Indian land can be leased on a long-term basis, or, with approval of Congress, can be conveyed. (I.D. 134–136) Additionally, the ALJ notes that the current title problems currently hindering development of the 91,000 acre Pajarito and Atrisco land grants to the west of Albuquerque can, with time, be cleared. (I.D. 147–149).

[28] The 1962 "AMA X-Ray Report" contained a "high" projection of 631,000 in 1980 (CX 251 z 93), and the 1985 Land Use Study contained a high population estimate of 830,000 by 1985 (CX 546 z 14)—the highest projection made by any official study.

[29] City Planner Carruthers, complaint counsel's main witness on this segment of the case, testified that density in the Albuquerque area would increase as development "filled in" vacant areas before going further from the city. He also testified that it was the policy of the City Planning Department to encourage such filling in.

Respondent's expert Fawcett, on the other hand, believed that the very low density of the Albuquerque region was likely to remain unchanged.

We find it unnecessary to resolve this dispute, since even using Mr. Fawcett's assumption about density, it is apparent that there would be no growth toward Rio Rancho during the 1960's and most of the 1970's, based on the highest population projections being made during the 1960's.

made it highly unlikely that Rio Rancho would be developed before other available land located close to Albuquerque. Unlike portions of the fertile Rio Grande Valley and the valleys of the Sandia mountains, the land at Rio Rancho was flat, arid rangeland. (I.D. 14; I.D. 233) In addition, Sandoval county was a rural area, poorer than Bernalillo County, making it a less socially desirable area for middle class development. (CX 231 R–S) Finally, the sheer vastness of Rio Rancho precluded individuals from developing their own parcels, since the cost of installing utilities was prohibitive. According to respondent, the cost of installing utilities at Rio Rancho's most remote lot was $315,000. (CX 162 K) Consequently, it was unreasonable to believe that there would be any demand for Rio Rancho until the land that was more attractive, less costly to develop, and closer to Albuquerque, was fully developed.

Significantly, respondent had actual notice that there would be no local market for Rio Rancho land until at least the mid 1980's, and that there would be no growth toward Rio Rancho during the 1960's and 1970's. A report prepared by an independent [**26**] planning firm for respondent in May, 1966[30] warned that the population projections in the 1985 Land Use Plan were "too optimistic" for Rio Rancho planning purposes. The report reviewed in detail land availability and desirability in the Albuquerque area, noting that the Northeast area of the city was the area of most growth and the most desirable residential areas. (CX 231, R–S). Because Sandoval County and the western areas were relatively rural, poorer areas, the report noted that there had been only "limited success" in attracting new housing, occurring only "in peak building times when home demand was greater than supply." (CX 231 S) The report concluded:

> Despite the expected doubling of Albuquerque's population over the next twenty years to over 600,000 residents, ample undeveloped suburban land exists more proximate to the City and its desirable parts than Rio Rancho's land, such that only small and selective market penetration by Rio Rancho is likely over the 20 year period from 1966 to 1985.

(CX 251 VV).

It is evident that, even assuming heavy population increases and continuing patterns of extremely low gross density, the data available during the 1960's showed that there would be no growth toward Rio Rancho until the mid-1980's, after other available land had been developed. Even then, Rio Rancho was so large that there would have been no local demand for the great majority of the lots until the turn of the century. Assuming that all of Rio Rancho was developed at the

[30] A preliminary summary report, containing substantially similar findings, was given to respondent in November, 1965. (CX 454)

same gross density as Albuquerque, Rio Rancho could have accommodated 220,000 people—a population nearly as large as that of Albuquerque itself in 1960.[31] [27]

By the year 2000, however, it is altogether possible that the present day legal restrictions hindering development of large parcels of vacant land around Albuquerque may well be removed, freeing up thousands of acres of land for development. (I.D. 134–136; 147–149) If that occurs, the demand for much of Rio Rancho, particularly for the lots located further away from Albuquerque, is likely to evaporate altogether. While one cannot say for certain whether this will in fact happen, it plainly constitutes a substantial assumption in respondent's representation that such restrictions will operate to drive development toward Rio Rancho.

Consequently, the data available during the 1960's showed that it was highly unlikely that there would be a local market for Rio Rancho land for at least twenty years, and longer—indeed, if at all—for many of the Rio Rancho lots located farther from the city. Even assuming that respondent had some arguable basis for rejecting the official projections made by the City Planning Department—which the record shows it did not—the report by respondent's consultant clearly notified respondent that its claim that Rio Rancho would be substantially developed in the short term (i.e., less than twenty years) was unreasonable. While respondent was not reasonable in making such a claim prior to that report, continuing the use of such claims after the receipt of that report constituted a knowing deception.

b) *The Basis for Development and Growth Claims in the 1970's*

In June, 1970, the preliminary 1970 census findings showed that the expectations of strong growth which everyone shared in the 1960's were wrong. Due to an unexpected sharp decline in in-migration and the birth rate, even the *lowest* City Planning Department's population projections made during the 1960's turned out to be too optimistic: the 1970 population was 333,000, a ten-year increase of only about 57,000 persons. Rather than growing at the 100% rate represented by respondent, growth from 1960 to 1970 occurred at about a 20% rate. (I.D. 99) Despite the fact that the changes in migration and birth rates meant that Albuquerque would not achieve a population of 600,000 until near the turn of the century—the point at which respondent's expert Fawcett said development of Rio Rancho would only *begin*

[31] Rio Rancho consisted of 54,000 acres until 1971. Applying the figure of about 5 persons per acre gross density, which represented the gross density within the Albuquerque city limits (Fawcett, Tr. 12286), Rio Rancho as constituted during the 1960's could have accommodated about 220,000 people. An alternative analysis provides an even higher figure. In 1971, our additional purchase expanded Rio Rancho to 91,000 acres, creating the potential for 114,760 dwelling units. (Fawcett, Tr. 12635) Using the average actual household size of Albuquerque in 1960 of 3.64 persons (Fawcett, Tr. 12630), Rio Rancho could have housed 417,726 persons.

—respondent purchased another 37,000 acres to be added to Rio Rancho in 1971.

Nevertheless, respondent asserts that it was justified in selling Rio Rancho as an investment during the 1970's and that it was reasonable to believe that Rio Rancho would be "substantially developed" by the year 2000, with a population of between 78,000 and 96,000 people. (Fawcett, Tr. 12272–12275) [28]

All of the official population studies and projections done during the 1970's, however, project insignificant growth in Sandoval County through the rest of this century. The highest population projection made for all of Sandoval County in the year 2000 estimated the population at 40,000—an increase of only 22,500 from 1970. (Fawcett, Tr. 12606, 616–17) Even if Rio Rancho were to capture *all* of this growth—an unlikely assumption—it would mean the improvement of only 9000 lots from 1975 to 2000, leaving the other 90% of Rio Rancho unimproved.[32]

Further, the most recent projection of population for the Albuquerque SMSA referred to in the record puts that figure at a range of 609,000 to about 707,000 in the year 2000. (Fawcett, Tr. 12616) Under Fawcett's own admissions, pressures to develop in the direction of Rio Rancho would thus not even start until the turn of the century, when the present legal restrictions on the development of other more accessible land may well be gone.

Fawcett's stoic projection of a thriving community at Rio Rancho by the year 2000 in the face of those facts is simply explained: he believes that the population projections ignore the "non-local demand" for Rio Rancho. Fawcett admits that there will be a local market for only about 11,000 units through the year 2000, a figure which is reconcilable with official population studies.[33] He asserts, however, that an additional 18,000 units will be built by out-of-state purchasers who have retired or moved to Rio Rancho. This assertion assumes that a [29] full 28 percent of Rio Rancho buyers will actually eventually settle there.[34]

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[32] Fawcett testified that it would be appropriate to use the figure of 2.5 persons per household as an average Rio Rancho household size in the year 2000. (Tr. 12628) On the basis of that figure, about 22,500 persons could be accommodated in 9,000 dwelling units, using Fawcett's average household size of 2.5 persons per household. Fawcett also testified that, based on the lots actually platted, Rio Rancho could contain 114,760 dwelling units. (Tr. 12635) Using Fawcett's assumptions, Rio Rancho has the potential to house 275,425 people.

[33] Fawcett agreed that his projections were consistent with the projections of University of New Mexico's Bureau of Business and Economic Research (BBER) that there would be 40,000 people or less in Sandoval County in 2000 if the non-local demand were subtracted. (Tr. 13202–203) Since the 1970 population of Sandoval County was 17,492, the BBER projection predicted an increase of about 22,500 people from 1970 to 2000. Fawcett's projection of 11,000 local units assumes that *all* of the expected increase in growth in Sandoval County would go to Rio Rancho alone.

[34] He testified that between 1975 and 2000, an additional 28,584 units would be built, 11,000 of which represented local demand. (Tr. 13202–203) Consequently, about 18,000 units would represent out of state demand. (Tr. 13,202–203) Assuming that most of the 2500 present units are "non-local," there would be a total of about 20,250 non-local units by the year 2000 under Fawcett's assumptions. Fawcett also testified that 71,620 lots had been sold at Rio Rancho. (Tr. 12623) Using those figures, 28.3% of the total lots sold would be "non-local."

Fawcett's prediction that over 28% of all Rio Rancho lot buyers will eventually settle there is unsupported by any factual basis. Respondent's own independent planning consultant warned respondent as early as 1966 that no more than 5% of buyers ever move to developments sold by land-sales developers. (CX 231, p. 34, 454) AMREP's own experience with Rainbow Lakes, an earlier Florida project which had sold out in the 1960's with only 7% of the buyers ever moving there, and indeed with Rio Rancho (only 2500 lots settled after 14 years of selling), confirmed that expectation. (I.D. 273) Fawcett was unable to supply any basis for his assumption. When asked why the Bureau of Business and Economic Research of the University of New Mexico, the official agency responsible for predicting Albuquerque's population growth, apparently failed to give any weight to the argument that Rio Rancho would attract a substantial population from its non-local buyers, all that Fawcett could say was "in my opinion, they don't take into consideration the drawing power and the growth power of Rio Rancho. I simply disagree with them." (Fawcett, Tr. 12826)

Putting the "non-local" demand aside, it is further evident that Fawcett's testimony constitutes a significant admission that there will be *no* local market for the vast majority of Rio Rancho lots even by the turn of the century. Even if it is assumed that there is a local demand for about 11,000 dwelling units at Rio Rancho (which itself assumes that Rio Rancho will capture all of the growth going to Sandoval County by the year 2000), that assumption would result in a total of 13,000 dwelling units by the year 2000, excluding Fawcett's projected "non-local" demand and including present developed lots. (Tr. 13202–203) Yet Fawcett also testified that Rio Rancho had a total capacity of 114,760 dwelling units. (Tr. 12635) Fawcett's projection of 13,000 local dwelling units thus represents a little more than 11% of the total number of dwelling units planned for Rio Rancho. At Fawcett's projection of 2.5 persons per dwelling unit, this would mean that Rio Rancho would attract only 26,720 persons from the expected population increase of 385,000 between 1975 and 2000, or about seven percent of the population increase. **[30]** (Fawcett, Tr. 12678) A full 93 percent of the population increase, even under Fawcett's assumptions, would live someplace other than Rio Rancho.

ii) Market Value of Rio Rancho Land

An important part of respondent's argument that Rio Rancho was a good investment hinged on whether its market value had increased and whether respondent's selling price was equal (or even below) fair market value. The evidence on the record of the present market value of Rio Rancho land was provided primarily by two expert appraisers,

Jack Mann for complaint counsel and Richard Godfrey for respondent. Both experts were eminently qualified to give appraisals. (I.D. 216) However, Judge Teetor found Mann's testimony to be highly credible, but found much of Godfrey's testimony to be of limited value. (I.D. 217–237)[35]

Based on a comparison with the Rio Rancho properties sold through the multiple listing service from 1970 to 1976, and sales of Rio Rancho lots at auctions in 1975 and 1976, Mr. Mann [**31**] determined that the eight typical Rio Rancho lots he analyzed had an average fair market value in 1976 of $1200 per acre. (I.D. 225–227) At the same time, AMREP was selling its Rio Rancho lots for an average price of $6300 per acre.[36] (I.D. 228) We adopt the ALJ's analysis of the record evidence with respect to the fair market value of Rio Rancho lots outside of the small developed core area. Indeed, even the testimony of respondent's own witness, Godfrey, established that respondent's sale price for Rio Rancho was higher than the fair market value that he had established.[37]

Perhaps even more importantly, the record shows that there simply is no local resale market for Rio Rancho land outside of the established core area. From the period of 1969 to 1975, out of a total of 878 Rio Rancho lot listings filed with the Albuquerque multiple listings service, only 16 were sold. (I.D. 220) The Albuquerque Multiple Listing Service even prepared a form letter to send out to inquirers which warned, "For your information, our records reflect that there is little,

[35] Godfrey based his opinion on 32 sales of "comparable" land. Originally, Godfrey wanted to testify to 800 "comparables", but Judge Teetor ordered that Godfrey limit his testimony to his "best" 25 (later extended to 32) "comparables." (I.D. 231) Out of these 32, only 9 were vacant, unimproved lots located in Rio Rancho which had been resold. (The ALJ rejected 14 of the other 23 "comparables" as being not comparable to the lots at issue. Those lots were either improved or located in parts of Albuquerque very different from Rio Rancho. The ALJ rejected 8 other proffered "comparables" because respondent failed to produce independent evidence of the prices of the sale. (I.D. 232–236)) The ALJ calculated that the "pro forma" per acre resale price for those 9 comparables ranged from $3200 to $7332, with a mean price of $4514. (I.D. 235) However, the ALJ went on to reject Godfrey's ultimate opinion that the least value one-acre lot at Rio Rancho was worth $5,000, finding that "the structure of [Godfrey's] opinion is so deficient in probative value that we accord it no weight." (I.D. 237)

Respondent argues that the Judge erred in restricting Godfrey's testimony to his 32 "best" comparables. (RAB 10–11) We see no prejudice to respondent and no error on the part of the Judge. Respondent was offered a fair opportunity to pick the "best" evidence; cumulative evidence would not have been helpful, and the ALJ was correct in limiting the testimony to advance the trial. Considering the ALJ's full reasons for rejecting Godfrey's opinion, respondent's inability to present other comparables was not prejudicial.

[36] In determining fair market value, the experts apparently did not contend that AMREP's selling price represented the best evidence of the market value, but instead attempted to derive the fair market value from individual resales and from "open market" sales of comparable property. This approach to valuation is undoubtably correct in this case. As we noted in *Horizon, supra*, at 817, the fair market value of land is arrived at through arm's length bargaining, where both parties are knowledgeable, acting in their self-interest, with a reasonable time to complete the purchase, and the transaction is free from any undue stimulus. As in *Horizon*, our conclusion herein that respondent used "high pressure sales tactics," in conjunction with deceptive representations about growth, development, and investment value, negates those conditions and renders the respondent's sales price meaningless as an indicator of fair market value. *See Horizon, supra*, at 819.

[37] Godfrey testified that, in his opinion, a typical one-acre lot at Rio Rancho was worth a minimum of $5,000 at the time of his testimony (1976). Since 1974, however, respondent's price for such lots has ranged from $6,200 to $7,100. (I.D. 236) While selling land at a price in excess of its fair market value does not, in and of itself, constitute a violation of Section 5, this conclusion is obviously relevant to determining the reasonableness of respondent's claim that its sales prices were *below* fair market value.

if any, local market for resale of tracts in this particular subdivision." (Williams, Tr. 2137) The letter was approved by the Board of Realtors on February 13, 1974, nearly a year before the Commission's complaint was filed. (I.D. 241) It is evident that owners could *not* sell land locally through the usual means **[32]** of doing so—by listing with a realtor and a multiple listing service.

Paul Heinz, an Albuquerque broker who was formerly a Rio Rancho salesman, testified that he had received a total of approximately 2,500 inquiries about the possibility of listing Rio Rancho lots. However, he was unable to negotiate a single sale for any of the 468 lot owners whom he convinced to pay him $25 (and later $50) apiece as an advance on a sales fee. (Heinz, Tr. 11323–24, 11336)

Respondent argues that the inability of owners to sell is due to the unfavorable publicity from the instant suit. The facts do not support this contention, since the experience of both Heinz and the Albuquerque multiple listing service occurred at least a year before the Commission brought suit.

Respondent argues that Judge Teetor ignored evidence in the record of resales by owners of Rio Rancho lots.[38] For the most part, such sales were either to local Albuquerque builders, who **[33]** then used the exchange privilege to "cash in" the vacant lot for a smaller amount of land near the core developed areas,[39] or to friends, neighbors, or others who were not part of the Albuquerque local market.

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[38] For example, respondent cites the results of a survey of Rio Rancho owners conducted by complaint counsel, which showed 106 sales. (CX 564–568; RAB 10) (The ALJ "adjusted" these figures to account for surveys which were undeliverable or unreturned, estimating a total 398 sales from *all* purchasers. (I.D. 248)) However, respondent also argues, somewhat inconsistently, that the ALJ erred in admitting the survey.

We agree with respondent that the survey was flawed in several respects. No one working on the survey had any significant expertise or experience in conducting surveys. (Schulman, Tr. 11537–538; Case, Tr. 11596) No procedures were established for testing validity or reliability. The low response rate (439 usable responses out of 1,976 questionnaires) is also disturbing. Finally, the fact that one of the complaint counsel was compelled to act as both an advocate and a witness in this case created a situation for bias which should have been avoided. These flaws, in our view, go to the weight and not the admissibility of the evidence. The possibility of bias and the lack of the usual survey controls compels us to give no weight to the complaint counsel survey.

We do not believe, however, that this holding affects the validity of the ALJ's findings on market value or any other finding. Contrary to respondent's assertions, the ALJ did not rely on complaint counsel's survey "heavily", but rather cited it as additional cumulative evidence confirming the lack of any active resale market. There is substantial record evidence to support that finding absent the survey.

[39] The record also contains evidence of land auctions held in Albuquerque by Rocky Mountain Land Auction Company of Denver, Colorado, at various times during 1975 and 1976. (I.D. 222–224) Three builders testified as to the prices they paid for Rio Rancho lots at auctions. (I.D. 224) Complaint counsel's expert appraiser, Mann, also relied to some extent on the auction prices in arriving at his opinion of the value of the eight typical Rio Rancho lots (Mann, Tr. 3358, 3374–75).

The ALJ cites evidence that in the November, 1975, auction, there were about 3000 lots listed, the majority from Rio Rancho; only 65 were sold. (CX 391 p.2; I.D. 223) Respondent argues persuasively that this last evidence is not properly in the record. (RAB 9–10) Mann's testimony as to the auction is hearsay; *see* I.D. p. 192, fn. 185. Further, Heinz's testimony and 2 exhibits, CX 562 and CX 563, were stricken by the ALJ, only to be reinstated in the Initial Decision, without affording respondent an opportunity to cross-examine. I.D. 222, fn. 158; C. Ans. 9. We hereby strike CX 562 and CX 563 and Heinz's testimony about the auctions from the record.

We do not agree with respondent, however, that this is a reversible error. As the ALJ noted, the prices of the lots bought at the auction are in the record through the builders' testimony, and Mann was entitled to rely upon the builders' statements about prices in arriving at his opinion. All that is dropped is evidence that 65 out of something less than 3,000 Rio Rancho lots offered were sold, a fact which is not critical to either the ALJ's findings or Mann's findings, given the other evidence about the lack of any resale market.

(*See, e.g.,* Keaveny, Tr. 20744; Estrema, Tr. 15172–73) Moreover, the fact that some few owners were able to sell their land does not diminish the overwhelming evidence that the vast majority of lot owners who wanted to sell their land were simply unable to do so. Indeed, respondent in various SEC filings has admitted since *1969* that buyers may find it difficult to resell homesites. (CX 4 J; CX 1 K; CX 5 E)

Nevertheless, respondent's experts assert that the illiquidity is only temporary, and that eventually owners will be able to sell at a profit. Respondent's expert investment witness, Charles Elias, testified that investors must be willing to wait out a "holding period" to get by temporary conditions that might dampen sales. (Elias, Tr. 23940–42) He viewed a 10–15 year period as reasonable and said that a century might not be too long for some people. **[34]**

Even assuming that it is likely that there will be sufficient local demand to sustain a viable resale market in the 10–15 year time period, an assumption contrary to the evidence, the fact remains that respondent did not market its land as a long-term investment and did not disclose the significant risk of illiquidity. Indeed, the net impression created by respondent's sales presentations was that profits could be expected quickly, certainly within a ten year period, and the investment was low-risk. In light of those representations, respondent's failure to warn purchasers that an extraordinarily long "holding period"—in the range of twenty years or more—might be required to realize a profit misled consumers into believing that the holding period was reasonably short-term. *See Horizon, supra,* at 814.

We affirm the ALJ's conclusion that there is no resale market for Rio Rancho land, either presently or in the foreseeable future. The preponderance of the evidence shows that, contrary to its representations, respondent's selling price for its Rio Rancho lots has always been well in excess of the fair market value. It is further plain that, without a foreseeable resale market, the market value of Rio Rancho land has not increased and bears no relation to the increase in selling prices contrived by respondent. Buyers have not realized any increase in market value for their land.[40]

iii) Conclusions

The preponderance of the evidence shows that respondent, in several ways, misrepresented the likely effect of future growth and development on the prices and market value of Rio Rancho land. First, respondent misrepresented the nature of the "constraints" on Al-

[40] We find no merit in respondent's argument that they were denied due process since they had no notice of the ALJ's findings that respondent's prices for Rio Rancho land were "unconscionable." (RAB 7; I.D. 237) It is plain from the context of the ALJ's discussion that his conclusion was more descriptive than legally meaningful. The "conscionability" of respondent's prices is not in issue here; whether they were, as represented, close to fair market value is the issue. We see no prejudice from the ALJ's description.

buquerque's future growth which it claimed would funnel most of the residential development toward Rio Rancho. As we have seen, those constraints were, if anything, long-term constraints: even under the most optimistic population projections of the 1960's, there was sufficient land all around and in Albuquerque to ensure that most growth would go elsewhere than Rio Rancho for at least twenty years. As the rate of population increase dropped during the 1970's, that timeframe was pushed further into the next century. By that time, however, many of the legal "constraints" may well be dissolved altogether. **[35]**

Second, respondent misrepresented the likely *rate* at which Rio Rancho would be developed. During the 1960's respondent grossly exaggerated the predicted population increase. Further, individual sales representatives promised that development could be expected within 3 to 5 years; reference to lots as "homesites" and comparisons to other "boom" towns reinforced that message. As we have seen, however, the only reasonable conclusion that could have been drawn from information available during the 1960's was that it was highly improbable that there would be any development in Rio Rancho until the mid-1980's, and that the bulk of Rio Rancho would remain undeveloped for years after that. Similarly, the only reasonable conclusion that could have been drawn from information available during the 1970's was that it was highly improbable that more than a fraction of Rio Rancho would be developed by the turn of the century.

Respondent represented, both directly and indirectly, that the rapid rate of expected development toward Rio Rancho made it virtually certain that the market value and prices of Rio Rancho land would rise rapidly as well, providing a handsome short-term return on the buyer's investment. Since most buyers were buying for investment purposes, such representations were plainly material to the buyer's consideration of Rio Rancho land as an investment opportunity. As we have seen, however, in fact it was highly unlikely that there would be any significant growth toward Rio Rancho for at least 20 years, and consequently, respondent misrepresented the likelihood that the market value of Rio Rancho land would increase within several years as a result of development pressures.

The preponderance of the evidence also demonstrates that respondent misrepresented the market value of Rio Rancho land. By setting its price well above the fair market value of the land, respondent led consumers to believe that the market value of Rio Rancho land was much higher than it actually was. In addition, respondent affirmatively stated that the price at which Rio Rancho land was offered for sale was *below* fair market value, a statement which the evidence shows is false. Respondent further misrepresented the market value

of Rio Rancho land by making misleading comparisons to the market value of properties located near to Rio Rancho. The properties referred to were developed communities which bore little resemblance to the vacant expanses of Rio Rancho. (I.D. 198)

Further, respondent also misrepresented past appreciation of Rio Rancho's market value. Through annual and sometimes semi-annual price increases, respondent created the impression that the market value of Rio Rancho had similarly increased. In fact, the price changes had no relation to changes in the market value of Rio Rancho land. Because there was and is no demand for or resale market for Rio Rancho land, the market value of Rio Rancho had not increased. **[36]**

Directly and indirectly, respondent also misrepresented the risks involved in the purchase of Rio Rancho land as an investment. Information about potential risks was plainly material to any investor evaluating an investment opportunity, including buyers and prospective buyers of Rio Rancho. Both through affirmative statements of safety, and the failure to disclose material facts concerning the risks of an investment at Rio Rancho, respondent represented Rio Rancho as a low-risk investment. In fact, however, there were significant risks. Because of the lack of a resale market for the immediate future, lots at Rio Rancho were illiquid and most could not be sold at any price. Further, it was highly probable that there would be little or no appreciation of Rio Rancho land for at least a 20-year period, and there was some risk that there would be none well into the next century, if ever. Despite respondent's knowledge of these risks,[41] it failed to disclose them and led **[37]** buyers to believe that the investment involved little or no risk.

Through all of these misrepresentations, respondent created the thoroughly misleading impression that Rio Rancho land was an excellent investment opportunity. As we have seen, the reality is quite different: contrary to respondent's representations, (1) the price at

[41] Respondent reported in its SEC filings as early as 1969 that buyers would face difficulty in attempting to resell land. Further evidence of respondent's knowledge that the sale of any land, including Rio Rancho, involved significant risks is demonstrated by the existence of a 10-point pamphlet entitled, "What You Should Know About Real Estate Ownership," prepared by respondent in 1974. (RX 1827) Among other things, the pamphlet warned that any real estate purchase should be for either use or possible long-term appreciation; that real estate lacks liquidity; that not all land will appreciate and that the future value of land is difficult to predict; that a long-term investment means 10, 20, even 40 years; that there should be no expectation of immediate financial return. (RX 1827) In addition, in May 1973, respondent included a rider in some contracts which contained significant disclosures about investment risks. (CX 449) The disclosures warned that the land was being purchased for long-term investment and that it was not presently income producing, and, most significantly, a warning that land may be an illiquid investment and that "customers may find it difficult to resell subdivided land while the Developer is actively selling homesites in the same development. (CX 449 B)

The record shows, however, that respondent made little or no use of the disclosure pamphlet described above. While it was prepared to be included in the contract packets to be sent to new purchasers *after* their purchase (Smith, Tr. 21028), in fact the evidence shows that it was not so used. The sales manager for Eldorado at Santa Fe, for example, testified that the brochure was just on display at the sales office. (Dautherty, Tr. 21165) He testified that it was not given to people who had purchased. (Tr. 21166) As for the contract disclosures, respondent included them only in sales made abroad after May, 1973, and only when the sale exceeded $30,000. (Tr. 7933; CX 449 B)

which Rio Rancho land was offered for sale was far above fair market value; (2) there were substantial probabilities that Rio Rancho would not appreciate in the short-term; (3) there was a significant risk that buyers would not be able to resell their land; (4) Rio Rancho land had not increased in value; and (5) there were significant risks to long-term appreciation, as well. All of this information was material to an investor considering price, risks, and potential returns on investment. Given these facts, it is evident that the purchase of land at Rio Rancho was, in fact, a poor investment, involving substantial risk and a very low probability of achieving a reasonable return on investment in the short-term. We find that respondent's misrepresentations and failures to disclose material facts are deceptive acts and practices in violation of Section 5 of the FTC Act. *See Horizon, supra,* at 814.

Given that conclusion, it is also apparent that respondent's comparisons to land purchases which *were* excellent investments were misleading because Rio Rancho bore no significant relation to the examples cited. Citations to Albuquerque real estate, for example, referred to improved acreage located in totally different sections of the city. (I.D. 198) Such comparisons were misleading and deceptive because they have the capacity to deceive consumers into believing that Rio Rancho shared the same potential for development and profits as the examples cited. As such, these comparisons violated Section 5.

For similar reasons, we sustain the ALJ's finding that some of respondent's general land investment statements, even if generally true, (RAB 55) were deceptive in the context of selling the particular properties involved here. (I.D. 285–300) When stated as principles of general applicability, as they were here, respondent's representations clearly had the tendency to lead consumers to believe (in the absence of any disclosure to the contrary), that those representations also applied to the particular real estate investment opportunity being offered. [38] Thus the references to profits made in real estate investments in other parts of the country are misleading where they bear no relationship to the properties at respondent's subdivisions.[42] For example, the comparison to "bridges" which launched land booms in other areas had nothing to do with the "bridges" across the Rio Grande, which did not suddenly open new residential areas to a teeming metropolis. (I.D. 202; 287–289) Similarly, respondent's claim that real estate as an investment is always superior to insurance, stocks and bonds and savings accounts is misleading because the particular properties involved here, as discussed below, are *not* good invest-

[42] It is well-settled that truthful statements may nevertheless be misleading and deceptive if material facts which are necessary to prevent deception are not also disclosed. *See, e.g., Horizon, supra,* at 805, n.6; *Bockenstette* v. *FTC,* 134 F.2d 369, 371 (10th Cir. 1943); *P. Lorillard Co.* v. *FTC,* 186 F.2d 52, 58 (4th Cir. 1950).

ments.[43] As a consequence, these misrepresentations are all deceptive acts in violation of Section 5. (I.D. 202)

Misrepresentations of material facts have long been held to be an unfair, as well as a deceptive, practice. *National Trade Publications Service, Inc.* v. *FTC*, 300 F.2d 790 (8th Cir. 1962). In considering whether a practice is unfair, the Commission focuses primarily on the existence of unjustified, substantial consumer injury. As we stated in *Horizon* at 849–50:

> To be legally "unfair," consumer injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice at issue produces; and it must be an injury that consumers themselves could not reasonably have avoided. [39]

The injury to consumers from respondent's deceptive representations is clearly substantial. As discussed later in the opinion, respondent, using a variety of high-pressure sales tactics, put pressure on consumers to sign the land sales contract before leaving the dinner sales party.[44] At that time, however, prospective buyers were relying almost exclusively on respondent's claims that the land constituted an excellent, low-risk investment. Since most purchasers bought the land for investment purposes, it is clear that respondent's representations were not only material, but were indeed the direct inducement of the sale.

Respondents sold more than 75,000 lots at Rio Rancho alone. The average price for all of respondent's subdivisions ranged from $3232 (in 1969) to $4899 (in 1976). (I.D. 11) The ALJ found that those sales prices were anywhere from three to five times the actual market value of the lots. (I.D. 229) Since, by definition, the fair market value of a parcel is the price a knowledgeable buyer would be willing to pay, and at which a knowledgeable seller would be willing to sell, under conditions free of deception and coercion, the difference between the market value of the land and respondent's selling price affords a rough calculation of the total consumer injury caused by respondent's deceptive representations. Using an average sales price of $4065, that figure amounts to more than $200 million at Rio Rancho alone.[45]

The second test of unfairness is whether the consumer injury is outweighed by any countervailing benefits to competition and to con-

[43] Judge Teetor also found that the comparisons to other forms of investment were deceptive because the comparisons did not compare rates of return holding all other things equal. (I.D. 294–298) While such comparisons are obviously incomplete and faulty, we do not find them deceptive in the abstract, but only as applied to the particular investments being offered. For the same reason, we disagree with the Judge's finding that respondent's claim that real estate is a good hedge against inflation is deceptive in theory. It is, however, deceptive with respect to the properties here, which are poor investments.

[44] *See* Part IV of the opinion, below.

[45] The figure is calculated by taking two-thirds of the estimated revenue obtained by selling 75,000 lots at an average price of $4065.

sumers. The record reveals no countervailing benefits stemming from respondent's misrepresentations about Rio Rancho's investment value.

The final test of unfairness is whether the consumer injury could have reasonably been avoided by consumers. The buyers here were not sophisticated, experienced investors. Indeed, one of respondent's main pitches was that AMREP's solid reputation and its substantial experience as a land developer made it possible to offer even average persons an opportunity to invest in land. (CX 456 H; CX 6 D; CX 102 A) As a result, buyers rarely had information or experience to rebut respondent's representations. Nor were buyers likely to have any knowledge about respondent's subdivisions, which were located far away from the northeast U.S. cities where most sales meetings took place. Further, [40] respondent's presentation underscored the theme that, as a solid company listed on the New York Stock Exchange, AMREP could be trusted. (CX 102 A; CX 59) The glossy sales brochures, the slickly-produced films starring well-known political and show business personalities, and the representations that respondent was complying with detailed federal and state regulations and had been approved by state regulators (CX 456 I; CX 110 K), all led consumers to believe that respondent was offering a legitimate and potentially valuable investment opportunity. Respondent further discouraged purchasers from seeking advice from attorneys or other professionals. (Jarrett, Tr. 10340; Wise, Tr. 10939)

In addition to convincing unsophisticated consumers that they could trust respondent, respondent also used a variety of tactics to persuade buyers to sign a contract and keep up payments. To begin with, as discussed later, respondent frequently misrepresented the purpose of the dinner parties in its invitations, making it difficult for consumers to avoid being subjected to respondent's sales pitch, short of refusing to come to the dinner party at all. More importantly, and as discussed in more detail later in the opinion, respondent used a variety of high-pressure sales tactics and deceptive representations to persuade consumers to sign the land sales contract at the dinner sales party, primarily by convincing consumers that they could still cancel the contract afterwards. However, as also detailed later, respondents worked hard to keep buyers from cancelling within the 72-hour cooling off period or after visiting the land. Further, it was plainly costly for consumers to travel to respondent's subdivisions to inspect their land, which was a necessary precondition to the later cancellation right. After those periods had run, consumers were locked into a contract, which provided, among other things, that they would forfeit *all* payments already made if they defaulted. As the ALJ noted, respondent's "organized offense" was intended to make it difficult and

costly for consumers to get an independent evaluation of respondent's claims and to get out of the contract once it was signed in reliance on respondent's deceptive claims. Under these circumstances, we conclude that consumers could not reasonably have avoided the injury caused by respondent's representations.

We conclude that all three tests for unfairness have been met, and that respondent's deceptive representations about Rio Rancho concerning its development, growth, and investment value constitute unfair acts or practices in violation of Section 5. [41]

We find that the preponderance of the evidence supports the complaint allegations set out in paragraphs 11 through 23.

3. Investment Representations about Silver Springs Shores

a) *Representations about Investment Value*

Silver Springs Shores consists of 18,500 acres of land about three miles southeast of Ocala, a small city located in Marion County in the north central part of Florida. (I.D. 31–40) About 88 percent of the acreage has been platted; about 34 percent (5,521 acres) of its platted acreage had been sold or contracted for by 1976. (I.D. 34) While 19,426 lots had been sold, only about 700 homes had been built or were under construction at the time of trial. (I.D. 35) The immediate building area was served by electricity and telephone service, but there was no central water or sewer system, requiring residents to install a well and septic system at their own cost, estimated to be about $1200. (I.D. 332)[46]

Respondent's sales presentations for Silver Springs Shores emphasized its investment potential. Respondent's films, brochures, and dinner scripts underscored the explosive growth of population in central Florida, and the attendant increase in land prices. (I.D. 159–160, 205; CX 456 B; CX 65 A; CX 76 O) Representations that Florida land prices were "doubling and redoubling again and again" (CX 175 M) made clear the "exciting potential for profit" (CX 456 B) which respondent was offering. Such comparisons to central Florida land had the capacity to lead consumers to believe that Silver Springs Shores had the same [42] potential for growth and quick profits as Florida land in general.[47]

[46] In February, 1983, the General Development Corporation ("GDC") purchased AMREP Corporation's remaining residential and commercial property in Silver Springs Shores. On September 30, 1982, the Commission entered an order in this matter containing an agreement between the Commission and GDC. In return for the Commission's agreement not to consider GDC a successor or assign to AMREP Corporation as a result of the purchase of Silver Springs Shores, GDC agreed to undertake certain actions for the benefit of the consumer owners of Silver Springs Shores. Among other actions, GDC is obligated under the Order to offer to repurchase approximately 20,000 lots that have been deeded or will be deeded in the next five years.

[47] Respondent attempted to dispel the plain intent of its reference to profits in central Florida real estate with a small print disclaimer (at least for its main brochure) that: "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

(footnote cont'd)

Respondent's sales presentations also stressed significant growth in Ocala, the town closest to Silver Springs Shores. Noting that Ocala's population had increased an "astounding 66 percent" in ten years, respondent's brochure clearly implied that the population had increased because of net migration into the city. (CX 58 N; CX 73 A; I.D. 170) Respondent's film also created the net impression that Ocala's population was rising rapidly:

> . . . a growth rate 340% greater than Daytona Beach; 300% greater than Miami Beach. Already Ocala, faced by fast-rising population and real estate pressures, has expanded its city limits . . . and whenever dynamic growth like this occurs land prices tend to move up and up. (CX 175 D)

Respondent's advertising made express the implied representation made above: that Silver Springs Shores "is in the path of tremendous growth." (I.D. 170; CX 73 A)

Respondent also represented that lots at Silver Springs Shores were like lots located in other AMREP property in Florida which allegedly had appreciated in value by $4,500 in five years. (I.D. 205)

While the evidence on resale representations is limited, the preponderance of the evidence shows that some of respondent's sales representatives also represented that there was presently an active resale market at Silver Springs Shores or that there would be no difficulty in reselling lots there. (I.D. 212)

Silver Springs Shores sales representatives, like their counterparts at Rio Rancho, referred to lots there as "homesites" and represented to potential buyers that development would occur rapidly, with utilities reaching their property within three to five years. (I.D. 336, 337) At one 1973 dinner party, a salesman went so far as to assure a potential buyer that a lot in an undeveloped area was fully developed, complete with streets, [43] electrical lines, and sewers. (Consumer Muzzillo, Tr. 7244) Indeed, respondent's own national advertising referred to Silver Springs Shores as part of a "thriving developing community where streets and utilities are already in . . ." (CX 72, CX 78, I.D. 333)[48] Moreover, these development claims implied that there was, or would be in the near future, a viable community with an active resale market.[49]

In summary, we find that respondent represented that Silver

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or predictions described." (CX 58 X; I.D. 160) We agree with the ALJ's conclusion that this disclaimer was unlikely to be effective in the context of respondent's total sales presentation.

[48] In light of the actual state of development at Silver Springs Shores, noted previously, such a claim was false and deceptive. (I.D. 333) This instance is the only one in which respondent misrepresented the actual state of development at one of its subdivisions.

[49] As we noted in *Horizon, supra*, at 810:

> The effect of these representations on consumers cannot be underestimated: roads and utilities mean the possibility of communities, communities mean resale, and resale means profit.

Springs Shores was an excellent investment; that it would share in the growth in population of central Florida and Ocala, and that such growth would be substantial; that the land would appreciate in price as a consequence of the increased demand for residential land; and that there would be significant appreciation in the short term.

b) *The Investment Value of Silver Springs Shores*

The ALJ found, and we affirm, that respondent deceptively represented the growth of Ocala, the town nearest to respondent's development in Silver Springs Shores. (I.D. 170) Ocala's population increase was due, not to in-migration as represented by respondent, but simply to a redrawing of the city's 1960 boundaries to encompass new areas. The population within Ocala's 1960 city limits actually declined from 1960 to 1970. (I.D. 171, CX 476 H, L) The record shows that the population increase was due almost entirely to capturing pre-existing population in the annexed areas.[50] While respondent asserts that it disclosed that Ocala's boundaries had been expanded in conjunction with the population growth claims, we find that such disclosure was not always made, and when it was, that it was unlikely to dispel [44] the deceptive message that the Ocala area was experiencing substantial population growth.[51]

Respondent's claim that Silver Springs Shores was "in the path of development" is contradicted by the record evidence showing that land available for residential development in Marion County was in abundant supply. Regional Planner James Mims testified that as of 1977 there were at least 94 land developments in Marion County, totaling over 135,292 acres, with the ability to accommodate a population of 784,693.[52] (Mims, Tr. 6795–6796, 6802; I.D. 172) At the time of trial, it was expected that Marion County would reach a population of 138,300 by 1985. (Mims, Tr. 6793–94) Enough land had been subdivided by the time of the *trial* to house not only that population projection, but an *additional* 646,694 people.[53] City planner Richard Lewis

[50] CX 476, entitled "The Characteristics of the Population" (1970 Census), notes that parts of Belleview, Fort McCoy-Anthony and West-Fellowship divisions were annexed by Ocala. The population of these three areas was 26,717 in 1960, and had increased to only 30,893 by 1970. (CX 476 L, RAB 45)

[51] For example, in the specific advertisement cited by the ALJ, respondent failed to disclose that Ocala had expanded its boundaries. (CX 73 A, I.D. 170) Further, where the disclosure was made, it implied only that the boundaries were expanded *because of* substantial population growth. *See, e.g.*, CX 175 D, a party film script for Silver Springs Shores:

> . . . Ocala has jumped 88% in population in only 7 years . . . Already Ocala, faced by fast-rising population and real estate pressures, has expanded its city limits . . . as outlying areas quickly became suburbs . . . as suburbs quickly became cities . . .

The net effect of the claim was to enhance the image of Ocala as an area bursting at the seams with significant population growth caused by in-migration.

[52] Respondent incorrectly asserts that Mims' population figures pertained to a five-county region, rather than to Marion County alone. (RAB 45; Mims, Tr. 6812)

[53] Regional Planner Mims testified that the University of Florida's Bureau of Economic and Business Research placed Marion County's 1975 population at 93,469 and predicted its 1985 population to be 138,300. (Tr. 6793–6794)

(footnote cont'd)

testified that there was more than enough residential acreage in the city limits of Ocala alone to meet the anticipated growth of population through 2000. (Lewis, Tr. 6675–77, 6685) Taking a somewhat different approach, Judge Teetor applied the past rate of growth from 1960 to 1975 and concluded that there already was enough subdivided land in Marion [45] County to last for 280 years. In light of the enormous supply of competing residential land, and the lack of any constraints which would funnel development toward Silver Springs Shores in lieu of the other areas, the only conclusion that could reasonably be drawn from all available information was that the probability of significant development of Silver Springs Shores was very low. Because of the abundant supply of available competing land, local demand for Silver Springs Shores was not likely to be significant until well into the next century, if then.

The evidence is plain that there is in fact no resale market at the present time for Silver Springs Shores. Testimony from several Ocala real estate brokers and the Chairman of the local multiple listing service indicated that while hundreds of Silver Springs Shores lot owners had expressed a desire to sell, only a few were successful in doing so. (Moutz, Tr. 6601–2; Kanninen, Tr. 6850–52, 6855) From April 1973 to December 1976, there were only four sales of vacant Silver Springs Shores lots through the multiple listing service. (Cepeda, Tr. 6530–5) One broker, Virginia Kanninen, testified that she had made three resales of lots, all at prices below respondent's current list price for lots. (Tr. 6855; I.D. 268–270)[54] Indeed, respondent's own SEC filings admit that owners find it difficult to resell lots. (CX 5 E; CX 1 K)

Respondent's two expert witnesses, Professor Elias and Mr. Tischler, contend that, while Silver Springs Shores lots may presently be illiquid, the lots may still be a good investment if they are held on to for a longer period of time.[55] (RAB 55; RPF 85–93; Elias, Tr. 23830; I.D. 273–275) While in the abstract the point may be true, the difficulty with the argument is that the purchase was represented to potential buyers as an investment in which there was little or no risk (because the demand for land was so enormous) and a significant likelihood of profit. Respondent did not disclose that there were substantial risks, particularly in the short term, that the investment might be illiquid, or that the holding period needed to achieve a

Subtracting the projected 1985 figure from the present capacity of existing subdivisions (784,694) yields a figure of 646,694.

[54] As with Rio Rancho, we give no weight to evidence about resales contained in complaint counsel's survey (CX 566). *See* discussion, *supra*.

[55] Respondent's expert witness Tischler also testified that he thought that a substantial percentage—perhaps half—of Silver Springs Shores owners would settle there. (Tr. 23331, 23453; I.D. 273) As discussed above in connection with Rio Rancho, this assumption is unreasonable in light of respondent's actual experience with its own projects and knowledge about the land sales industry generally.

reasonable return on investment would likely be long term, longer than twenty or thirty years. In conjunction with the claims that the purchase of land was a good investment, the failure to [46] disclose such material facts had the capacity to lead consumers to believe that the investment was for the short term and involved little or no risk.

Given the lack of foreseeable demand for land at Silver Springs Shores, the abundance of alternative land available for residential development, and the lack of any active resale market at Silver Springs Shores, we conclude that it was highly unlikely that there would be substantial growth or development in Silver Springs Shores, particularly in the short term period of under 20 years. Consequently, future short-term growth and development was unlikely to have any effect on the market value of lots at Silver Springs Shores. Therefore, we find that respondent misrepresented the likelihood of future development and the effect of such development on prices. Further, the preponderance of the evidence shows that there is little likelihood that the market value of lots at Silver Springs Shores will increase, particularly in the short term, and that there is a substantial probability that buyers will be unable to resell their land. As a result, lots at Silver Springs Shores were not, as represented, excellent, low-risk investments but instead were purchases involving a substantial risk of illiquidity and little or no potential for profit, particularly in the short term. Respondent's misrepresentations of and failure to disclose such facts, which would be material to a buyer weighing the investment value of Silver Springs Shores, were deceptive acts and practices in violation of Section 5. For the reasons discussed previously, we find that such deceptive practices cause substantial, unjustified and unavoidable consumer injury, and accordingly, we also find that these practices are also unfair acts or practices in violation of Section 5.

4. Oakmont Shores

a) *Representations about Investment Value*

Oakmont Shores is a 3,500 acre recreational/resort development adjoining a 56 mile long man-made lake in the Ozark country in southwestern Missouri. Respondent acquired the project from a bankrupt developer and began selling lots there in 1972. Out of a total of 2,300 platted lots, respondent sold 803 lots and deeded 29 more. (I.D. 47–48) Most lots lacked one or more utilities. (I.D. 341–359) In April, 1975, respondent abandoned its plan to develop Oakmont Shores and reconveyed the land to the trustee in bankruptcy for the former owner. (I.D. 51)

Respondent's investment theme for Oakmont Shores, a recreational/resort development, took a slightly different tack than in its other

projects. The main theme is captured in the title of respondent's main promotional film, "A Race for Space." (CX 171) The film claimed that recreational land in general was getting scarcer and the standard dinner script stated that the price of "good lake land" was skyrocketing. (CX 102 C; [47] I.D. 178–179) The script concluded: "The closeness of Oakmont Shores to the second largest man-made lake in the nation means that demand—and prices—can be expected to go only one way—up!" (CX 102 C) The film cites a "government report" which found that the property adjacent to Table Rock Lake had increased in value 535% in seven years. (CX 171 I) Respondent's sales representatives portrayed Oakmont Shores as a good investment, which would double or triple in value in several years. (I.D. 207) The image of a rapidly developing recreational community was fostered by reference to the lots as "homesites." (I.D. 341) The net impression from these representations was that recreational land around Table Rock Lake was in high demand and that therefore the market value of such land, including Oakmont Shores, would continue to increase, making the purchase of a lot a good investment.

b) *The Investment Value of Oakmont Shores*

Contrary to the representations made by respondent, there is no demand for lots at Oakmont Shores, largely because of the abundant supply of recreational/resort land adjoining Table Rock Lake in competition with Oakmont Shores. (I.D. 181) While no surveys or projections were made which would indicate how rapidly the area around Table Rock Lake could be expected to develop, there was substantial capacity for development which made any expectations about an increase in market value at Oakmont Shores speculative, at best, particularly within the short time frame. For example, nearly 75% of the land around Table Rock Lake had not yet even been subdivided. (McGee, Tr. 9175)

Indeed, there was, by the time of trial, virtually no resale market for Oakmont Shores lots. Three different real estate brokers testified that, despite receiving numerous inquiries from land owners about the possibility of selling, only one lot was actually sold. (I.D. 278–280) Again, respondent has recognized the difficulty of resale in its SEC filings. (CX 5 E; CX 1 K)

In view of the abundant supply of competing land and the lack of a resale market for Oakmont Shores, it was highly unlikely that lots at Oakmont Shores would be developed in the foreseeable future or that the market value of such lots would increase as a result of development or the increasing scarcity of land available for recreational development. As a result, lots at Oakmont Shores were not, as represented, excellent investments, but instead were purchases with little

possibility of appreciation in the foreseeable future and with a substantial risk of illiquidity. Respondent's misrepresentations about the investment value of lots at Oakmont Shores were deceptive practices in violation of Section 5. Further, it was a deceptive practice violating Section 5 for respondent to claim that prices had risen 535% over a seven-year period without disclosing that during that seven-year period, Table Rock Lake was being constructed. Any increase in property values during that time was likely to be highly atypical. (*See* McGee, Tr. 9154) [48] The use of atypical data, without disclosure that they are atypical, is misleading, and therefore a deceptive practice under Section 5.[56] These deceptive practices are also unfair acts or practices in violation of Section 5 because they cause substantial, unjustified, and unavoidable consumer injury.

5. Eldorado at Santa Fe

The smallest of respondent's projects, Eldorado at Santa Fe, consists of about 6,000 acres located 14 miles southwest of Santa Fe, New Mexico. (I.D. 41–42) Respondent started selling lots in January, 1973; by 1976, 351 lots had been contracted and an additional 98 lots had been deeded. However, as of 1975, there were only 21 occupied homes, and few parts of the subdivision had utilities. (I.D. 43; 338–339)

Complaint counsel produced only a limited amount of evidence for the record concerning investment representations made by respondent at Eldorado. On the basis of this limited evidence, we make no findings about specific investment representations.

The ALJ found that there was a plentiful supply of land available for residential development in and around Santa Fe, making respondent's claim that growth was blocked in all directions but to the South false and deceptive. Santa Fe City Planner Moul calculated that enough land existed to support 63,400 people (Tr. 10483), about the size of the County's probable population growth for the next 51 years. (I.D. 177) That calculation excluded two areas, the Weil Ranch and the Jarrett Ranch, which totaled 49,000 acres. (I.D. 176–177)

The ALJ found, however, that the record did not support a conclusion as to the investment value of Eldorado lots. (I.D. 276) While there plainly is no demographic pressure forcing development towards Eldorado in rapid fashion, there is no evidence about the present market value of Eldorado lots or whether there is an active resale market. Thus, we find the record does not support a finding that the respondent has deceptively marketed Eldorado land as an excellent investment. [49]

[56] *See, e.g., Horizon, supra,* at 806; *National Dynamics Corp.,* 82 F.T.C. 488, 564–65 (1973), *aff'd in part and remanded in part,* 492 F.2d 1333, 1335 (2d Cir. 1974), *cert. denied,* 419 U.S. 993 (1974); *reconsideration,* 85 F.T.C. 1052, 1053–54 (1975).

C. *Respondent's Defenses*

1. The "Exchange Privilege"

Respondent asserts that, even if buyers of Rio Rancho land were unable to sell their land, they were not injured because they were able to exchange it for a lot of "comparable value" whenever they were ready to build on it.[57] Respondent estimates that the exchange privilege alone is worth $3500. (RAB 52–54)

In reality, the exchange benefit provides very little of worth. In the first instance, as respondent belatedly disclosed in its property reports, respondent is not in a position to honor the exchange privilege if, in fact, a substantial number of buyers want to build on their lots. (CX 162 J, CX 163 H)

More importantly, the exchange privilege is so restricted by conditions that its value is very limited. All that the privilege entitles the buyer to is the right to a lot in the building section which is of "comparable value" to the buyer's vacant lot. Since the market value of a vacant lot is much lower than the market value of a building lot with utilities near the core developed areas (I.D. 221), respondent may give substantially smaller lots in the building area, or charge additional fees, in complete compliance with the exchange **[50]** provision, and indeed frequently has done so.[58] (*See, e.g.,* Wise, Tr. 10946–49; Salesman Kimmel, Tr. 3903; Bradley, Tr. 2168; Douglas, Tr. 10076–77; Lobianco, Tr. 4748–49; Sanchez, Tr. 9889–90.) In essence, the phrase "comparable value" gives respondent discretion to determine what to provide in exchange for the owner's vacant lot. In addition, the right applies only to the first half acre lot; there is no exchange privilege for any additional lots owned. (CX 162 J)

But even more fundamentally, the privilege was of no value to someone holding the land simply for investment, rather than for eventual relocation or retirement, since the exchange privilege applied *only* if the *buyer* was "ready to build." A buyer holding the lot

[57] The provision in the reservation and purchase agreement for Rio Rancho Estates provides:

> 4. If when Buyer is ready to build a home, utilities have not yet reached his site, Seller will exchange a building lot of comparable value in an area already served by utilities, for a single lot of Buyer. (CX 155)

Earlier contracts provided, in contrast, that the Buyer would be entitled to a lot of equal size in the core area served by utilities. (CX 313 A; CX 266 B; CX 286 B; CX 273 B) This right was watered down over time to a right to a lot of "comparable value," a term which is not defined in the contract. Contrary to some representations (*see, e.g.,* Benfante, Tr. 4312; Hurza, Tr. 2402), buyers were not entitled to an equal size lot in the building area at no additional cost.

Rio Rancho was the only project in which respondent offered the building exchange privilege. In Silver Springs Shores, buyers were given the opportunity only to trade a lot for another within 5 years of the purchase. (CX 323; CX 315; CX 320)

[58] Indeed, the complaint alleges in paragraphs 44–45 that respondent misrepresented the operation of the exchange privilege provision by failing to disclose that, in practice, respondent attempts to get buyers to accept smaller lots and to make additional payments. The ALJ made no findings on these allegations. Our own review of the record does not demonstrate sufficient evidence that respondent misrepresented the exchange privilege to support a finding of violation of Section 5.

for investment has no interest in building a house, but only in the market value of the vacant lot. It is true, of course, that an investor can sell the vacant lot to a third party who is ready to build. The third party, in turn, can use the exchange privilege to get a lot with utilities.[59] But the third party will only be willing to pay a price commensurate with the fair market value of the building lot—which, in turn, is set by the fair market value of the *vacant* lot. Ultimately, then, an investor can realize a profit on his vacant lot only if the fair market value of the particular vacant lot he owns increases. The exchange privilege is largely irrelevant to the investor. Indeed, the very fact that there is no local resale market and no demand for vacant land underscores the fundamental worthlessness of Rio Rancho as an investment because it signals that there is no market for lots *even with the exchange privilege.* **[51]**

2. Disclosures

Respondent strenuously argues that the ALJ's decision ignores the fact that consumers were given "probably the most thorough set of disclosure documents relating to a consumer product that was available in the entire American economic system." (RAB 53)

As permitted by OILSR regulations,[60] respondent chose to supply property reports at the dinner parties and afford consumers a 72-hour cancellation right rather than provide the report 48 hours before a purchase. (I.D. 80) As a result, although respondent complied with OILSR regulations, it is clear that the tightly organized and smoothly presented sales presentations gave potential buyers very little time to consider the property report disclosures *before* they signed contracts.

Further, the complaint charged that the property reports were distributed in a manner calculated to prevent buyers from making any effective use of the disclosures, and that such practices were unfair and deceptive acts or practices in violation of Section 5. While there was some evidence that property reports were effectively concealed at the dinner parties (for example, by putting them under stacks of documents, Jarrett, Tr. 10337), and that reports were delivered late or not at all, the ALJ did not conclude that respondent failed to provide property reports. (I.D. p. 100, fn. 61) The ALJ did note that respondent's sales presentations did not mention the property report and that, while respondent did not "officially condone" the effective concealment of property reports, "it did nothing about it, either, despite our reasonable certainty that some effective concealment did

[59] Indeed, most of the few sales of vacant lots at Rio Rancho were made to builders who bought a number of vacant lots and traded them in for a smaller area in the project's building area. (Bradley, Tr. 2168; Douglas, Tr. 10076–77; I.D. 222–224)

[60] 24 C.F.R. 1710.208(f)(3).

occur." Nevertheless, we do not find the evidence sufficient to support a finding of a Section 5 violation with respect to these practices.

More significantly, even if purchasers had a limited opportunity to look at the property report, it is by no means clear that the disclosures in the property report would have been sufficient to dispel the specific investment value representations being made by respondent. For the most part, the information contained in property reports is concerned with the condition of the land in question, its suitability as a homesite, the present extent of development, the availability and cost of utilities and other amenities, the likely pace of future development, and the developer's contractual obligations (or financial protections) to ensure the promised development. Such information, while certainly helpful to a consumer who is evaluating land as a possible retirement location or primary homesite, is less useful to an investor evaluating the value of respondent's land as an investment. For example, unlike many other land developers, [**52**] respondent was not contractually obligated to provide *any* development. Instead, it represented that development would occur as a result of market forces, not from its own actions. Thus, there is relatively little in the property report which could assist a potential investor in evaluating the respondent's sales claims that development—and profit—would be rapid based on scarcity of residential land, past increases in property value, and expected population growth. The property reports thus contained little information to challenge the illusion crafted by respondent's carefully designed sales presentation that respondent's subdivisions are the investment opportunity of a lifetime. Consequently, compliance with OILSR disclosure requirements would not be sufficient to disabuse consumers of the impressions created by the deceptive and misleading statements, as well as the deceptive failure to disclose material facts, made by respondent in its sales presentations.[61] We therefore reject respondent's contentions that the property reports provide a defense to this action.

3. The Visitation Privilege

Respondent asserts that it encouraged buyers to visit their lots and afforded them an opportunity to cancel their purchases for any reason after they had an opportunity to visit, as long as that was within six months after signing the contract.[62] (I.D. 85) While the record does not indicate what percentage of buyers actually visited their land within the six month period, either with the company's tour or on their own, relatively few of those who did come cancelled their contract, while

[61] *Cf. Horizon, supra,* 859.

[62] All of respondent's subdivisions with the exception of Oakmont Shores offered the six-month cancellation privilege. (I.D. 85, fn. 62)

others purchased even more land. (I.D. 88) Respondent asserts that under such circumstances, it is impossible to conclude that buyers were deceived. (RAB 53)

If respondent's claims about the state of development had been deceptive, which we have found that they generally were not, respondent's argument would have greater force. Clearly, if purchasers had been misled about the present state of development, a trip to respondent's subdivisions would quickly reveal the deception. For example, while a visit to Rio Rancho could have been of some help to an investor, particularly if the trip was made individually and not as part of respondent's organized **[53]** tour,[63] it was still unlikely to overcome the main message of respondent's representation: that substantial local demand was just around the corner. While obviously buyers could see the vast amounts of undeveloped land around Albuquerque and the enormous size of Rio Rancho, they had no way to evaluate how quickly that land would become developed or whether it was property that was subject to development constraints. Respondent's tour guides sought to minimize the significance of the vast undeveloped acreage by telling buyers, according to the standard script: "Although it appears that there is a lot of open land in New Mexico, most of it is either owned by the government in the form of military installations, Indian reservations or held by land grants." (RX 268 D) While literally true, the statement reflected the buyers' inability to judge for themselves the validity of respondent's claims about the scarcity of land and the likely pace of development. To calm any additional lingering doubts, respondent's sales personnel reminded buyers of the exchange privilege, which seemed to offer protection if the pace of development was slower than predicted. (I.D. 93–95) Under these circumstances, we do not find persuasive respondent's argument that the visitation privilege cured any possibly deceptive representations.

4. Representations were "Opinion"

Respondent also argues that it cannot be held liable for its representations concerning the expected future growth of Albuquerque toward Rio Rancho and its statements about the future market value of its lots because such representations are merely a matter of "honest"

[63] As the ALJ found, respondent's organized tours of Rio Rancho were designed to sell purchasers on the advantages of the Southwest and to reinforce the theme of rapidly rising demand for Rio Rancho land. (I.D. 89–92) Respondent's closely-controlled tours left little time for tour participants to inspect their lots or to do any independent research. The effectiveness of respondent's tour is reflected in the fact that nearly a third of all purchasers who visited their lots on their own cancelled their purchases, compared to only ten percent of those taking respondent's tour.

The complaint charged that the use of the tour to vitiate the six-month refund was unfair. (Par. 43) The ALJ made no findings on this part of the complaint. Our own review of the record does not support a finding of unfairness, and we accordingly decline to find a violation of Section 5 as charged by this paragraph of the complaint.

opinion or prediction which cannot be fraudulent under common law. (I.D. p. 266–267; RAB 43) [54]

Commission cases reflect the common law's standard that certain statements of opinion, such as "puffery," lack the capacity to deceive consumers. *Colgate-Palmolive Co.* v. *FTC,* 310 F.2d 89 (1st Cir. 1962); *Bristol-Myers* v. *FTC,* 185 F.2d 58 (4th Cir. 1950); *Kidder Oil Co.* v. *FTC,* 117 F.2d 892 (7th Cir. 1941).[64] Statements of value, and predictions of events in the future, can be expressions of opinion which are not actionable under common law. Prosser, *The Law of Torts,* Section 109 (1971).

At the same time, the common law has developed a number of exceptions to this general principle. It is well-settled, for example, that the expression of an opinion carries with it an implied statement of fact that the opinion is honestly held and that the speaker knows of no facts which would preclude holding such an opinion. *Irwin* v. *United States,* 338 F.2d 770, 773–74 (9th Cir. 1964), *cert. denied,* 381 U.S. 911 (1965); *United States* v. *Rubinstein,* 166 F.2d 249, 255 (2d Cir. 1948), *cert. denied,* 333 U.S. 868 (1948); *United States* v. *Grayson,* 166 F.2d 863, 866 (2d Cir. 1948); Prosser, *The Law of Torts,* Section 109 (1971). Further, where a speaker holds himself out or is understood to have special knowledge not possessed by the listener, the speaker's opinion carries with it the implied statement of fact that the speaker knows of facts which support the opinion. *Magnaleasing, Inc.* v. *Staten Island Mall,* 428 F.Supp. 1039 (S.D.N.Y. 1977), *aff'd,* 563 F.2d 567 (2d Cir. 1977); *Vertes* v. *G.A.C. Properties, Inc.,* 337 F.Supp. 256, 261 (S.D. Fla. 1972); Prosser, *supra,* Section 109. Both situations involve special circumstances which make it probable or reasonable for the listener to accept and rely upon the speaker's opinion, and in such cases, the "opinion" defense is not available. Prosser, *supra,* Section 109. [55]

The evidence shows clearly that respondent knew facts which would have precluded a reasonable person from expressing the "opinion" about the rate of expected growth to the Northwest and its effect on property values at Rio Rancho.[65] Most significantly, respondent received actual notice in 1965, from its own planning consultant, that there would be no local demand (and consequently, no increase in

[64] Since the Commission's cease and desist powers are more in the nature of a common law equitable remedy than a legal remedy for damages, it is appropriate that Section 5 actions, like equity actions at common law, recognize the "opinion" defense only in a very limited set of circumstances. *See* Prosser, *The Law Of Torts,* Section 109 (1971).

[65] In addition, it is also clear from the evidence that AMREP, with the exercise of reasonable diligence, should have known of facts inconsistent with its opinion about the rate of growth to the Northwest and its probable effect on property values at Rio Rancho. For example, AMREP should have known that buyers were unable to resell lots through the Albuquerque multiple listing service, and that such fact meant that the purchase of land at Rio Rancho involved a substantial risk of illiquidity. Representing that the purchase of land at Rio Rancho involved no risk was, at best, a negligent statement. Declarations of opinion made with negligence or with reckless disregard for the truth are actionable under common law. *United States* v. *Love,* 535 F.2d 1152, 1158 (9th Cir. 1976), *cert. denied,* 429 U.S. 847 (1976); *Cameron* v. *Outdoor Resorts of America,* 608 F.2d 187 (5th Cir. 1979), *reh.* 611 F.2d 105 (5th Cir. 1980).

market value) for Rio Rancho land for at least twenty years. Further, during the 1960's, respondent had actual knowledge of the only official population projections for that area, placing predicted population growth as one-third to one-half of that being predicted by respondent. (I.D. 180) It knew, from those studies, that the official planning agencies responsible for development were of the opinion that there was still enough available land to meet the highest reasonable population growth for at least forty years. Further, it knew some of these "constraints," like the title disputes in the Pajarito and Atrisco land grant areas, were legal ones which could be resolved over time. It was also put on notice in 1970 that population growth had significantly slowed, pushing off any pressure to grow toward Rio Rancho until the turn of the century. Yet in 1971, it purchased an additional 31,000 acres to sell as "investment opportunities."

Given these facts, no reasonable person could have honestly stated that the purchase of land at Rio Rancho was an excellent, low risk investment, particularly in the short term. Accordingly, we find that AMREP's opinion as to the rate of growth to the Northwest and the likely effect on Rio Rancho market values was not honestly held, and was a misrepresentation of its actual beliefs and knowledge. The "opinion" defense does not protect such misrepresentations. **[56]**

AMREP went even further, however, and represented itself as a real estate investment expert which ordinary, inexperienced consumers could rely upon. Respondent represented itself as a community developer—a big, reliable and financially sound company, listed on the New York stock exchange, with a proven track record of developing award-winning, progressive communities. (CX 102 A; CX 59 H) Its sales materials frequently referred to AMREP's experience in successful real estate ventures, citing the increase in land values in those projects. (CX 456 G; CX 6 D; CX 102 A; CX 109 F) Representations such as these plainly were intended to make potential buyers trust AMREP and put faith in its ability to make safe, excellent investments. By touting its expertise and experience, respondent claimed to have superior knowledge about land values, population trends, and community development. Further, respondent wrapped itself in the protective coloration of state and federal regulation. AMREP's presentations referred to the fact that it had complied with state regulations, and in some instances had the active approval of state regulators. (CX 456 I; CX 110 K; CX 112 E, 112 H) Such representations contributed to the impression that respondent was offering a legitimate investment opportunity and that its claims could be trusted because they were strictly supervised by state and federal regulation.

Respondent's representations about likely rates and directions of

growth and the probable effect of such development on property values were clearly material to potential buyers trying to evaluate the investment value of respondent's land. Buyers were at a distinct disadvantage to AMREP in having access to the information which was relevant to the investment decision. Most sales, for example, occurred in the northeastern United States, far from the sites of the subdivisions involved here. It would not be practical or feasible for buyers to attempt to conduct absorption studies to corroborate AMREP's claims, particularly in the very brief time frame respondent permitted for a decision. Even visiting the land, as we discussed above, was insufficient to give buyers the information they would need to determine whether AMREP's claims were reasonable.

In such a case, where the seller has unique access to critical information, where the buyer cannot reasonably obtain the information, and where the seller has been portrayed as a legitimate, recognized expert with the intention to induce reliance, the seller cannot escape liability for making deceptive statements in the form of an "opinion." It is evident that respondent, contrary to its implied statement, had no reasonable basis for its opinion concerning the rate of growth toward Rio Rancho and the probable effect of such development on market value. As a result, it misrepresented material facts. Such misrepresentation, which would be actionable even under common law, violates Section 5's proscription of deceptive practices. Accordingly, we reject AMREP's "opinion" defense. [57]

IV. MARKETING TECHNIQUES

The complaint also charged that respondent used a number of standard sales practices which, taken together, made it very difficult for buyers to make a considered, informed decision, and that such practices constituted unfair or deceptive acts or practices in violation of Section 5.

The complaint alleged that respondent got buyers to come to its dinner parties by misrepresenting the purpose of the meetings, which was, of course, to sell land at respondent's subdivisions. (Complaint Paragraphs 9–10) In addition, buyers were led to believe that the sales subsidiaries sponsoring the meetings, usually bearing names like ATC Realty Corporation, had no connection with AMREP. (Complaint Paragraph 50)

Other sales practices were designed to put pressure on buyers to sign a contract at the dinner party. To that end, the complaint charged that respondents deceptively represented that buyers must buy lots immediately because lots would soon be unavailable or desirable locations would be gone. (Complaint Paragraphs 28–31) It further charged that respondent engaged in an unfair practice by discourag-

ing buyers from obtaining counsel or outside assistance. (Complaint Paragraph 47) Finally, the complaint alleged that respondents deceptively represented to prospective purchasers that signing the land sales contract, which contained vague and confusing terms, involved no binding obligation since buyers had a right to cancel. (Complaint Paragraphs 38–39)[66]

Numerous invitations in the record show that the dinner meetings were represented to be presentations of "general information" about such topics as life in the Southwest, retirement on a limited income, real estate investments, or vacations in the Southwest, not a sales presentation. (CX 143; CX 22; CX 26; CX 27) Nevertheless, we decline to find that such [58] representations were deceptive in that they failed to disclose that there would be an effort to sell something at such meetings. We think it likely that most consumers, receiving such invitations for a free dinner, were likely to assume that there would be some sales presentation, at least in the absence of a statement that clearly suggested otherwise.

We also find that complaint counsel failed to carry the burden of showing that respondent's failure to disclose that the sales companies were wholly-owned subsidiaries of AMREP had the tendency or capacity to deceive buyers. While one consumer testified that she understood the sales representative to be an "independent" real estate broker, and thus a source of objective information (Gray, Tr. 5418–19), the preponderance of the evidence shows that the sales subsidiaries routinely revealed that they were "representing" particular subdivisions. (CX 109 B, CX 111 A–B, CPF 243) Whether the relationship between AMREP and its sales representatives was one of agency or of ownership seems unlikely to be material to prospective buyers. In either event, buyers should have known that the sales representatives had a clear interest in selling the particular subdivision and that they were representing respondent's interests. We accordingly decline to find a violation of Section 5 on these charges.

One of respondent's selling techniques was to convince prospective buyers that only a few lots were currently available and that those that were left were going fast. Sales representatives told buyers that the land was being sold fast and that buyers would "never have the opportunity again." (Acree, Tr. 8866; Wise, Tr. 10936; Weber, Tr. 8943) In addition, in order to implant this impression in prospective

[66] The complaint also charged that respondent represented that buyers moving to Rio Rancho would have no difficulty finding jobs of similar nature and pay to those they presently had, and that such claims were false and deceptive. (Complaint Paragraphs 32–33) The ALJ found that complaint counsel had failed to carry their burden of proof on the issue (I.D. 360–363, p. 268) and complaint counsel have not appealed that finding.

The complaint also charged that respondent represented that financing would be easy to obtain when, in fact, some buyers had difficulty in arranging financing. (Complaint Paragraphs 51–52). The ALJ made no findings on this issue and we find no evidence cited which bears on this issue. Accordingly, we make no findings on this complaint allegation.

buyers' minds, respondent used allocation sheets, holds, and deletions. Although respondent had a large number of lots available for sale at each of its subdivisions, the sales representatives were given allocation sheets before each dinner party which listed the small number of lots that would be available for sale at that particular party. (ID 68) If a potential customer demonstrated any interest in a particular lot, the sales representative would jump up, raise his hand and call out a hold on that particular lot. While the purpose of this activity was purportedly to avoid duplicative purchases, respondent's actual reason for mandating its use at dinner parties was to create excitement and to suggest that the available lots were going fast, generating a sense of urgency in [59] the room.[67] (ID 68–9 fn. 55–56) If a lot was sold, sales representatives were instructed to call a deletion from the allocation sheet. As ex-sales representatives explained, deletions were called for "general motivation in the room" (Kimmel, Tr. 3890) and "to create enthusiasm." (Bondy, Tr. 7512) Not satisfied with the enthusiasm created by holds and deletions after actual sales, one former sales manager testified that occasionally deletions were called even though a lot was not sold. (Bondy, Tr. 7512–13)

Respondent's "holds" technique was carried over to the time when the lot owners visited their lots. All salesmen taking homesite owners to see their lots were instructed to leave their two-way radios on in order to communicate with headquarters and to call holds for homesite owners who wanted to buy or exchange for other lots. The basic purpose of these "site holds" was to create an impression of a bustling trade in lots much the same way holds were used to create excitement at respondent's dinner parties. (ID 92)

The sense of urgency created by affirmative representations and the use of the allocation sheets, holds, and deletions was, however, completely contrived. There has never been a scarcity of unsold lots at any of respondent's four subdivisions.[68] (CX 222 a-d)

Respondent's sales representatives were also well-versed in the various ways of putting pressure on buyers to "close" the sale at the sales presentations. (I.D. 58–79) Among other tactics, the sales representatives disparaged professional advice and discouraged buyers from taking home copies of the contract to examine. (I.D. 60–61; Jarrett, Tr. 10340; Wise, Tr. 10939; Bondy, Tr. 7470; McCorkle, Tr. 2234) Sales representatives would "assume the sale," filling out contracts with all the required information even if the buyer informed the sales

[67] Respondent's sales training manual describes the purpose of the allocation sheets and hold calls as follows:

> You will be supplied with an allocation sheet for the party. As allocations are sold, they will be called off from the speaker's platform and each man should delete it from his list. This shows activity and will help stimulate people to make up their minds quickly or the allocation under discussion will be gone. (CX 39 V, CX 309 R)

[68] More than 25% of all Rio Rancho lots, 33% of Silver Springs lots, and 60% of Eldorado and Oakmont Shores lots, remained unsold by the end of 1975. (CX 222 a–d)

epresentative [60] that he or she was not interested. (I.D. 74) If a sales epresentative was having difficulty in making a sale, a "takeover" ales representative, often represented as someone with special "expertise," would move in on the stubborn sales prospects. (I.D. 76–79) Questions about the security of the investment were routinely answered with references to AMREP's established reputation, size, and listing on the New York Stock Exchange, or the pervasive regulations and review of land offerings by state and federal governments. (Wise, Tr. 10933–34; Bondy, Tr. 7494) Prospects who continued to balk at signing the contract immediately were assured that signing created no obligation on their part, since they had a right to cancel for any reason within 72 hours or to cancel after inspection within six months, and that signing the contract was only a "reservation" of a particular piece of land. (I.D. 60) Once a buyer signed a contract, sales representatives used a number of techniques to ensure that the contract was not cancelled during the three-day cooling off period, including contacting the buyer the next day and congratulating them and inviting them to another free dinner party. (I.D. 83–84)

The ALJ found that such "high-pressure marketing techniques" were unfair methods of competition and unfair and deceptive acts and practices. (I.D. p. 264) While not finding such tactics to be deceptive in and of themselves, the ALJ found that they were nevertheless deceptive because they tended to "contribute" to the consumer's ultimate deception by increasing the likelihood that the buyer will act on other deceptive statements. In addition, he found them to be unfair practices because they reduced the consumer's ability to "react carefully and rationally to what they are hearing." (I.D. p. 264)

While we are in essential agreement with the ALJ that these practices violated Section 5, our analysis differs to some extent. Some of respondent's express claims were simply false. For example, the practice of announcing a deletion when no lot had in fact been sold was plainly deceptive. Similarly, the description of the contract as a "reservation," rather than as a land sales contract, and the representation that signing the contract imposed no obligations, were misleading since the terms of the contract clearly bind the purchaser to certain obligations unless the purchaser takes affirmative acts to avoid them.[69] [61] Such misrepresentations of material facts are deceptive under Section 5.

While not deceptive standing by themselves, respondent's use of holds, allocations and deletions, in conjunction with its other affirma-

[69] While the ALJ apparently found that the portion of Complaint Paragraph 38 charging respondent with "obscuring the legal or practical significance of signing a contract" to be "too obscure for us to comprehend," (I.D. p. 5), he clearly did not dismiss all of paragraph 38 and 39 charging respondent with misrepresenting the legal effect of signing respondent's contracts, as suggested by respondent. (RAB 67–68) Indeed, the ALJ specifically included an order provision addressing the practice. (I.D. p. 274)

tive statements emphasizing limited lot availability and the need for urgent action, reasonably could lead consumers to believe that they were required to purchase respondent's land immediately in order to ensure an opportunity to purchase, contrary to fact. Under such circumstances, respondent's use of holds and deletions was a deceptive practice in violation of Section 5.

The other sales tactics used to pressure buyers into signing a contract immediately—disparaging professional assistance, discouraging buyers from taking home the contract, "assuming the sale," using "takeover" sales representatives and various reinforcement tactics used to keep the buyer contented during the 72-hour cancellation period—may well have amounted to an unpleasant "hard sell," but they are not, without more, legally "unfair." As we stated in *Horizon,* we do not accept "unwarranted pressure" as the test of unfairness under Section 5. *Horizon, supra,* at 841.

Where, however, such marketing tactics occur in a context of pervasive deception as to material facts, such practices can be deceptive acts or practices proscribed by Section 5. *Horizon, supra,* at 841. Here, as discussed above, respondent's land was not, as represented, an excellent, low-risk investment, but instead a poor investment with substantial risk. Further, contrary to respondent's representations, there was no urgency to purchase lots at respondent's subdivisions since there was a substantial supply of lots. Finally, respondent misrepresented the binding nature of the sales contract. The "hard sales" tactics referred to above assisted respondent in making it likely that buyers would legally bind themselves in reliance on those deceptive representations, and to reduce the risk that buyers might obtain outside assistance or other information which might alert them to the deceptive character of the claims. Such tactics facilitated respondent's efforts to mislead consumers and accordingly are in themselves deceptive practices which violate Section 5.

V. CONTRACT PROVISIONS

The complaint charges that AMREP violated Section 5 by including in its standard land sales contract several provisions which were unfair to purchasers. The ALJ agreed, finding that four particular provisions violated the prohibition on unfair practices set out in Section 5: (1) a provision requiring the purchaser to pay interest on the unpaid balance of the purchase price; (2) a provision restraining the alienability of the purchased lot; (3) an integration/disclaimer clause; and [**62**] (4) a provision requiring the forfeiture of all payments made upon the purchaser's default, as liquidated damages.

For the reasons noted below, we reverse the ALJ with respect to the

irst three provisions, and uphold his ruling with respect to the forfeiure provision.

In each of AMREP's four developments, it used a standard form contract, called a "Reservation and Purchase Agreement," as the sales agreement. Under the terms of the agreement, purchasers typically made a down payment of 10 percent of the "delayed payment price," paying off the balance in monthly installments over a period of five to eight years. (I.D. 10) Until all payments were made, AMREP retained title, use and possession of the lot; in the event that the buyer defaulted at any time, AMREP was entitled to retain all payments (including interest, taxes, and assessments) made by the buyer as well as to recover all rights to the lot.

In finding that several of the provisions were unfair, Judge Teetor determined that the sales agreement was a standard form contract, that there was no evidence of any serious bargaining as to any of the material terms of the contract, and that there was an enormous disparity of bargaining power between respondent and the individual consumers. He concluded that the contract was therefore "adhesive" in nature. (I.D. 364–369) The ALJ concluded that "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," (I.D. p. 269) and concluded that all four of the provisions cited above were unfair contract terms.[70]

As the Commission recently noted in *Horizon, supra,* whether a consumer contract is "adhesive" does not determine whether its provisions are unfair or deceptive under Section 5. Rather, a finding that a contract is adhesive simply defines the level of scrutiny that the Commission applies to its analysis of the fairness of the contract's terms. As we stated there at 843: **[63]**

> [I]f a contract is adhesive in nature and its terms appear unreasonably harsh, the Commission will, as the courts have, scrutinize those terms carefully to determine if they are unconscionable, unfair, or deceptive . . . [T]he determination whether a term is unfair or deceptive depends on its operation in a specific factual context.

Respondent's sales agreements clearly have characteristics of an adhesive contract. They are pre-printed, standardized forms containing provisions which are not the result of bargaining between two relatively equal parties. Indeed, the disparity of bargaining power between respondent and buyers is manifest. Respondent's sales plan

[70] Respondent argues that the issue of whether its contracts were adhesive was not properly noticed. (RAB 6–7) While the complaint does not specifically mention "adhesion contracts", it does refer to "standard form contracts" and several of the standard contract provisions (paragraphs 4, 36 and 37, 40, 41, 42, 46 and 47). Those references were adequate to give notice that the fairness of certain of respondent's standard contractual provisions were in issue. Moreover, there is no prejudice to respondent in any event because the ALJ's finding that respondent's contract was adhesive does not necessarily mean that it is unfair or deceptive. *See* discussion in text, above.

is targeted to ordinary consumers, not to potential investors with prior experience in purchasing land or in making other significant investments. As against the experience of a large, well-known corporation involved in the sale of large developments, these individual consumers had little opportunity or ability to question the claims and representations made by AMREP, to evaluate the risks of investing in unseen land, or to assess the terms of the contract. Respondent's "high pressure" sales tactics further diminished the buyer's ability to consider carefully what was being offered.

As noted above, however, finding that respondent's standard sales contract is adhesive in nature does not end the inquiry. In considering whether a provision in an adhesive contract is legally unfair, the Commission focuses primarily on the existence of unjustified, substantial, and unavoidable consumer injury.[71] In that context, we turn to the specific terms at issue.

A. *Charging Interest*

Most of the buyers of respondent's lots pay a "deferred payment price," which in effect includes interest on the unpaid balance of the purchase price. Judge Teetor found this practice of charging interest, where the seller retains title and possession of the lot, to be an unfair practice in violation of Section 5. The ALJ reasoned that the buyers were receiving nothing of value which would justify the seller charging interest. (I.D. 370–375) **[64]**

We reverse the ALJ's finding for several reasons. In the first instance, there is no evidence in the record to show that buyers who sought to use the land were ever denied the privilege of using it by respondent, although the ALJ's conclusion that respondent had the legal right to possession is probably correct.[72] Therefore, the record does not seem to clearly establish consumer injury flowing from this provision. Secondly, the ALJ's conclusion that buyers get nothing apparently does not take into account the fact that buyers receive the seller's forbearance from demanding payment in full at the time of the sale, in addition to obtaining a fixed price and the conditional right to a specific piece of property.

Whatever reservations we have about the ALJ's decision on this point, it is unnecessary for us to resolve them since we find that the lawfulness of the practice was never challenged or litigated in this

[71] *Horizon, supra* at 849–50, citing letter from Federal Trade Commissioners to Senators Wendell H. Ford and John C. Danforth (December 17, 1980), outlining the Commission's views on the boundaries of its consumer unfairness jurisdiction.

[72] The record is not entirely clear with respect to the exact nature of the buyer's right to, or interest in, the land during the payment period. As the ALJ found, the contracts contain no express provision concerning possession, and therefore, under a common law interpretation, the right to possession remains with the party retaining title. (I.D. 371) However, respondent notes that in each of the three states in which its developments are located, the buyer receives an "equitable estate." (RAB 61)

proceeding and therefore is not properly before the Commission. The ALJ believed that paragraph 54 of the complaint put the practice into issue (I.D. at 7), while complaint counsel suggested that it is raised also by paragraph 4. (C. Ans. 64) We disagree. Paragraph 4 simply describes respondent's sales contract; it does not challenge its legality. Paragraph 54 is a broad "catch all" charge that AMREP's continued retention of *any* funds is unlawful because they were obtained through deceptive and unfair practices. The paragraph does not distinguish between interest payments and any other payments made by buyers to respondent. In examining the record, it is clear that neither complaint counsel nor respondents introduced any evidence or arguments concerning the practice of charging interest. We find that the issue was not raised at trial, and therefore is not properly before us at this time. Accordingly, we reverse the ALJ's finding on this point.

B. *Alienability of Land*

Respondent's standard land sales contract for Rio Rancho, Eldorado, and Oakmont Shores provides that the purchaser can transfer his contract only with the consent of respondent. The Rio Rancho clause, for example, provides that: **[65]**

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

(CX 155 B)

The ALJ found that such a clause, appearing in an adhesion contract, was an "oppressive" and "unfair" provision which deprived buyers of their right to transfer their property without restriction. (I.D. 388)

We reverse the ALJ's finding on this point simply because the issue of the fairness of this provision was not raised in the complaint or litigated before the ALJ, as conceded by complaint counsel. (C. Ans. 64) In passing, however, we would note the failure of the record to show any consumer harm, since there is no evidence to suggest that respondent ever withheld permission to transfer or that consumers were discouraged from transferring because of the existence of the clause in the contract. Therefore, we reverse and grant Respondent's appeal on this point.

C. *Integration/Disclaimer Clause*

Paragraphs 36 and 37 of the complaint charged that it was an unfair practice for respondent to include an integration clause in its

form contract in the face of numerous oral sales claims which differed in material respects from the terms of the contract.

The ALJ found that respondent used a standard integration clause in all of its land sales contracts.[73] In addition, respondent also included a disclaimer that "no oral representations have been made to induce Buyer(s) to enter into this **[66]** agreement" in contracts at Silver Springs Shores and Oakmont Shores. (I.D. 384).

The ALJ found that both clauses were unfair. Although the clauses would not, in fact, have precluded buyers from showing oral representations in a suit against respondent for fraud, Judge Teetor found that the clauses would have the tendency to mislead buyers into believing that they would be so barred. Citing *Automobile Owner's Safety Insurance Co.*, 53 F.T.C. 956, 961 (1957), the ALJ found that "such provisions might discourage in some instances the making of otherwise valid claims."

In *Horizon,* we reversed a similar finding by the ALJ that an integration clause in a standard form land sales contract was unfair in the absence of any record evidence that buyers were, in fact, discouraged from asserting their legal rights against Horizon Corporation. There, we noted:

> In the absence of concrete evidence that consumers were chilled from asserting their legal rights when they read the integration clause contained in Horizon contracts, or that the respondent misrepresented the operation of the clause, we decline to find that respondent's use of such clause constitutes an unfair practice. *Horizon, supra,* at 848.

The record in the instant proceeding is equally devoid of evidence that consumers were discouraged from bringing suit against respondent by the presence of the integration clause in their contracts. Consequently, we reverse the ALJ on this issue.

Respondent's contracts for two developments, Oakmont Shores and Silver Springs Shores, contain the additional disclaimer that no oral representations had been made to induce the purchaser to buy. Considering the substantial evidence concerning respondent's well-organized sales presentation, filled with deceptive oral claims, the contract disclaimer is clearly false. While requiring consumers to sign a contract containing a patently false representation is reprehensible, it is not legally "unfair" under Section 5 in the absence of any showing of unjustified, substantial and unavoidable consumer injury. As with

[73] A typical clause appears in the Rio Rancho sales contract, as follows:

> 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 286 A)

the integration clause, the disclaimer would not bar a buyer from showing oral claims in a suit against respondent for fraud. Further, the record does not show that consumers were discouraged from bringing such a suit for fear that evidence of oral claims would not be admitted. Since the record is silent as to consumer injury, we must reverse the ALJ's finding on this point. [67]

D. *Forfeiture Clause*

Respondent's sales contracts for each of its four developments contain versions of a "forfeiture clause." Under this clause, upon default of the buyer,[74] respondent recovers all rights to the land and, in addition, retains all payments made by the buyer (including taxes, interest, and assessments) as "liquidated damages." The contracts make no distinction between an early default and a late one.

The complaint charged, and the ALJ found, that respondent's inclusion and enforcement of the forfeiture provision in its standard form contract were unfair practices in violation of Section 5. (Complaint paragraphs 40–41; I.D. 383) In essence, the ALJ believed that the land sales contract should most equitably be considered a mortgage, in which the principal right of the creditor is "to the money and his right to the land is only as security for the money." (I.D. 378) Judge Teetor found it "grossly unfair" that respondent should be entitled to the payments as well as to the land securing the payments.

The Commission considered a similar forfeiture clause in *Horizon*. There, the Commission concluded that a 100% forfeiture clause, appearing in an adhesion contract for the sale of land, signed in an atmosphere of high pressure sales tactics, unequal bargaining power and deceptive misrepresentations, violated Section 5's proscription on unfair practices. *Id.* at 848–852. In determining that the forfeiture clause in *Horizon* was unfair, the Commission found that the clause had caused substantial consumer injury by permitting Horizon to retain sums greatly in [68] excess of any actual damages occasioned by the purchaser's default. Further, the Commission found no evidence of any countervailing benefits to consumers or to competition from the 100% forfeiture clause, and concluded that consumers could not have readily avoided the injury because they were unable to bargain over such clauses, contained in a contract "adhesive in nature

[74] A typical provision is found in the Rio Rancho contract, Guarantees and Conditions of Sale (CX 155 B):

> 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, 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.

Respondent's contract at Silver Springs Shores contained a sliding scale of grace periods, geared to the percentage of price already paid in.

and signed in an atmosphere of deceptive misrepresentations." *Horizon, supra,* at 850. While the Commission's conclusion that the clause caused unavoidable, unjustified and substantial consumer injury would have been sufficient to sustain a finding of legal "unfairness," additional support for the Commission's conclusion came from an examination of public policy contained in the common law against unconscionable contracts negotiated in an atmosphere of deception, the Uniform Commercial Code, and the developing trend in state and federal law toward the imposition of limitations on forfeiture clauses in installment land sales contracts. We concluded from these sources that there was a clear public policy against harsh contract terms, such as the 100% forfeiture clause in this case, which are unreasonably favorable to one party when the other party lacks meaningful choice because of deception in the inducement of the contract. *Id.* at 851.

A very similar pattern of practices has been demonstrated here. As noted above, respondent's contract has elements of an adhesion contract, being offered as a "take-it-or-leave-it," non-negotiable agreement between two parties of vastly disparate bargaining power. The high pressure sales campaign, combined with serious misrepresentations about the nature and the value of the investment being offered, negate the presumption that such a harsh provision as the 100% forfeiture clause was the product of free bargaining. The forfeiture clause enables respondent to retain sums greatly in excess of any actual damages incurred by the buyer's breach. The record indicated, and the ALJ found, that respondent's overhead and sales cost amounted to no more than 40% of respondent's "cash price." (I.D. at 277; Larramore, Tr. 16444–16447; Friedman, Tr. 24117; RPF 77) The injury is not theoretical: the record contains specific evidence of substantial consumer injury. (*See, e.g.,* Grimaldi, Tr. 4794–98; Yarnall, Tr. 6154; Reynolds, Tr. 8415.) We find no evidence that the clause provides any countervailing benefit to consumers or competitors. Finally, the authorities cited in *Horizon* establish **[69]** that such a clause violates established public policy.[75] Accordingly, applying the rationale developed in *Horizon,* we find that respondent's 100% forfeiture clause, contained in a contract signed under the pressure of powerful sales tactics, unequal bargaining power, and substantial misrepresentations, causes significant, unjustified and unavoidable consumer injury in violation of Section 5.

[75] The conclusion that 100% forfeiture clauses cause unjustified consumer injury is bolstered by Congress' determination in enacting the 1979 amendments to ILSFDA to limit such clauses. (R. Rep. 19–21) Under section 1703(d) of the Act, as amended, any forfeiture provision must provide that the seller can retain, on buyer's default, no more than the greater of 15% of the purchase price (excluding interest), or actual damages. If a contract fails to contain such a provision, the buyer is entitled to cancel at any time and for any reason within two years from the date of purchase and to receive a full refund of all monies paid. *See* section 1703(e).

VI. PROCEDURAL ISSUES

Respondent raises a host of procedural and evidentiary errors on the part of the ALJ. (RAB 2–18) Some of those are discussed elsewhere in this opinion. We find no showing of impropriety or a clear abuse of discretion in respondent's allegations of error concerning a variety of discovery and evidentiary rulings. For the most part, the allegations made deal with credibility of witnesses and exhibits, admissibility and relevance of evidence, and scope of discovery, rulings which are within the ALJ's scope of discretion. In this section, we deal with those allegations of errors that merit some discussion. Unless otherwise stated herein, we affirm the ALJ's decision and reject respondent's procedural appeals.

A. *Consideration of the Entire Record*

Respondent alleges that the Initial Decision is defective because it is not based on a consideration of the whole record, as required by the Commission's Rule of Practice Section 3.51(b)(3). (RAB 2–6) As evidence, it points to the ALJ's failure to give credence to or even mention the testimony of several of its witnesses and documentary exhibits.

The ALJ is not required to discuss the testimony of each of the nearly 250 witnesses or the 1500 exhibits that were presented at the extensive administrative proceeding in this case. Rather, he is required to make findings on those issues of fact, law or discretion which are material and to support those rulings by the record evidence which he finds reliable, [70] probative and substantial. Rules of Practice 3.51(b). *Stauffer Laboratories, Inc.* v. *FTC,* 343 F.2d 75, 82 (9th Cir. 1965). *See also, Baltimore & Ohio Railroad Co.* v. *United States,* 298 U.S. 349, 359 (1936). In any event, the Commission has independently reviewed the record in making its determinations of fact and law, and the Commission, not the ALJ, has the ultimate responsibility for finding of facts. Consequently, the failure of the ALJ to refer to parts of the record is not prejudicial to the respondent and does not constitute reversible error. *Standard Distributors, Inc.* v. *FTC,* 211 F.2d 7 (2d Cir. 1954).

B. *Ex Parte Communications*

Respondents claim that they were prejudiced by *ex parte* communications between complaint counsel and the Commission. (RAB 12–13) The contacts at issue occurred in 1978 when complaint counsel sought Commission authorization to intervene in certain class action lawsuits pending against AMREP in federal court. After the close of the administrative record, respondent moved to reopen the proceeding

and to have all *ex parte* materials disclosed to it; in July, 1978, all such relevant materials, including complaint counsel's memorandum to the Commission, were placed on the public record. The ALJ denied respondent's motion and refused to certify an interlocutory appeal since the Initial Decision was due shortly. Respondent then filed suit seeking interlocutory review of that decision in United States District Court. *AMREP* v. *Pertschuk,* No. 79–0491 (D.D.C. Apr. 6, 1979), *aff'd,* No. 79–1592 (D.C. Cir. Apr. 30, 1980). In denying AMREP's requested relief, the district court noted that all "existing *ex parte* communications even remotely related to [AMREP] have been disclosed and are on the public record" and that the proper forum for raising its arguments of prejudice was on appeal before the Commission.

Despite this notice, respondent has failed in its appeal brief to discuss the manner in which the *ex parte* contacts in this case have allegedly deprived it of due process or prejudiced its right to a fair hearing. Instead of presenting its argument on appeal, respondent moved for a hearing to introduce evidence, comment and argument concerning *ex parte* communications, which was denied by the Commission on February 19, 1980.[76] It is evident that respondent has chosen not to raise this issue on appeal, although it is clear that respondent was well aware that it had the right to do so and had sufficient time in which to do so. Accordingly, we find that respondent has waived its right to raise this issue on appeal. [71]

C. *Brady Ruling*

Respondent challenges the ALJ's "inconsistent" treatment of certain discovery requests. (RAB 12) While the ALJ granted complaint counsel's request for an expansion of its documents and witness lists, he denied respondent's request that complaint counsel provide all exculpatory materials in complaint counsel's possession or control, pursuant to *Brady* v. *Maryland,* 373 U.S. 83 (1963).

We see no basis for error. We have previously held that the rulings of *Brady* and its progeny are inapplicable to administrative proceedings. *Allied Chemical Corp.,* 75 F.T.C. 1055, 1056 (1969). The fact that the ALJ found reason to grant complaint counsel's request to expand their witness and document list does not support respondent's conclusion that its *Brady* request should similarly have been granted. The ALJ granted complaint counsel's request, notwithstanding his previous turnover order, because he was entirely satisfied with complaint counsel's explanation for and good faith in not submitting the supplementary nominations earlier, and found that the additions would not

[76] Order Denying Motion for a Hearing to Introduce Evidence, Comment and Argument Concerning Ex Parte Communications, (February 19, 1980).

result in unfairness to, or an undue burden on, respondent.[77] We have repeatedly stated our intention to grant ALJs discretion in conducting discovery, and absent a clear abuse of that discretion, we find no reason to disturb the ALJ's determinations.

D. *Reliance by ALJ on Respondent's Conviction in the Criminal Trial*

Respondent also protests that the ALJ relied on the conviction in *U.S.* v. *AMREP Corp.*, 560 F.2d 539 (2d Cir. 1977), in arriving at his "heart of the case" finding that respondent misrepresented the growth, development and investment value of its properties. (RAB 18–19) This reliance was improper, respondent asserts, because the ALJ had previously ruled that he would consider the evidence in this proceeding *de novo*. In reliance on this ruling, respondent says it did not introduce evidence in explanation or mitigation of the jury verdict.

We see no error. The ALJ's Initial Decision demonstrates a thorough and independent review of the administrative trial record, and—as he states—his conclusions are based on that record. In referring to the criminal conviction, the ALJ merely notes that his own findings are virtually identical to the facts cited by the Court in *U.S.* v. *AMREP Corp., supra.* (I.D. p. 265) [72] We see no prejudice to respondent of its right to a full *de novo* proceeding on all the facts at issue, and we do not rely upon respondent's conviction in our findings.

E. *The Commission's "Reason to Believe" Determination*

Respondent argues that the ALJ erred in striking respondent's affirmative defense that the Commission did not have "reason to believe" that respondent had violated the law when it issued the complaint. (RAB 11) While respondent fails to present any argument in its appeal brief as to why it believes that the Commission did not have "reason to believe" at the time it issued the complaint, it appears from the record that respondent alleges that there had been no investigation of Oakmont Shores and Silver Springs Shores to indicate any law violations at the time the complaint was issued. (C. Ans. 13–14; R. Rep. 8–9)

Respondent is not entitled to litigate this issue during the administrative proceeding, which should be concerned with proving whether the allegations of the complaint are supported by evidence.[78] Permitting litigation on the sufficiency of the pre-complaint investigation or

[77] Complaint counsel explained that the delay was due to the unavailability of the information because of its use in the concurrent criminal proceedings against AMREP in federal court in the Southern District of New York.

[78] If the Commission's "reason to believe" determination is reviewable by a court of appeals, and if the court of appeals finds that the record is inadequate to review the determination, it could order the Commission to take additional evidence under Section 5(c) of the FTC Act. *FTC* v. *Standard Oil of Calif.*, 449 U.S. 232, 244–245 (1980).

the Commission's determination of "reason to believe" would only invite delay into the hearing process. *See All-State Industries of North Carolina, Inc.*, 74 F.T.C. 1591, 1592 (1968).

VII. COMPLAINT COUNSEL'S APPEAL

Complaint counsel have appealed certain decisions of the ALJ denying proposed relief.

The first ground of the appeal is that the Commission should reinstitute the relief requested in Section IV of complaint counsel's proposed order, which would prohibit AMREP from selling any land as a "homesite" or "building lot" unless the land met certain conditions and respondent makes certain cost disclosures in the contract. It is clear that the ALJ intended to include this provision in his order, but simply overlooked it. (I.D. p. 282) Respondent does not dispute this point.

However, the Commission believes that a simple ban on misrepresenting a lot as a "homesite" or a "building lot," unless it meets certain conditions, is sufficient, and has included such a provision in Part II of the order. The definition of "homesite" has been adopted from current OILSR regulations. The [73] cost disclosures requested by complaint counsel are already required in OILSR regulations to be in the Property Report. Consequently, there is no need to require a separate statement of those costs in the contract.

Complaint counsel's more significant appeal deals with the ALJ's denial of proposed relief which would prevent AMREP from selling any more land at Rio Rancho and the other three subdivisions involved here until such time as a "viable resale market" comes into existence. In addition, AMREP would be required to set up a listing service and help individuals sell their lots. In essence, complaint counsel assert that it is unfair for respondent to continue to sell land in competition with its lot owners who are also trying to sell, particularly considering the vast oversupply of land. Complaint counsel also propose that respondent be required to "buy back" one vacant lot whenever a "building lot" is sold.

There is some justification for complaint counsel's concern that respondent continues to profit from new sales, while buyers who bought in reliance on respondent's deceptive misrepresentations concerning future value cannot resell their lots because of the overwhelming excess of supply of land over the demand. But complaint counsel's proposed relief—an indefinite ban on respondent from making any more sales—is an extremely harsh remedy which could only be justified by a compelling showing that no less intrusive remedy would be sufficient to stop continuing, substantial consumer injury. That showing has not been made here. Complaint counsel's proposed

relief is neither necessary nor likely to result in the stimulation of a resale market. In the first instance, we see no harm in respondent continuing to make sales of land, as long as those sales are made fairly and free from deception. Consumers who are fully cognizant of the risks, who have not been misled as to any short-term investment potential, and who have been able to visit the land to inspect it without harassment from the seller, should have the opportunity to buy respondent's land if they want to. To the extent that respondent can continue making sales, it will add some revenue to the company which may enable it to continue the slow process of development around the core areas. Cutting off revenue to respondent resulting from fair sales may have the unwanted effect of destabilizing whatever market forces there may be for continued development.

VIII. THE ORDER

Complaint counsel has not sought restitution in this Section 5 case. To the extent that buyers are entitled to restitution or redress for past injuries caused by respondent's deceptive and unfair practices, such restitution or redress must be sought in this case in a proceeding under Section 19 of the FTC Act, 15 U.S.C. 57(b). We agree with the ALJ that the record of this case satisfies the statutory requirements of Section 19 for consumer redress. *See FTC* v. *MacMillan Inc. and* [74] *LaSalle Extension University,* No. 81 C6053 (N.D. Ill., Aug. 3, 1983); *FTC* v. *Turner,* CCH 1983–1 Trade Cas. ¶ 65,244 at 69,448 (M.D. Fla. December 29, 1982). At such time as the Commission's order in this case becomes final, the Commission will consider whether to seek consumer redress for the acts and practices discussed herein, in accord with the provisions of Section 19.

We adopt much of the basic order proposed by complaint counsel and adopted, in large part, by the ALJ. While there have been a number of significant changes, as discussed in more detail below, the Commission finds that the basic provisions of the proposed Order are necessary to stop ongoing deceptive and unfair practices of the respondent, and to prevent the use of such practices with respect to other land sales activities the respondent may engage in in the future. The first section, Part I, contains several definitions. Part II limits certain representations with respect to any unimproved land respondent may sell and requires respondent to substantiate future investment value claims. Part III requires respondent to deliver a pre-sale Notice to Buyers which will inform them of the purpose of the sales presentation and provide buyers with important pre-sale information. Part III also requires certain warning disclosures in promotional materials. Part IV requires respondent to include in its land sales contracts a number of important rights for buyers, including an op-

tion to cancel within 7 days after buying. Part IV also requires respondent to contractually bind itself to provide utilities or facilities if it represents that such utilities or facilities will be provided, and to provide certain refunds to buyers who default. Part V contains a number of miscellaneous provisions. It requires respondent to make disclosures about respondent's building exchange lot program, and to provide buyers who have visited their property within 6 months a notice of a right to cancel after inspection. It further bars respondent from enforcing the 100% forfeiture clause in any existing contract, and requires respondent to send a letter to its lot buyers informing them of this Order. Part VI requires respondent to police its sales activities to ensure that its employees or agents are complying with the terms of the Order.

On the whole, the Order is designed to ensure that consumers approach the sophisticated, hard-sell tactics of the respondent forearmed with some knowledge. **[75]**

A. *Part I — Definitions*

A number of changes have been made in the Order's definitions proposed by the ALJ. In some instances, the changes have been made to make the definitions clearer and simpler (*e.g.,* the definition of "Property Report") or to avoid the need for repetition within the order (*e.g.,* definition of "AMREP").[79] Other changes are intended to limit the scope or the order. For example, the order has been limited to apply only to the sale of land which is not improved by commercial or residential building. The record evidence demonstrates abuse only in the sale of unimproved land and complaint counsel urge an order only with respect to such land. The factors involved in the selling of improved property are likely to differ considerably from those involved in the sale of vacant subdivided land to distant purchasers, and the order provisions designed to address the practices demonstrated in this record might not be appropriate in sales involving improved property. Accordingly, we see no reason to extend the order to cover the sale of improved real estate. While not binding on us, we note that complaint counsel and respondent are in agreement that this limitation on the scope of the order is appropriate. (RAB 66; C. Ans. 68) Certain definitions have been dropped in view of the Commission's decision to deny complaint counsel's appeal for further relief (*e.g.,* "resale market" and "development land"). Finally, other definitions were revised so that they would more closely conform with the regula-

[79] The Order's definition of AMREP makes clear that General Development Corporation, which purchased Silver Springs Shores from AMREP in early 1983, is not bound by the Order. This provision is pursuant to the Commission's Order of September 30, 1982, binding General Development Corporation to certain offers and improvements at Silver Springs Shores in exchange for the Commission's agreement not to hold it liable as a successor or assign to AMREP under any final order.

tions of the Office of Interstate Land Sale Registration (*e.g.*, "homesite").

B. *Part II—Misrepresentations*

Part II of the Order addresses the use of certain representations typically made by respondent and its sales representatives during the course of selling land at the four subdivisions involved here. While portions of Part II are similar to the proposed Order adopted by the ALJ, we have made substantial revisions in other portions. As proposed, the ALJ's Order was too broad and could have had the effect of precluding [**76**] respondent from providing potentially helpful—and truthful—information to prospective buyers.[80]

The most important revision relates to the claims which are at the heart of this case: representations that the vacant land offered for sale constitutes an excellent investment opportunity. Rather than simply barring respondent from making such claims in the future, the Order as revised adopts a substantiation standard which will permit respondent to make limited claims with respect to investment potential in the future, provided that it has, at the time the claim is made, adequate substantiation to support the claim. While the complaint alleged simply that respondent's claims were false, and did not charge that respondent failed to have adequate substantiation, a substantiation requirement is justified here as a "fencing-in" provision to prevent respondent from engaging in similar conduct in the future. *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952). *See also Bristol-Myers Co., et al.*, Docket No. 8917 (Opinion and Order, July 5, 1983) [102 F.T.C. 21]. Further, a substantiation requirement, as opposed to a strict and potentially overbroad ban, serves the public interest by enabling respondent to provide truthful and not misleading information to potential buyers who might be interested in the investment potential of land.

The Order distinguishes between claims concerning past or present facts, which are verifiable and readily substantiated by a variety of objective data, and claims about future investment value, which are inherently forecasts or predictions. Part II(A) requires that, if respondent represents that any land has been a good or safe investment, or that the demand for, or market value of, any land has increased, or that the resale of any land has not been difficult, respondent must substantiate those claims with competent and reliable data. At a minimum, the data must include historical data of sufficient actual individual resales of lots in the same subdivision (and in the same

[80] The right to engage in truthful and nondeceptive commercial speech is, of course, protected by the First Amendment. *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748 (1976); *American Home Products Corp.* v. *FTC*, 695 F.2d 681, 713–714 (3d Cir. 1982).

condition) to demonstrate that the claim is representative of the typical buyer. In essence, Part II(A) requires respondent to have an actual track record of individual resales before it can make claims as to past or present trends affecting investment value. The scope of this section of the Order applies to any unimproved land, not just land sold by respondent or land at the four subdivisions involved here. Such a broad scope is necessary to prevent future violations of the FTC Act. **[77]**

Part II(B) of the Order addresses respondent's use of forecasts or projections of future trends that affect investment value. Such statements are, of course, predictions or opinion. While consumers might ordinarily be expected to resist simple expressions of opinion about the probability of future events, where, as here, a seller engages in a course of deceptive misrepresentations and high pressure sales tactics representing itself as an established and reputable community developer, expert in land sales and land valuation, and makes representations about the future value of land which do not honestly represent its own opinion, such representations must be carefully circumscribed to prevent further deception. Consistent with past Commission policy of opting for disclosure over prohibition where feasible, *American Home Products* v. *FTC*, 695 F.2d 681, 713 (3d Cir. 1982), Part II(B) sets out three requirements.

First, respondent must possess and rely upon all reasonably available competent and reliable evidence at the time it makes such a claim. This provision requires respondent to make a reasonable search for data supporting or refuting its forecast or projection.

Second, the data relied upon by respondent must be sufficient so that it would be generally accepted by the community of experts qualified to make such representations as providing a reasonable basis for the projection or forecast. Obviously, what such data will consist of will vary, depending on the nature of the claim made. A highly specific representation will probably be easier to substantiate under this claim than a broad claim of future investment value. In any event, the Order incorporates an objective standard which will look to the standards of the relevant expert community in determining whether the data relied upon provides a reasonable basis for respondent's opinion.[81] **[78]**

Third, at the time any such representation is made, the Order requires respondent to provide to the buyer a copy of a written state-

[81] In a strict sense, the term "reasonable basis" is not used in the same sense as it appears in other Commission deceptive advertising cases. *See, e.g., Pfizer, Inc.*, 81 F.T.C. 23 (1972). A reasonable basis usually implies that a claim is backed by sufficient objective data relating to a verifiable performance claim to lead the maker of the claim to believe that the claim is, in fact, true. Such a standard is not appropriate for a statement of opinion about future events, which are by their very nature not objectively verifiable at the time that they are made. For such claims, it is sufficient that the maker of the claim has relied upon the type and quality of data which experts in the field would reasonably rely upon in making such a prediction.

ment containing the material bases and assumptions for the representation, and disclosing the buyer's right to inspect respondent's substantiating data on request, which respondent is required to honor. This provision is intended to give the buyer the opportunity to weigh the probativeness of respondent's data and to make an individual determination about the weight to be given it. Such information may also prove very helpful to any professional assisting the buyer in evaluating the purchase opportunity. This disclosure provision is similar to provisions which the Commission has adopted with respect to projections and forecasts in other contexts.[82]

Part II(C) of the Order prohibits respondent from misrepresenting certain facts in the future.

Part II(D) prohibits respondent from engaging in certain other sales practices, which, while not necessarily deceptive or unfair in and of themselves, have the capacity to prevent reasoned consideration and to make the buyer more susceptible to deceptive statements and practices. (I.D. pp. 264–265) Provisions variously prohibit discouraging buyers from seeking assistance; failing to give the required property reports; filling out a contract before the buyer says he wants to buy; sending in new sales representatives after the buyer has decided he doesn't want to buy; making any statements about the buyer's rights or duties, or the development of the land, which differ from the contract or the property report; and using contract provisions which allow the seller to retain more than the amounts allowed in Section IV(F) of the Order in the event of the buyer's default.[83] **[79]**

C. *Part III - Notice to Buyers and Disclosures in Promotional Materials*

Section III of the Order requires respondent to give to buyers, at least two days before any in-person meeting, a "Notice to Buyers" which contains critical information. We are convinced after our study of this record that a post-sales cooling-off period by itself is not sufficient to give consumers an adequate opportunity to evaluate land offered for sale by this respondent. Indeed, respondent's sales representatives frequently told buyers that they need not pay particular attention to signing the contract since they would have sufficient time to cancel the sale later on. A limited cooling-off period appears not to

[82] *See, e.g.,* Disclosure Requirements and Prohibitions on Franchising and Business Opportunity Ventures, 16 C.F.R. Part 436.1(b) (1983).

[83] We have dropped a provision found in the ALJ's Order which prohibited respondent from "artificially enhancing" the appearance of its subdivisions in its promotional films. Complaint counsel failed to produce probative evidence that such "enhancements" were material or that they had any tendency or capacity to deceive consumers. (I.D. 64.1) We have also dropped the ALJ's order provision prohibiting respondent from representing that its promotional materials had been produced independently of respondent when respondent had influenced the materials. The ALJ made only very cursory findings on this issue. (I.D. 64, 64.2) The record does not contain sufficient evidence to support a finding of deception, and a fencing-in prohibition does not seem necessary since such conduct does not appear to be integrally related to respondent's deceptive conduct in this case.

give consumers an adequate chance to shake off the fevered excitement created by the respondent's carefully structured sales presentation. Consequently, we find that a limited pre-meeting disclosure notice, which gives a prospective buyer time to decide whether or not this is an offer he or she wishes to hear more about *before* being subjected to respondent's lulling claims, is necessary to prevent further deceptive sales practices. Warning consumers that they will be subjected to a sales pitch for land enables consumers who know that they are susceptible to such pitches to simply stay away and avoid temptation. However, we have made a number of changes to make the document as brief as possible, to help ensure that buyers will actually read and use the information it contains. Further, we agree to some extent with respondents' arguments that the Notice, as proposed, was unduly prejudicial and would, in fact, have effectively foreclosed any sales. In particular, we have deleted the proposed disclosure of AMREP's criminal conviction.[84] We believe that strict compliance with this Order will be sufficient to prevent the abuses we have seen in the past and require AMREP to conduct its business operations in a fair and honest manner in the future. **[80]**

We have also deleted provisions requiring disclosures summarizing plans for development and respondent's responsibility for them. Generally, the record does not contain evidence that respondent misrepresented the present state of development of its subdivisions or its obligation to install utilities and facilities. These required disclosures therefore are unnecessary. In addition, the same disclosures are required to be in the HUD property report, which under the 1979 amendments, must be given to buyers *before* the sales presentation. 15 U.S.C. 1703(a). Including the same disclosures in our pre-sale notice to buyers is likely to cause consumer confusion and could thereafter overwhelm the prospective buyer with too much information. We have also deleted the proposed requirement that respondents establish a toll-free telephone number; we simply fail to see the utility of such a provision.

Paragraph III(B) of the Order requires respondent to include a disclosure in all printed promotional material warning buyers that the future value of land is very uncertain. Part III(C) requires respondent to include in all other promotional materials, including television and radio commercials, a brief disclosure advising buyers to get the property report and read it before buying anything.

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[84] Respondent is already required to disclose the criminal conviction of several of its officers in the federal property report under OILSR regulations. *See* 24 C.F.R. 1710.116(c). In addition, it would be required to disclose the present administrative action. Several state laws also evidently require the prominent disclosure of criminal convictions, as evidenced by some of the state property reports in the record. *See, e.g.*, RX 1738.

Of course, nothing in the Order will affect any additional disclosure requirements required by state or federal laws or regulations.

Respondent argued that these disclosures are inconsistent with OILSR regulations which only require a reference to the property report in printed materials, and that the Commission should limit itself to such relief. (RAB 70) We disagree for several reasons. Most importantly, we have found that respondent has engaged in an extensive campaign of deception and unfair practices. Under such circumstances, what requirements Congress or HUD might choose to impose on law-abiding companies may be insufficient for the law violator. In such cases, the Commission is permitted to fence in the respondent and go beyond what may be required generally of other companies in order to avoid future law violations. We think that it is clear from the record that respondent has very effectively used slickly produced films and carefully scripted dinner party presentations to market its land as a good, profitable investment. These minimal disclosures are therefore necessary in non-printed material. Further, warnings in written materials about this respondent in addition to those required for other land sellers are altogether warranted.

D. *Part IV - Contract Provisions*

Part IV provides significant protection for future buyers of land from respondent. It requires certain protections and disclosures to be included in contracts, including requiring respondent to give buyers the right to cancel within seven business days after signing the contract and within seven days after visiting the land (within six months after signing the contract), provided that the land was not seen prior to the [81] sale. However, while the general provisions remain similar to the ALJ's order, we have made a number of important modifications.

Part IV(A) requires respondents to title their contracts for the purchase of land as such and to cease using deceptive and confusing titles, such as "Reservation for the Purchase of Land" which are inaccurate descriptions of the contents of the document and which can easily mislead consumers.

Part IV(B) sets out the significant "cooling-off" provision which enables consumers to cancel their purchase, for any reason, within seven days of the purchase. We have made a number of changes in the Order proposed by the ALJ in order to make the provision more closely conform with the OILSR regulations and with orders in effect against other land sales developers. Some of these changes are discussed below.

First, the language of the disclosure has been modified slightly to eliminate any inconsistency between the language required by the Order and by OILSR regulations. 24 C.F.R. 1710.209(F)(3)(i). While OILSR and the Order each require *additional* disclosures, the disclo-

sures which overlap are now identical so that unnecessary duplication of language is avoided. In addition, the cooling-off period has been shortened from the 10-day period found in the ALJ order to seven days, as contained in the OILSR regulations. Considering the additional protections for AMREP's customers in this order, we see no reason to depart in this instance from the seven day cooling-off period required for all other land sellers.

The ALJ's order would have prevented all communications between the buyer and the seller during the cooling-off period. The record shows that some limitation on the ability of the seller to make further pitches or create additional sales pressure during this time is necessary; however, the ALJ's order goes too far. Respondent may have a valid non-sales reason for contacting the buyer during the time, such as checking (per Section VI) to make certain that the buyer has received all of the documents required by this Order or that no contrary claims have been made. Similarly, the buyer may well have the need to obtain additional information. The ALJ's order is also deficient in that it provides the buyer the right to cancel and receive a full refund at any time prior to the final payment if there is a sales contact during the cooling-off period. Such a penalty goes too far; allowing the buyer to receive a full refund eight years following the alleged contact puts respondent in an impossible position to verify whether a violation of the Order has in fact occurred. A more modest approach has been adopted here, one which is designed to address the particular harm caused by the sales contact. If a contact occurs, the buyer's cooling-off period will be extended to 45 days from the date of purchase, provided that the buyer notifies the seller of the contact. [82]

The disclosure required in Paragraph D of the ALJ's order has been simplified and incorporated into the single disclosure required in Paragraph B of this Order.

The form of the cancellation notice adopted by the ALJ in his Paragraph E has been deleted entirely. The notice of the cancellation right is prominently announced in the contract, and additional papers might distract the buyer from carefully considering the contract. Further, the federal property report, which now must be given to prospective buyers before a sale, contains a cancellation notice and a cancellation form. We have also dropped the requirement that respondent orally inform the consumer of his or her right to cancel. Such a provision is virtually unenforceable; in addition, the written notice is sufficient to put the buyer on notice of his right to cancel.

Part IV(C) of the order requires AMREP to refund and cancel within 30 days from receipt of a notice of cancellation. We find that the 10 day period specifically required in the ALJ's order is too short and

inflexible, and therefore adopt respondent's suggestion that it be given 30 days. (RAB 71)

Part IV(D) requires respondent to make any representations that it will install utilities or facilities to be included in the contract for the sale of land. This provision is consistent with ILSFDA and OILSR regulations. 24 C.F.R. 1715.19(f). We do not, however, adopt the suggestion by the ALJ and complaint counsel that we go farther and require all representations in the property report and the Notice to Buyers to be included as part of the land sales contract. While a land seller is free to incorporate the property report by reference into the contract under ILSFDA and OILSR regulations, 24 C.F.R. 1715.19(f)(3), we think it is sufficient here to prohibit respondent from making any representations which are materially inconsistent with the contract, Notice to Buyers, or property report. *See* Part II(D)(5).

We also decline to require respondent to give buyers the option to get a full refund or an exchange lot in the event that AMREP fails to complete promised improvements within six months of the promised date. As respondent notes (RAB 70), such a right goes well beyond reimbursing the buyer for any damages which the buyer may suffer as a consequence of respondent's failure to make the promised improvements, and is inconsistent with the regulatory scheme set up by Congress in the 1979 ILSFDA amendments, which would give consumers contract damages only. 15 U.S.C. 1703(a)(2)(D). While we required such a right in *Horizon,* there is little evidence in this case, in contrast to *Horizon,* that AMREP misrepresented the state of development, or its development obligations, or refused to honor such obligations. Indeed, AMREP was not contractually bound to install utilities or build facilities, and consequently the proposed provision would add little protection in any event. [83]

Part IV(E) and (F) of this Order require AMREP to give future buyers of land the right to a limited refund in the event of the buyer's default. As discussed in detail above, we have found that the use of the 100% forfeiture clause as contained in respondent's land sales contract, in conjunction with a sales program laced with deception and misleading statements, is unfair and deceptive. We recognize, as did Congress in enacting the ILSFDA amendments, that an honest seller has a right to keep some of the payments made which represent actual damages suffered by the seller as a consequence of the buyer's default. Accordingly, we have adopted the ILSFDA provision which would enable respondent, in future sales under this Order, to retain the greater of 15% of the purchase price or respondent's "actual damages."

However, we do not adopt the additional restriction proposed by the ALJ to put a 40% maximum cap on the amount of "actual damages."

While the record indicates that 40% may be an appropriate estimate of past sales costs associated with some of the subdivisions here (I.D. p. 277), such sales costs may well vary significantly in the future. In any event, the burden will be on respondent to demonstrate that any payments retained in excess of 15% of the cash sales price are justified. Further, the ALJ's Order would have required respondent to refund all interest, assessments, and taxes paid by the buyer. In our view, it is not unfair in a land sales contract to charge a buyer for costs associated with the buyer's interest in the land during the time the buyer is making payments on the principal. That view is also contained in the statutory scheme adopted by Congress in ILSFDA, which permits the seller to retain interest payments. 15 U.S.C. 1703(d)(3). Of course, buyers who have been defrauded may have the right to a total rescission and refund. To the extent that buyers are entitled to such relief, however, it must be sought in this case under Section 19, and not Section 5.

E. *Part V—Miscellaneous Provisions*

Part V contains a number of significant provisions. Paragraph A, which requires a disclosure about respondent's "exchange right," has been adopted from the ALJ's order. Paragraph B requires respondent to give a buyer who has not seen the land in person prior to purchasing a right to cancel and receive a full refund if the buyer visits the land and chooses to cancel within six months of the signing of the contract. Given respondent's ability to lull consumers by assuring them that they will have the right to cancel after inspection, it is necessary to go beyond the ILSFDA 7-day cooling-off period which applies to all land sellers and mandate certain procedures to ensure that consumers can use that right effectively. For the most part, the Order tracks the Order proposed by the ALJ. Minor revisions have been made to make the order more closely conform to other Orders in effect against AMREP's competitors. The provisions of the [84] order parallel the provisions concerning the right to cancel during the initial "cooling-off" period.

Paragraph I of the ALJ's order would have required AMREP to record all land sales contracts. We see no basis in the record for requiring such conduct, and accordingly do not adopt this provision.

Paragraphs C and D are based on paragraphs L and M of the ALJ's Order. Paragraph C of the Order bars AMREP from attempting to collect any further payments from defaulting buyers whose contracts were signed before the effective date of the Order. This clause, adopted from the ALJ order, is necessary to prevent AMREP from obtaining future profits by enforcing contracts against defaulting buyers where those buyers entered into them in an atmosphere of fraud and

deception. We have, however, adopted respondent's suggestion to permit such payments at the buyer's option. (RAB 72)

Paragraph D prohibits respondent from enforcing the 100% forfeiture clause in existing contracts. The Commission has, however, deleted provisions proposed by the ALJ which related to the standard integration clause since we did not find that the use of such clauses violated Section 5. Similarly, we have also deleted Paragraphs O and P in the ALJ's Order, which would have required respondent to include a contractual clause insuring the free alienability of the buyer's interest, and the extension of all of the buyer's contractual rights to subsequent purchasers or assignees. As we have previously noted, there is no basis in the record for these provisions. In the same vein, the ALJ's added paragraph prohibiting respondent from collecting "interest" has been deleted since this issue was never litigated.

AMREP urges that Paragraphs C and D seek to reform existing contracts and to provide relief for past buyers, which is beyond the scope of the Commission's powers, citing *Heater* v. *FTC,* 503 F.2d 321 (9th Cir. 1974). (RAB 65, 72) We do not believe that the relief contained in these provisions is barred by *Heater.* In *Heater,* the Court rejected the Commission's argument that respondent's continued *retention* of funds obtained through unfair and deceptive means was, in itself, a continuing unfair and deceptive practice which could only be remedied by requiring restitution to bilked consumers. The Court rejected this position on the theory that it would

> permit the Commission to order private relief for harm caused by acts which occurred before the Commission had declared a statutory violation, and thus before giving notice that the prior conduct was within the statutory purview.

503 F.2d 321, 323. [85]

In contrast, Paragraph D is directed to future acts and future harm only—the enforcement of a contract provision, the forfeiture clause, which the Commission has found in this proceeding to be, in the context of the deceptive sales practices engaged in by respondent, unfair and deceptive and in violation of Section 5 of the FTC Act. Until the respondent enforces that clause, upon default by the consumer, or forces payment by threatening that it will enforce that clause, there is no harm. Those consumers who, prior to the Order, lost all of their payments as a consequence of the forfeiture clause, will not receive refunds. That loss must be redressed, if at all, through a Section 19 action. Similarly, Paragraph C prohibits the *future* enforcement of a contract which respondent induced buyers to enter into through deception and unfair practices. Payments made prior to

the Order will not be refunded through this Order, but must be sought, if at all, in a Section 19 proceeding.

The intent of these provisions is to prevent future harm. If, as a direct consequence of the prospective operation of this order, respondent must forego collecting sums which would be otherwise due it, this effect on past contracts is permissible because the effect is only ancillary or incidental to future compliance with the order.[85] Such ancillary effects of prospective orders are not barred by *Heater*. The Order does not, therefore, afford private relief for past injuries caused by respondent's acts and practices, but rather only prospective relief for acts and practices which have been found to violate the statute. The order simply requires respondent to refrain from engaging in the future in acts which this Order has found to be unfair and deceptive.

Since, in our view, *Heater* does not bar prospective prohibitions on the enforcement of contract provisions found to be unfair and deceptive, we have modified the ALJ's proposed order to cover all existing contracts, regardless of when they were executed. The date of execution of the contract is [86] irrelevant, since the Order relates only to the *future* enforcement of the contracts.

Paragraph E, which prohibits respondent from obtaining waivers of the rights and privileges afforded by this order, is taken directly from the ALJ's order.

Part VI of the Order requires respondent to institute a program of reasonable surveillance to ensure compliance by its employees and agents and to do business only with those agents and employees who agree to follow the terms of the order. It has been substantially taken from the ALJ's order. We have deleted as unnecessary the requirement that respondents create a toll-free telephone line.

Part VI(K) requires AMREP to mail to its buyers a "truth letter," attached to the Order as Appendix A. The Commission believes that buyers must be put on notice about the facts of their purchases to prevent further injury from respondent's deception. The Appendix has been substantially modified to inform the consumers of this order.

Finally, we dismiss those portions of the complaint as to which complaint counsel failed to carry its burden of proof.

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[85] In other contexts, courts have recognized the distinction between payments which constitute a form of compensation for past practices, and payments which must be spent to cease engaging in prohibited past practices. Even where the former relief has not been in the power of the court to order, courts have held that such lack of power does not bar the courts from ordering prospective relief that may involve the expenditure of funds to comply. *See, e.g., Quern* v. *Jordan*, 440 U.S. 332, 335 n.6 (1979). (While Eleventh Amendment deprives federal courts of jurisdiction to try cases which would require states to pay compensation to private citizens for past practices, it does not bar injunctive relief which would result in a payment of state funds as a necessary consequence of future compliance; *see also, Williams* v. *Edwards*, 547 F.2d 1206 (5th Cir. 1977).)

IX. *Conclusion*

We have found that AMREP Corporation has engaged in a sustained campaign of deception and unfair practices. Representing that the vacant lots it offered for sale were excellent, short term investments with little or no risk, respondent portrayed its subdivisions as being poised for rapid suburban or (in the case of Oakmont Shores) recreational development and substantial annual appreciation. In fact, as investments, respondent's vacant lots were unlikely to appreciate in anything but the very long term—if ever. Generally, in each of its subdivisions, there was sufficient land to absorb even the very highest reasonable predictions of growth. As a result, it was unlikely that there would be any local demand for, and corresponding development and appreciation of, respondent's land until the turn of the century. In reality, respondent's lots were poor investments with substantial risk.

Once respondent had whetted potential buyers' appetites for profit, it used a variety of high pressure sales techniques to get buyers to sign sales contracts. In conjunction with its pervasive misrepresentations, we found that some of those tactics were deceptive.

Finally, once the contract was signed, respondent locked the buyer into the contract by including a provision which permitted respondent to keep all of the money the buyer had paid in, if the buyer defaulted. We found that 100% forfeiture provision to be unfair. [87]

The Order we adopt today will permit AMREP to market its land honestly. It will be required to substantiate investment value claims, and refrain from misrepresentations. A Notice to Buyers will provide prospective buyers with important pre-sale information, and warnings in promotional materials will be required. Required contract provisions include warnings and protections, including a 7-day cooling off period and a right to cancel after a personal inspection of the land. Respondent is banned from using or enforcing a 100% forfeiture clause. Respondent is also required to send a letter to current owners informing them of our decision and their options. Together with the property reports required by state and federal laws, future purchasers will be forearmed in dealing with AMREP.

For the reasons set forth above, the initial decision of the administrative law judge is modified as described. An appropriate order is appended.

CONCURRING STATEMENT OF CHAIRMAN MILLER*

I concur fully in the result reached by the Commission today. I

* Commissioner George W. Douglas joins this concurring statement.

agree that respondents have engaged in "unfair and deceptive practices" as proscribed by Section 5 of the FTC Act. Further, I support the order and believe that it will prohibit respondents from violating the law, while, at the same time, permitting them to market their properties.

I also concur in the Opinion of the Commission in this matter. However, I do not believe that the standard applied in the analysis of the deception issue was the appropriate one. Throughout the opinion, Commissioner Pertschuk describes various practices of respondents as having the "tendency or capacity" to mislead consumers. I agree that respondents' practices, indeed, have the tendency and capacity to mislead consumers as discussed in the opinion. In may view, however, the Commission's standard in deception cases should be: whether the act or practice is likely to mislead consumers acting reasonably in the circumstances to their detriment.

Any ambiguity regarding the standard to be applied can be dispelled by the Commission protocol on deception. However, despite my fundamental disagreement with the meaning of deception articulated in Commissioner Pertschuk's opinion, I am satisfied that the facts regarding respondents' actions satisfy both the deception standard set forth in the opinion and the deception [2] standard which I believe is appropriate. Accordingly, I concur in the result reached by the Commission in this matter.

Finally, I would note that the Commission has recently adopted procedures to reduce the type of time delays with which this decision has been plagued. In a very real sense, justice delayed is justice denied. It is my sincere hope, one which I know is shared by all of my fellow Commissioners, that in the future the Commission's justice will be swift as well as sure.

Final Order

This matter has been heard by the Commission upon the cross-appeals of complaint counsel and respondent's counsel from the initial decision and upon briefs and oral argument in support of and in opposition to each appeal. The Commission, for the reasons stated in the accompanying Opinion, has granted each appeal in part and denied each in part. Therefore,

It is ordered, That the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission except as otherwise inconsistent with the attached Opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following Order to Cease and Desist be entered: [2]

ORDER

I.

It is ordered, That for the purposes of this Order the following definitions shall apply:

A. *Property Report* shall mean any and all documents providing information regarding the purchase of land in general or a specific subdivision in particular which are required by federal or state law to be distributed to prospective purchasers or purchasers of land.

B. *AMREP Corporation* or *respondent* shall mean the corporate respondent, its successors and assigns, its officers, directors, agents, representatives and employees, acting directly or through any corporate subsidiary, division, or other device; *provided, however,* that pursuant to the Commission's Order of September 30, 1982, nothing in this Order shall be deemed to apply to General Development Corporation as a result of its purchase of property at Silver Springs Shores from AMREP Corporation.

C. *Land, property* or *lot* shall mean any real property unimproved by a commercial or residential building sold or offered for sale by respondent.

D. *Vacant land, vacant property* and *vacant lot* shall mean any land which is not a *homesite,* as that term is defined in this Order.

E. *Homesite* or *building lot* shall mean any lot in which (1) potable water is available at a reasonable cost; (2) the lot is suitable for a septic tank operation or there is reasonable assurance that the lot can be served by a central sewage system; (3) the lot is legally accessible; and (4) the lot is free from periodic flooding.

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

G. As used in this Order, a requirement to cease and desist from representing or misrepresenting shall include representing, or misrepresenting, directly or by implication, and by any manner or means. [3]

II.

It is ordered, That respondent AMREP Corporation, in connection with the advertising, sale, offering for sale, contracting, or other promotion of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do cease and desist from:

A. Representing that:

1. The purchase of any land has been a good, profitable, safe or sound investment;
2. The demand for, or market value of, any land has increased;
3. The resale of any land has not been or is not difficult;

unless such representation is true and is not misleading, and unless, at the time such representation is made, respondent possesses and relies upon competent and reliable data which substantiates the representation, including, at a minimum, data of individual resales (including all resales and attempts to resell which are either known, or with the exercise or reasonable diligence, should be known, to respondent) of similar land (land with the same characteristics and degree of development) within the particular subdivision which are sufficient to demonstrate that the typical owner of such land is likely to have achieved the results represented.

B. Representing that:

1. The resale of any land is not likely to be difficult;
2. The supply of land available to meet present or future demand is likely to be limited for any reason;
3. The demand for, or market value of, any land is likely to increase;
4. Development (including residential development) of any land is likely to occur within a certain period of time;
5. The price set by respondent for any land is approximately equal to the fair market value of such land; [4]

unless, at the time such representation is made: (1) the competent and reliable evidence reasonably available to respondent would be generally accepted by the community of experts qualified to make such representations as providing a reasonable basis for the projection; (2) respondent possesses and relies upon such data for its representation, which data respondent shall make available for inspection by any buyer on request; and (3) respondent provides the buyer with a copy of a written statement containing the representation and disclosing the material bases and assumptions therefor, and disclosing the buyer's right to inspect respondent's substantiating data on request.

C. Misrepresenting:

1. The legal ramifications of signing a contract, through any means including, but not limited to, making representations that the buyer is only making a deposit, is only reserving the land, is only taking the first step, or is not making a final decision;

2. The market value, or change in market value, of any land;

3. Population data, the direction of population growth, or other geographic or demographic data or trends;

4. Characteristics of investments of any sort, including stocks; the stock, commodity or options market; savings account or certificates; annuities; or land as an investment;

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

6. Respondent's reputation, size, assets, or listing on any stock exchange;

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

8. The true nature and purpose of any promotional 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 sight-seeing tours. [5]

D. Engaging in the following acts or practices:

1. 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. Failing to provide any property report before the customer signs a contract;

3. Filling out a contract with a purchaser's personal information prior to the purchaser signifying, by affirmative statement, that he or she desires to purchase the land being offered;

4. Subjecting a purchaser who has evidenced a desire not to purchase respondent's land to continued sales efforts from any sales representative or other employee other than the original sales person, i.e., any institution of a "T.O." or "takeover" system;

5. Making any statement or representation concerning the rights or obligations of respondent or the purchaser, or concerning the present, planned, or potential development, improvement, or facilities of the particular land being offered or of the unit, subdivision or project in which the offered land is located, which differs in any material respect from the contract of sale, the property report or the Notice to Buyers;

6. Including in any contract, language permitting the respondent to retain any sums paid by the buyer in excess of the amount permitted to be retained by Section IV(F) of this Order upon the failure of buyer to pay any installment due or to otherwise perform any obligation under the contract.

7. Representing that a lot is a homesite or a building lot if the lot is not a *homesite* as defined in this Order;

III.

[NOTICE TO BUYERS; PROMOTIONAL MATERIALS DISCLOSURES]

It is further ordered, That respondent AMREP Corporation, in connection with the advertising, sale, offering for sale, contracting or other promotion of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall: [6]

A. Distribute to all purchasers a copy of the following "Notice to Buyers" at least two days prior to any in-person sales contact; *provided, however,* that in cases where the initial contact is in person (as, for example, at a booth located in a public place), respondent shall give the Notice to the buyer at the commencement of any sales presentation, request that the purchaser read it, and not interrupt the reading thereof by any purchaser. Respondent shall also include the Notice with any mailing which invites the purchaser to attend a meeting sponsored by respondent. The Notice shall be on a separate sheet of paper and shall contain only the required information and no other writing unless approved in advance by 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:

WE ARE OFFERING LAND FOR SALE IN THE STATE OF _____, _____ MILES FROM THE CITY OF _____. THE AVERAGE LIST PRICE FOR THE LOTS BEING OFFERED IS $_____, FOR AN AVERAGE SIZE LOT OF _____ ACRE(S),WHICH IS A COST PER ACRE OF $_____.

IMPORTANT

DO NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT. THE FUTURE VALUE OF LAND IS UNCERTAIN AND MAY HAVE NO RELATION TO OUR SALES PRICE, WHICH IS SET BY US.

[State the number of lots sold in the subdivision by the developer from the *initial sale* to the date of this Notice, or through the end of the second most recent complete month

preceding the date of the 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.]

PERSONAL INSPECTION OF ANY LAND PURCHASE IS DESIRABLE. WE RECOMMEND THAT YOU VISIT ANY PROPERTY YOU PURCHASE. YOU SHOULD TAKE THE TIME DURING YOUR INSPECTION TO VISIT THE LOCAL AREA AND EXAMINE THE REAL ESTATE MARKET. [7]

[The following warning set off by a box outline:]

IMPORTANT: OBTAIN AND READ THOROUGHLY EACH PROPERTY REPORT AND CONTRACT BEFORE SIGNING ANYTHING. THE PROPERTY REPORT CONTAINS INFORMATION THAT YOU SHOULD KNOW AND UNDERSTAND BEFORE YOU SIGN A CONTRACT TO BUY THIS LAND. IT IS DESIRABLE TO HAVE A QUALIFIED PROFESSIONAL EVALUATE THIS PURCHASE *BEFORE* YOU SIGN ANYTHING.

B. Include clearly and conspicuously in all written promotional materials and advertisements, the following statement:

Do not count on your lot rising in value or your being able to resell it. The future value of land is very uncertain, and may have no relation to the sales price, which is set by the seller.

C. Include clearly and conspicuously in all promotional materials not covered by section III (B) of this Order, including all radio and television commercials, the following statement:

Get the property report required by federal law. Read it carefully before signing anything.

IV.

[SALES CONTRACT]

It is further ordered, That respondent AMREP Corporation, in connection with the advertising, sale, offering for sale, contracting or other promotion of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. 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.

B. Include clearly and conspicuously, immediately preceding the space provided for the purchaser's signature in each contract for the sale of land, the following statement in 12-point boldface type: [8]

SEVEN DAY RIGHT TO CANCEL

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THE CONTRACT.

IF YOU CANCEL WITHIN THIS TIME, WE WILL REFUND ANY PAYMENTS MADE BY YOU UNDER THIS CONTRACT, AND CANCEL AND RETURN THIS CONTRACT, WITHIN THIRTY DAYS AFTER RECEIPT OF YOUR NOTICE.

NO SALES REPRESENTATIVE WILL CONTACT YOU DURING THESE SEVEN DAYS. IF A SALES REPRESENTATIVE CONTACTS YOU AND YOU NOTIFY US OF THE CONTACT WITHIN 30 DAYS OF ITS OCCURRENCE, YOU WILL HAVE 45 DAYS FROM THE DATE OF PURCHASE TO CANCEL THIS CONTRACT.

RIGHT TO CANCEL AFTER PROPERTY INSPECTION

IF YOU HAVE NEVER VISITED THE PROPERTY, YOU HAVE AN ADDITIONAL RIGHT TO CANCEL THIS CONTRACT, BUT ONLY IF YOU VISIT THE PROPERTY WITHIN SIX MONTHS. YOU HAVE UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER THE CONCLUSION OF YOUR IN-PERSON INSPECTION IN WHICH TO NOTIFY THE SELLER OF A DECISION TO CANCEL. IF YOU CANCEL WITHIN THIS TIME, WE WILL REFUND ANY PAYMENTS MADE BY YOU UNDER THIS CONTRACT, AND CANCEL AND RETURN THIS CONTRACT, WITHIN 30 DAYS.

NO SALES REPRESENTATIVE OF THE SELLER SHOULD CONTACT YOU DURING THIS SEVEN DAY PERIOD. IF A SALES REPRESENTATIVE CONTACTS YOU AND YOU NOTIFY US OF THE CONTACT WITHIN TEN DAYS OF ITS OCCURRENCE, YOU WILL HAVE 30 DAYS FROM THE DATE OF YOUR VISIT TO CANCEL THIS CONTRACT.

IMPORTANT:

WE RECOMMEND THAT *BEFORE* SIGNING, YOU CAREFULLY EXAMINE THIS CONTRACT AND THE PROPERTY REPORT AND HAVE THEM REVIEWED BY A QUALIFIED PROFESSIONAL.

Provided, however, That in the event that any state or federal law or regulation requires that another statement immediately precede the space provided for the buyer's signature, the statement required herein may precede any such statement. [9]

Provided, further, That during this seven day period after the signing of a land purchase contract, respondent shall not initiate any sales-related contact with the purchaser. Any such contact shall be grounds for rescission of the purchase contract and recovery of all payments thereunder at the purchaser's option, exercisable at any time before the expiration of 45 days from the date of purchase, but only if the customer notifies respondent of the contact within thirty days after its occurrence. Respondent shall investigate any notification received from buyers of contact violating the provisions of Part IV(B) above, and comply with the requirements of Part VI(F) of this Order. This provision shall not preclude respondent from initiating contacts solely for the purpose of determining compliance with this Order.

Provided, That nothing in this Order shall prevent respondent from offering a cancellation period greater than seven days.

C. Honor any signed and timely Notice of Cancellation by Buyer (or its functional equivalent) and, within 30 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.

D. Include in all contracts of sale, if respondent represents in any manner that it will provide or complete roads or facilities for water, sewer, gas, electric service or recreational amenities, a provision which expressly obligates respondent to provide or complete such roads, facilities, or amenities.

E. Include in all contracts for the sale of land, a provision requiring respondent to refund to the buyer, in the event of the buyer's default under the contract, all monies paid under the contract (excluding interest, taxes and assessments), less either: (1) 15% of the cash sales price of the lot shown on the contract, or (2) the actual damages incurred by respondent resulting from the buyer's default as determined by the law of the jurisdiction governing the contract, whichever is greater.

F. Refund to buyers who purchase after the effective date of this Order and who are deemed in default, within 60 days after the buyer is deemed to have defaulted, all monies paid under the contract (excluding interest, taxes and assessments), less either: (1) 15% of the cash sales price of the lot shown on the contract; or (2) the actual damages incurred by respondent resulting from the buyer's default, as determined by the law of the jurisdiction governing the contract, whichever is greater; *provided, however,* 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 the purposes of this paragraph, a buyer **[10]** shall be deemed to have defaulted when either (a) the buyer notifies the respondent of his or her intent to default, or (b) the buyer has failed to make a payment for a period of two months from the due date of such payment; *provided, however,* that this provision shall not prohibit respondent from granting any purchaser an extension of time within which to make payments.

V.

[MISCELLANEOUS PROVISIONS]

It is further ordered, That respondent AMREP Corporation, in con-

nection with the advertising, sale, offering for sale, contracting or other promotion of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. [EXCHANGE PRIVILEGE] Whenever respondent extends a privilege or right whereby the buyer may exchange buyer's undeveloped land for a building lot of "equal value" or similar terms, include in all materials, including the contract, which discuss the privilege or right, or if such privilege or right is described orally, in a concurrently delivered written notice, the following statement:

BUILDING EXCHANGE LOTS MAY BE SMALLER IN SIZE AND MAY REQUIRE YOU TO PAY MORE MONEY THAN YOU ARE NOW CONTRACTING TO PAY.

[State the specific financial terms or formula for exchange of the buyer's equity in the original lot into the building lot]

B. [VISITATION; CANCELLATION RIGHT] Whenever respondent sells property to a purchaser who has never seen the property before executing a contract for the purchase thereof, respondent shall:

1. Extend a refund privilege conditioned upon the purchaser making a personal visit to the property within 180 days after the purchase and notifying respondent within seven days after inspection that a refund is desired;
2. Provide such purchaser seven days after making the personal inspection within which to request a refund;
3. Ensure that every buyer who seeks to make this inspection visit sees the precise lot identified in buyer's contract; [11]
4. Furnish such purchaser, at the conclusion of the inspection visit, 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:

NOTICE OF CANCELLATION AFTER INSPECTION

Date of conclusion of inspection tour of property:
Lot identification:
Name of Customer:

You may cancel your contract without any penalty or obligation, at any time prior to midnight of the seventh day after the above date. No sales representative of the seller should contact you on behalf of the seller during this seven day period. If a sales representative contacts you and you notify us of the contact within ten days of its occurrence, you will have 30 days from the date of your visit to cancel the contract. (This right is in addition to other cancellation rights you have under your contract.)

If you cancel, we will send you a full refund within 30 days.

To cancel your contract, 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 not later than midnight of _____.

I (WE) HEREBY CANCEL THE ABOVE-DESCRIBED CONTRACT. (EACH BUYER MUST SIGN THIS NOTICE)

_____

(Date)

_____

(Buyer(s)' signature)

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. [12]

5. Before furnishing the buyer copies of the "Notice of Cancellation After Inspection" set forth in Paragraph B(4) 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 name of the customer and the date, not earlier than the seventh day following the conclusion of the inspection, by which the buyer may cancel the purchase.

6. During the post inspection cancellation period, refrain from initiating any sales related contact with the purchaser. Any such initiation of contact shall be grounds for rescission of the purchase contract and recovery of all payments thereunder at the purchaser's option, exercisable any time before the expiration of thirty days from the date of the conclusion of the visit, but only if the customer notifies respondent of the contact within ten days of its occurrence. This provision shall not preclude respondent from initiating contacts solely for the purpose of determining compliance with this Order.

7. Investigate any notification received from buyers of contact violating the provisions of Part V(B)(6) above, and comply with the requirements of Part VI(F) of this Order.

8. Honor any signed and timely Notice of Cancellation after Inspection (or its functional equivalent) and, within 30 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 purchaser.

C. [BAR TO RECOVERY FROM BUYERS IN DEFAULT] Forbear from seeking to recover, or recovering by any means, from buyers who were under contract before the date this Order becomes final for the purchase of land at Rio Rancho Estates, Silver Springs Shores, Oakmont Shores,

and Eldorado at Santa Fe, and who have defaulted or who become in default, any sums remaining due on their contracts.

D. [FORFEITURE CLAUSE] Forbear from using or enforcing in any manner, or representing that respondent will rely upon or enforce in any manner, against any purchaser, a contract clause which provides that the seller may retain all sums previously paid by the buyer in the event that the buyer fails to pay any installment due or otherwise to perform any obligation under the contract. [13]

E. [WAIVER OF RIGHT TO CANCEL] Not misrepresent, nor solicit nor 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.

VI.

It is further ordered, That respondent AMREP Corporation, shall:

A. Deliver, by certified mail or in person, a copy of this Order to all of its present and future sales representatives and other employees, independent brokers, advertising agencies and others who sell or promote the sale of respondent's land;

B. Provide each person so described in paragraph (A) above with a form to be returned to respondent, clearly stating each person's intention 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 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 the services of such person;

E. 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 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 reasonable program of continuing surveillance adequate to reveal whether the sales practices of each of said persons

described in paragraph (A) above conform to the requirements of this Order, and promptly investigate and make good faith efforts to resolve any complaints about such persons received by respondent, and maintain records of any such complaint, investigation and disposition for ten years from the date of the complaint; [14]

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 or her 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 paragraph of this Order;

H. Forthwith distribute a copy of this Order to each of its subsidiaries;

I. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, reorganization or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order;

J. 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.

K. Mail to all buyers who were under contract before the final date of this Order for the purchase of land at Silver Springs Shores, Rio Rancho Estates, and Oakmont Shores, regardless of whether or not they are in default, the Notice attached to this Order as Appendix A.

Complaint paragraphs 32–33, 34–35, 36–37, 42–43, 44–45, 46, 47, 50, 51–53, and 56 (to the extent it refers to unfair methods of competition) are hereby dismissed.

APPENDIX A

IMPORTANT NOTICE TO LOT BUYERS IN (insert RIO RANCHO, SILVER SPRINGS SHORES, or OAKMONT SHORES)

Dear Customer:

We are sending this letter to you under an order issued by the Federal Trade Commission. It contains facts you should know about your purchase.

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. A copy of that Order is enclosed.

Please read this letter carefully and consider the alternatives suggested in Part II. We cannot advise you as to what decision is best for you.

I. LOT VALUE AND RESALE

There is virtually no resale market for 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 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 it is developed. The population growth and community development necessary to enable you to sell your lot at or near the price you paid or are paying for it may not occur for many years, if at all. If the lot may be exchanged for a developed lot, there may be some small demand by builders for a limited amount of such lots at the present time.

You should be aware that neither AMREP nor (insert subdivision) will buy back your lot or help you resell it.

II. OPTIONS AVAILABLE TO PURCHASERS

There are a number of options available to you at this time.

1. You can continue making your payments.

2. You can refuse to make any further payments. According to the FTC Order you *cannot* be required to pay any more money, but if you elect this option, you will lose your land and all of the money you have paid.

In addition, if you purchased your lot as an investment and not for your own use as a homesite, you might be able to declare any money you lost as a tax loss, deductible from your income on federal and state tax returns. It is suggested strongly that you contact your tax advisor or local District Director of the Internal Revenue Service before deciding whether to stop payments, if your decision is based on the possibility of taking a tax loss. Whether your loss is deductible will be based on your specific situation and you should not rely on this letter as authority for a deduction.

3. You can stop making payments and seek satisfaction against AMREP in a private lawsuit. You should consult an attorney before electing this option. The Commission's Order may be relevant in such a suit.

4. You may be able to relocate to (insert subdivision) and build on your lot or exchange for a building lot if so permitted by your contract or by company policy. You may, however, be required to pay more money for this exchange lot. Check with your contract for details.

5. The Federal Trade Commission may consider bringing an action against AMREP to provide refunds or other relief for past purchasers. For additional information, you should contact the Federal Trade Commission, 11000 Wilshire Boulevard, Los Angeles, California 90024.

If you have questions about this letter, please write to us at the following address:

( )
(Insert Respondent's Address)
( )

In any letter, you should include your name as set forth in your contract, your account number, your lot identification number, your current address and telephone number, and the name of the subdivision in which your lot is located.

Sincerely,

President
AMREP Corporation