

## IN THE MATTER OF

## AMREP CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9018. Complaint, March 11, 1975—Final Order, Nov. 2, 1983*

This Final Order requires a New York City land sales company, among other things, to cease representing that the purchase of land is a sound investment; that resale is not difficult and that the price set by the company is the land's fair market value, unless such claims can be substantiated by competent and reliable data. The order requires that all advertising, promotional materials and sales contracts include prescribed disclosures advising purchasers of the risk involved in undeveloped land and of the importance of obtaining a property report and inspecting the land prior to purchase. Respondent is prohibited from misrepresenting the present or potential development of any land by others; the direction of population growth or other demographic factors; and the true nature and purpose of any promotional event or activity. Respondent is further prohibited from discouraging purchasers from consulting with a real estate specialist prior to purchase; using high pressure sales tactics; and utilizing certain contractual provisions, including one whereby defaulting purchasers forfeit all payments made. Additionally, respondent must provide customers with cooling-off periods; make specific disclosures regarding rights to cancellation and refunds; and maintain a surveillance program designed to ensure compliance with the order's provisions.

*Appearances*

For the Commission: *George E. Schulman, Perry W. Winston and Jon R. Calhoun.*

For the respondent: *Solomon H. Friend, Theodore R. Schreier, Michael E. Schoeman and Peter Williamson, Friend, Dorfman & Marks, New York City and Louis Barton, in-house counsel, New York City.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that AMREP Corporation, a corporation, hereinafter sometimes referred to as respondent, by itself and through its wholly-owned subsidiaries, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent AMREP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 16 West 61st Street, New York, New York.

PAR. 2. Respondent AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of its land sales and housing sales subsidiaries.

PAR. 3. Respondent AMREP Corporation is now, and for some time past has been, engaged, by itself and through its wholly-owned subsidiaries, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public. Among the subdivisions in which lots have been and are being offered for sale by respondent are the subdivisions known as Rio Rancho Estates, New Mexico; Silver Springs Shores, Florida; Oakmont Shores, Missouri; and Eldorado at Santa Fe, New Mexico. The acreage of each of these subdivisions is substantial. Such subdivisions are the property of wholly-owned subsidiaries of AMREP Corporation. Land sales are generally effected through sales offices operated by wholly-owned subsidiaries which are located in approximately 20 states.

PAR. 4. Respondent sells the lots in its subdivisions to purchasers by use of standard form contracts, entitled "Reservation and Purchase Agreements" (hereinafter sometimes referred to in this [2] Complaint as a "contract.") whereby the purchaser pays monthly installments over terms ranging from 5 to 8 years. According to the provisions of the contract, title to the lot remains in respondent until final payment is made, at which time title to the lot is to pass to the purchaser. Purchasers do not, during the term of the contract, have any rights of ownership and cannot use the lot. Purchasers pay interest to respondent during the contract term on the unpaid balance owing on the contract.

PAR. 5. In the course and conduct of its business as aforesaid, respondent now causes, and for some time past has caused, its advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other States of the United States. Respondent now maintains and operates, and for some time past has maintained and operated, places of business and has made substantial sales to purchasers in various States of the United States. Respondent has been, and is now, engaged in the practice of conducting tours for prospective purchasers and purchasers of land at its subdivisions. Such tours include the transportation of the prospective purchasers and purchasers from

various States in the United States to subdivisions in Florida and New Mexico. Such tours, and the sales of land and houses made pursuant thereto, constitute a significant amount of respondent's business. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in the undeveloped land and houses in or affecting commerce, as defined in the Federal Trade Commission Act.

PAR. 6. In the further course and conduct of the aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of undeveloped land and houses.

PAR. 7. In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials through the mail and in person to members of the public, and makes sales presentations by means of oral and written statements, slides and movies. By and through such means, respondent has made and is making, various statements and representations, directly or by implication, concerning the size, diversity, and assets of AMREP Corporation, the backing of respondent's land sales business by such assets, and the good reputation and integrity of the AMREP Corporation.

PAR. 8. By and through the use of such representations and statements, respondent AMREP Corporation has used and is [3] using its name and the prestige and diversification of its holdings for the purpose of selling its subsidiaries' land and houses and deriving pecuniary benefits therefrom.

PAR. 9. In the further course and conduct of the aforesaid business, respondent has made and is making various written and oral statements to the public concerning the purpose of contacting members of the public and inviting them to dinner parties or other gatherings, or offering goods and services free or at low cost. By and through such statements respondent has represented and is representing, directly or by implication, that the purpose in inviting members of the public to dinner parties or other gatherings, or in offering goods or services free or at low cost, is to inform people of the land situation in general, or to accomplish some purpose other than attempting to get invitees to sign contracts for undeveloped land.

PAR. 10. In truth and in fact, respondent's purpose in contacting members of the public, or holding dinner parties or other gatherings, or in offering goods or services free or at low cost, is to induce the signing of contracts for the purchase of respondent's land. Therefore, the acts and practices alleged in Paragraph Nine herein are deceptive and unfair.

PAR. 11. In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials to members of the public, and makes sales presentations by means of oral and written statements, movies, and slides. By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; personal financial security; the stock market, banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited to purchasers' rights to cancel the contract within six months should they visit the property. By and through such statements and representations respondent has represented and is representing, directly or by implication, that the lots which respondent is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 12. In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are poor investments involving a substantial amount of financial risk to purchasers. Therefore, the acts and practices alleged in Paragraph Eleven herein are deceptive and unfair. [4]

PAR. 13. In the further course and conduct of the aforesaid business, respondent, through statements in advertisements, booklets, pamphlets, letters, movies, slides, and oral presentations has represented and is representing, directly or by implication, that the resale of a lot purchased from respondent is not difficult.

PAR. 14. In truth and in fact, there is virtually no resale market for lots purchased at respondent's subdivisions. Therefore the representations, acts, or practices alleged in Paragraph Thirteen herein are deceptive and unfair.

PAR. 15. In the further course and conduct of the aforesaid business, respondent has offered and is offering for sale lots in its subdivisions without disclosing to prospective purchasers that the lots being offered are, at the price at which respondent is offering them, a risky investment in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price. Respondent therefore has failed to disclose material characteristics of its lots which, if known to customers, would be likely to

affect their consideration of whether or not to purchase a lot from respondent. The failure to disclose such information is a deceptive and unfair act or practice.

PAR. 16. In the further course and conduct of the aforesaid business respondent, through oral statements and periodic increases in prices of lots, represents, directly or by implication, that the market value of the lots at its subdivisions is rising.

PAR. 17. In truth and in fact, the market value of the land has not been rising. Therefore, the acts or practices alleged in Paragraph Sixteen herein are deceptive and unfair.

PAR. 18. In the further course and conduct of the aforesaid business, respondent has, with respect to its various subdivisions, made representations through advertising, promotional materials and oral statements that the growth of land values at its subdivisions has corresponded and still corresponds to the growth of land values in certain other geographical areas. Through the use of such advertisements and oral statements, respondent has represented and is representing, directly or by implication, that lot values at its subdivisions increase at a rate comparable to those of the certain other geographical areas.

PAR. 19. In truth and in fact, lot values at respondent's subdivisions do not bear any significant relation to land values in these other geographical areas and do not increase at a rate similar thereto. Therefore the acts and practices described in Paragraph Eighteen herein are deceptive and unfair. [5]

PAR. 20. In the further course and conduct of the aforesaid business, respondent has, with regard to the subdivision Rio Rancho Estates, used advertisements, pamphlets, oral statements, movies and slides to give prospective purchasers the impression that the only direction in which the city of Albuquerque, New Mexico can expand is toward Rio Rancho Estates. Through the use of such representations, respondent has represented and is representing, directly or by implication, that the value of undeveloped land in Rio Rancho Estates will increase because of such an expansion.

PAR. 21. In truth and in fact, Rio Rancho Estates is not the only direction toward which the city of Albuquerque can grow. Therefore the acts and practices set forth in Paragraph Twenty herein are deceptive and unfair.

PAR. 22. In the further course and conduct of the aforesaid business, respondent has made and is making various oral and written statements and representations to purchasers under contract with respondent by which respondent has represented and is representing, directly or by implication, that the value of lots has increased significantly since the time of purchase from respondent.

PAR. 23. In truth and in fact, the value of lots has not increased significantly since the purchase from respondent. Therefore, the acts and practices alleged in Paragraph Twenty-two herein are deceptive and unfair.

PAR. 24. In the further course and conduct of the aforesaid business, respondent has made and is making oral statements and representations to members of the public concerning the present and future development of its subdivisions. By and through such statements and representations, respondent has represented and is representing, directly or by implication, that its subdivisions will, in the near future, be developed at least to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 25. In truth and in fact, respondent's subdivisions will not, in the near future, be developed to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities. Therefore, the acts and practices alleged in Paragraph Twenty-four herein are deceptive and unfair.

PAR. 26. In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that the particular lot a purchaser buys [6] will, in the near future, or at some specifically stated time, be useable as a homesite, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 27. In truth and in fact, many purchasers bought lots which were not useable as homesites, because potable water, septic tanks or central sewage, electricity and telephone service were not made available without extraordinary charges for hook-up to said utilities within the near future or such specifically stated time. Therefore, the representations alleged in Paragraph Twenty-six constitute deceptive and unfair acts or practices.

PAR. 28. In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that land in the subdivision being offered would soon be unavailable, and therefore that prospective purchasers must purchase lots immediately or risk being unable to do so.

PAR. 29. In truth and in fact, respondent's land has not been and is not selling at such a rate that prospective purchasers could not wait a substantial period of time and still be able to obtain land in the

subdivision being offered. Therefore the acts and practices alleged in Paragraph Twenty-eight herein are deceptive and unfair.

PAR. 30. In the further course and conduct of the aforesaid business, respondent has made and is making oral statements concerning the location of the lots offered for sale. By and through such statements, respondent has represented and is representing, directly or by implication, that prospective purchasers must purchase immediately to ensure that they can obtain what respondent's employees refer to as "desirable locations."

PAR. 31. In truth and in fact, purchasers could wait a substantial amount of time and still have a substantial choice of lots with locations as "desirable" as those offered at the time the representations alleged in Paragraph Thirty are made. Therefore, the acts and practices alleged in Paragraph Thirty herein are deceptive and unfair.

PAR. 32. In the further course and conduct of the aforesaid business, respondent, through advertisements and oral statements, has represented and is now representing, directly or by implication, that the Rio Rancho Estates area is attracting a substantial amount of new industry, and that purchasers who decide to move there will not have difficulty obtaining jobs similar in nature and remuneration to those held in their former place of residence. [7]

PAR. 33. In truth and in fact, jobs for new residents of Rio Rancho Estates are difficult to obtain unless the new resident decides to take either a substantial reduction in salary or a substantially different job, or both. Therefore the use of the advertisements and oral statements alleged in Paragraph Thirty-two herein constitutes deceptive and unfair acts or practices.

PAR. 34. In the further course and conduct of the aforesaid business, respondent has, through oral statements and other means, represented that certain facilities or improvements in Rio Rancho Estates are presently available, or will be available in the near future.

PAR. 35. In truth and in fact, the facilities or improvements referred to in Paragraph Thirty-four herein are not now and will not soon be made available at Rio Rancho Estates. Therefore the acts and practices alleged in Paragraph Thirty-four herein are deceptive and unfair.

PAR. 36. Respondent's land sales contracts contain a declaration by the purchaser that the purchaser understands that no agent or representative of the seller shall have any authority whatsoever to make any other representation on behalf of the seller aside from what is stated in the written contract.

PAR. 37. Use by respondent of the aforesaid declaration is an unfair and deceptive act or practice because respondent and its employees make representations, through advertisements and publications of

general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from, or which obscure, the rights and obligations of purchasers and respondent under said contracts.

PAR. 38. In the further course and conduct of the aforesaid business, respondent has made and is making various oral statements in sales presentations concerning the import or significance of signing the contract for the purchase of respondent's land. By and through such statements, respondent (1) has represented and is representing, directly or by implication, that by signing a contract the purchaser is not entering into a binding obligation to purchase land, or (2) respondent has obscured and is obscuring the legal or practical significance of signing a contract.

PAR. 39. In truth and in fact, a person signing a contract which is later signed by respondent, has thereupon entered into a binding obligation to purchase land. Therefore the acts and practices alleged in Paragraph Thirty-eight are deceptive and unfair. [8]

PAR. 40. In the further course and conduct of the aforesaid business, respondent has used and is using in its standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondent under the contract. Respondent has received payments from purchasers who subsequently defaulted on their contracts and has failed to offer to refund or has refused to refund to such purchasers those amounts of the purchasers' total payments which exceed respondent's reasonable damages caused by the defaults. Respondent's continued retention of said amounts constitutes an unfair act or practice and/or an unfair method of competition.

PAR. 41. The use by respondent of the aforesaid contract provisions as described in Paragraph Forty constitutes an unfair act or practice.

PAR. 42. Respondent's contracts contain a six-month refund provision according to the terms of which the purchasers must visit the lot in order to obtain a refund of all monies paid under the contract. Respondent conducts tours to its subdivisions for purchasers ostensibly so that purchasers might examine their land and decide whether or not to request cancellation of the contract. However, respondent actually uses these tours to sell purchasers more land, and to discourage such purchasers from exercising their cancellation privilege.

PAR. 43. The use of the tours mentioned in Paragraph Forty-two to vitiate the effect of the six-month refund provision constitutes an unfair act or practice.

PAR. 44. In the further course and conduct of the aforesaid business, respondent has utilized and continues to utilize a provision in its standard form contracts giving purchasers of land the right to ex-

change parcels of undeveloped land for parcels of comparable value in a developed area. This exchange privilege has also been explained in sales presentations to prospective purchasers. Through the use of this provision and the explanations in sales presentations, respondent has represented and now represents, directly or by implication, that those who are ready to build homes on respondent's property will be able to get a lot of equal size in a developed area without paying additional cash.

PAR. 45. However, when purchasers wish to exchange for a lot in a developed area, respondent uses various means and devices to encourage or coerce purchasers to exchange their lots for smaller building lots and, moreover, to pay extra money to respondent. Among the devices used by respondent to discourage exchanges for equal size lots with no additional cash being paid are representations that such lots are less desirable than others because they require septic tanks, have overhead as opposed to underground utility lines, have no public transportation available, and because financing for homes to be built on them is more difficult to obtain. Respondent does not disclose to purchasers that such practices will be used to discourage them from receiving a lot of equal size in a developed area without paying additional cash, nor does respondent disclose that a substantial number of purchasers do in fact pay extra money and receive a smaller lot in return. Respondent therefore has failed to disclose material facts which, if known to certain purchasers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive or unfair practice.

PAR. 46. In the further course and conduct of the aforesaid business, respondent has presented and is presenting purchasers with a contract, a property report required to be provided to the purchaser by federal or state law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers on whether to sign a contract for the purchase of respondent's land. Respondent frequently has made and is making available the aforesaid documents at dinner parties or other gatherings sponsored by respondent in circumstances where it is likely that many purchasers will not read such documents at all because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents carefully, completely or with full comprehension of their meaning and import. In many instances respondent has withheld reports required to be provided to the purchaser by state or federal law until after an agreement is signed, which practice is in violation of federal or state laws. The soliciting or obtaining under such circumstances of an agreement to purchase respondent's land,

involving a substantial financial commitment by the purchaser, is a deceptive and unfair act or practice.

PAR. 47. In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing contract provisions which are not understandable to many consumers or cannot be evaluated by many consumers. Respondent has made and is making the contract available to prospective purchasers, and solicits and obtains signatures to the contract from purchasers, in circumstances where the purchaser does not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondent has discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, together with the discouragement of purchasers who wish to seek assistance of counsel before entering into such an agreement, constitute unfair acts or practices.

PAR. 48. In the further course and conduct of the aforesaid business, respondent has utilized artificial props in [10] the production of motion pictures promoting the sale of land in its subdivisions. Typical of the motion pictures in which such props were used, was one for which grass was sprayed green and pine cones were hung from trees in order to make the area appear more appealing.

PAR. 49. The promotional motion pictures referred to in Paragraph Forty-eight purport to accurately and truthfully depict or describe the appearance or habitability of respondent's land. However, by and through the use of the artificial means alleged in Paragraph Forty-eight, said promotional motion pictures falsely represent said appearance or habitability. Therefore, said promotional motion pictures were and are unfair or deceptive.

PAR. 50. Respondent maintains a number of wholly-owned subsidiaries which operate in various states and whose function is to sell vacant land in respondent's subdivisions. Many of such subsidiaries are given names consisting solely of initials. Prospective purchasers of land are often not informed that such sales companies are wholly-owned subsidiaries of respondent AMREP Corporation. Prospective purchasers have thus been and are led to believe that an independent sales company is promoting the purchase of land in respondent's subdivisions. Respondents therefore have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive and unfair act or practice.

PAR. 51. In the further course and conduct of the aforesaid business, respondent represents, directly or by implication, that financing for homes to be built in respondent's developments will be easily obtained.

PAR. 52. In truth and in fact, certain purchasers experience problems in obtaining home financing. Therefore, the representations alleged in Paragraph Fifty-one constitute unfair and deceptive acts or practices.

PAR. 53. The problems in obtaining home financing are material facts which if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Therefore, the failure to disclose such information is a deceptive and unfair act or practice.

PAR. 54. In the further course and conduct of the aforesaid business respondent has induced and is inducing members of the public through deceptive and unfair acts and practices, to pay to it, in advance of passage of title or the obtaining of any rights of enjoyment or possession, substantial sums of money towards the [11] purchase of lots in respondent's developments which are of little or no use or value to the purchasers as investments or for any other purpose. Respondent has received and is receiving the said sums, and has failed to offer to refund or has refused to refund said sums to purchasers. Respondent's continued retention of the sums obtained as alleged in this Paragraph constitutes an unfair act or practice and/or an unfair method of competition.

PAR. 55. The use by respondent of the aforementioned unfair and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and to cause the purchase of substantial numbers of respondent's lots because of said mistaken and erroneous belief.

PAR. 56. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

## INITIAL DECISION BY

PAUL R. TEETOR, ADMINISTRATIVE LAW JUDGE

JULY 18, 1979

## SUMMARY OF PLEADINGS\*

## I. COMPLAINT

The Complaint in this matter issued on 3/11/75. A number of allegations concern Respondent's identity, its activities in and affecting interstate commerce and the Commission's jurisdiction over the subject matter of the Complaint.

Substantively, the Complaint (Par. 3) alleges that Respondent is in "the business of acquiring land, subdividing said land into lots, and advertising . . . and selling (them) to the public" at four large subdivisions known as Rio Rancho Estates, New Mexico, Silver Springs Shores, Florida, Oakmont Shores, Missouri, and Eldorado at Santa Fe, New Mexico. It describes Respondent's sales organization, generally operating through subsidiaries in some twenty states (Par. 3); its use of "standard form contracts" to make 5-8 year conditional (installment) sales of lots at the foregoing developments (Par. 4); and the nature of its selling methods, including dissemination of advertisements, distribution of promotional materials and oral and written statements, slides and movies, particularly at so-called "dinner parties" and similar gatherings (Pars. 7, 9).

The gist of the Complaint is contained in Paragraphs 11 and 12:

. . . . By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land, the liquidity or marketability of land, land prices and values; land as an investment; personal financial security; the stock market, banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited [3] to purchasers' rights to cancel the contract within six months should they visit the property. By and through such statements and representations respondent has represented and is representing, directly or by implication, that the *lots which respondent*

## \* Abbreviations used:

TR - Transcript of Hearing  
 CX - Complaint Counsel's Exhibit  
 CTX - Court's Exhibit  
 RX - Respondent's Exhibit  
 R/A - Request for Admissions  
 CCPF - Complaint Counsel's Proposed Findings  
 RPF - Respondent's Proposed Findings  
 CCRB - Complaint Counsel's Reply Brief  
 RRB - Respondent's Reply Brief

*is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.* (emphasis added)

In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are *poor investments involving a substantial amount of financial risk to purchasers.* Therefore, the acts and practices alleged in Paragraph Eleven herein are deceptive and unfair. (emphasis added)

Most of the rest of the Complaint is made up of more detailed variations on this theme. Respondent's allegedly deceptive representations and/or non-disclosures (or otherwise unfair acts) include:

*Pars. 13-14:* misrepresentations that resale of a lot purchased from Respondent is "not difficult".

*Par. 15:* unfair failure to disclose the risky nature of the investment, in that its future is uncertain and the purchaser "probably will be unable to sell his lot . . . at or above the purchase price." [4]

*Pars. 16-17:* misrepresentations that the market value of Respondent's subdivision lots is rising.

*Pars. 18-19:* misrepresentations that the growth of land values at Respondent's subdivisions will correspond to such growth in different, unrelated (boom) areas.

*Pars. 20-21:* misrepresentations that the "only" direction in which Albuquerque, N.M. can expand is toward Rio Rancho Estates.

*Pars. 22-23:* misrepresentations, including those implicit in its price schedule,<sup>1</sup> that the value of lots purchased from Respondent has increased significantly since the purchase.

*Pars. 24-27 and 34-35:* misrepresentations as to the development of subdivisions (or particular lots) that all or most will be useable as "homesites" (with the usual utilities available and without extraordinary hook-up charges) in the near future or by a date certain. [Pars. 34-34 relate only to "certain facilities or improvements" in Rio Rancho Estates.]

*Pars. 28-31:* misrepresentations that land in a subdivision being offered (or at least the "desirable locations") will soon be unavailable unless purchased immediately. [5]

*Pars. 32-33:* misrepresentations that Rio Rancho is attracting new industry and that purchasers moving there can easily find new jobs similar in nature and remuneration to their old ones.

*Pars. 36-37:* unfair compulsion of customers to accept a form contract integration clause in the face of materially different misrepresentations by Respondent and its employees.

<sup>1</sup>The complaint reads literally: ". . . representing, directly or by implication, . . ."

*Pars. 38–39:* misrepresentations that by signing Respondent's form contract ["Reservation and Agreement to Purchase"] a purchaser is not entering into a binding obligation.<sup>2</sup>

*Pars. 40–41:* unfair compulsion of credit customers to accept a form contract provision forfeiting all of purchaser's payments in the event of default by purchaser.

*Pars. 42–43:* unfair inducement of customers to tour the developments and inspect the lots they have purchased, with the purpose of dissuading them from exercising a cancellation privilege or even buying more land.

*Par. 44:* misrepresentations that the building exchange provisions of Respondent's form contracts offer lots of equal size when they really offer "comparable value". [6]

*Par. 45:* failure to disclose to customers that in the event they exercise their building exchange privilege they will be discouraged from seeking a so-called "even exchange" and will be encouraged or coerced into accepting smaller lots and/or paying boot-money to Respondent.

*Par. 46:* unfairly arranging to give prospective purchasers lengthy and detailed legal documents (such as its form contract and State and Federally-required property reports) at dinner parties and other gatherings where it is likely that many purchasers will not read these documents carefully, if at all. [In some cases, it is alleged, Respondent deceptively withholds the property reports until after an agreement is signed, in violation of Federal or State law.]

*Par. 47:* unfairly using contract provisions not understandable or evaluable by many consumers who lack advice of counsel or other professionals and, indeed, discouraging reference by consumers to counsel or other professional advisers.

*Pars. 48–49:* misrepresenting the appearance and/or habitability of Respondent's land by using artificial props for promotional movies (*e.g.* by spraying grass with green paint and hanging pine cones from trees).

*Par. 50:* unfair failure to disclose the connection between Respondent and its sales subsidiaries, whose identity was regularly masked by the use of alphabet names [such as "ATC Co."]

*Pars. 51–53:* misrepresenting the ease of obtaining financing at its developments and unfairly failing to disclose the problems connected therewith. [7]

*Par. 54:* unfairly compelling credit purchasers to pay substantial sums toward the time price of its lots, even before the purchaser gets title, possession or enjoyment of the property, which, in any event, is of little or no use or value to a purchaser as an investment or for any other purpose.

All of the foregoing practices are alleged (Pars. 55–56) to possess a capacity and tendency to deceive, mislead and/or otherwise injure the purchasing public and Respondent's competitors, thus constituting unfair methods of competition and/or unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

There was served with this Complaint a proposed order which the

<sup>2</sup> Par. 38 also charges Respondent with "obscuring the legal or practical significance of signing a contract" but this is too obscure a charge for us to comprehend.

Commission then expected to issue if the facts were found to be as alleged in the Complaint. There was also a warning that a judicial redress action under Section 19(b) of the Federal Trade Commission Act, as amended, might be brought by the Commission on the basis of the findings here. Because the order eventually proposed by Complaint Counsel at the close of the evidence varied considerably in form and to some extent in substance from that originally proposed, it would be a waste of time and effort to summarize the voluminous provisions of the order originally attached to the Complaint. Instead, Complaint Counsel's ultimate proposal will be discussed below in connection with the order recommended here.

## II. ANSWER

On 5/7/75 Respondent filed its Answer to the Complaint. The Answer conceded Respondent's corporate identity; admitted that it advertises and sells subdivided land at Rio Rancho Estates, Silver Springs Shores and Eldorado at Santa Fe (but no longer at Oakmont Shores); and agreed that it uses the U.S. mail to send out contracts and promotional materials. However, it denied (or severely qualified) [8] almost everything else alleged in the Complaint, including the master allegations of Paragraphs 11 and 12.

In addition to these denials, Respondent's Answer contained four affirmative defenses. The *first* (Answer, Pars. 16-18) pleaded that all of Respondent's advertising since 12/1/73, when the Department of Housing & Urban Development's (HUD's) Office of Interstate Land Sales Registration (OILSR) established "stringent" guidelines with respect to such advertising, has been in complete compliance therewith and asserted that as to advertising material used only before 12/1/73 the Complaint must be moot. The *second* affirmative defense (Answer, Par. 19) pleaded that the Commission had no reason to bring a complaint with reference to Silver Springs Shores and Oakmont Shores because it conducted no pre-complaint investigation at either development. The *third* affirmative defense (Answer, Par. 26) pleaded that substantially all of the advertising used by Respondent and its subdivisions has been reviewed by government experts and found to be not misleading. Respondent's *fourth* and last affirmative defense pleaded that HUD's OILSR has "primary jurisdiction" over interstate land sales and to the extent of any conflict with the proposed order in this case the rules of the government agency having "primary jurisdiction" must prevail.

## III. MOTION TO STRIKE AFFIRMATIVE DEFENSES

On 7/21/75 Complaint Counsel moved to strike all of Respondent's affirmative defenses. After Respondent answered Chief Judge Han-

scom on 9/17/75 denied the motion to strike Respondent's *first* defense because the claim of abandonment (although usually rejected) might eventually have some bearing on the case. He made clear, however, his view that Respondent's advertising might conform to HUD guidelines yet violate Section 5 of the Federal Trade Commission Act.

As for Respondent's *second* affirmative defense, it was held that the Commission is the sole arbiter (absent an improper motive) of whether there is enough reason to believe a violation of law has occurred. Accordingly, Judge Hanscom struck Respondent's second defense. [9]

In a dictum concerning the *third* affirmative defense he stated that even aside from the fact that this complaint attacks more trade practices than "advertising", no action or finding of another agency or "government expert" can oust the Commission of its "statutory responsibility". He ruled, however, that because "it cannot be said, at least at this juncture, that review and approval, if such occurred, can have no possible bearing on this proceeding", the motion to strike Respondent's third affirmative defense would be denied but warned that this was not to be taken as "a commitment to extensive litigation of these defenses."

Finally, Judge Hanscom denied Complaint Counsel's motion to strike Respondent's *fourth* affirmative defense (primary jurisdiction in HUD's OILSR) because it related only to an issue of law concerning relief as to which Respondent was entitled to make an argument, "even if unfounded."

#### CHRONOLOGY OF PROCEEDING

On the same date that this Complaint issued (3/11/75), the matter was assigned to Chief Administrative Law Judge Daniel H. Hanscom. The complaint was served on Respondent on 3/17/75. Pursuant to extensions of time granted, on 5/7/75 Respondent filed its Answer to the Complaint. A prehearing conference on 5/13/75 settled a schedule for initial discovery by both parties. [Most details of discovery and evidentiary disputes other than a few crucial ones will be omitted here.]

A motion by Respondent on 5/28/75 to stay this proceeding pending completion of a related federal grand jury investigation in the Southern District of New York was denied in part and certified in part by Chief Judge Hanscom on 6/27/75 and denied *in toto* by the Commission on 7/29/75. As noted in the above summary of pleadings, a motion by Complaint Counsel on 7/17/75 to strike Respondent's four affirmative defenses was denied by the Chief Judge on 9/15/75 as to the first, third and fourth defense, although granted as to the second.

On 8/13/75 Respondent sued in the U.S. [10] District Court for the Southern District of New York (75 Civ. 4013) to enjoin prosecution of this complaint during pendency of the grand jury investigation there. However, the suit was dismissed as moot by Judge Pierce on 11/3/75, following Respondent's indictment by said grand jury on 10/28/75 on related charges of mail fraud and interstate land sales fraud (75 Cr. 1023).

At a second prehearing conference held on 10/30/75 further discovery for both sides was scheduled, turnover of Complaint Counsel's evidence to Respondent was ordered for 1/30/76, trial of the case-in-chief was set for 2/17/76 and provision was made for a six weeks interval between the case-in-chief and defense. On 11/10/75 this matter was reassigned for trial to Administrative Law Judge Paul R. Teetor, who has continued in charge of the case to date.

On 12/19/75 Respondent moved to stay both discovery and the hearing of this matter pending trial of the related criminal case referred to above. The Administrative Law Judge denied a stay of discovery on 12/29/75 and his recommendation to deny a stay of the whole proceeding was eventually accepted by the Commission on 2/24/76.

Meanwhile, however, Respondent had gone to the U.S. District Court for the Southern District of New York, where it obtained from Judge Metzner, a temporary postponement of scheduled discovery and on 1/15/76 an order that this proceeding might not continue after 7/30/76 until one month after the end of the criminal trial (75 Cr. 1023), over which Judge Metzner would preside. See *AMREP Corp. v. United States*, 405 F.Supp. 1053 (U.S.D.C., S.D.N.Y., 1976). On 3/1/76 the Court of Appeals for the Second Circuit, acting from the bench, upheld Judge Metzner's ruling. See *United States v. AMREP Corp.*, 535 F.2d 1240 (2d Cir., 1976), listing but not publishing the Court's opinion.

On the eve of trial Respondent moved to exclude the public from the hearing of this matter and to gag all witnesses and FTC officials in order to prevent publicity which might prejudice Respondent during its future criminal trial in New York. The motion was denied by the Administrative Law Judge here on 5/22/76 and a further effort to obtain such [11] an order from the U.S. District Court for the Southern District of New York, Judge Metzner, on 5/24/76 was similarly unsuccessful.

Between 6/1/76 and 7/1/76 the first series of evidentiary hearings were held in Albuquerque, New Mexico. Following a brief recess for travel, hearings were then resumed in New York City between 7/14/76 and 7/30/76, the last allowable hearing date under Judge Metzner's order noted above.

On the first day of hearings Respondent moved in open court to sequester all anticipated witnesses. Following Rule 615 of the Federal Rules of Evidence, which makes sequestration mandatory on motion of either party, the Administrative Law Judge issued such an order but excepted therefrom anyone attending the hearings as official representative of the Respondent or the Commission and, by special leave of court, anyone else found essential to present either side's case. Without objection by Respondent it was further ordered that until Respondent firmed up its witness list it would be presumed that any of Respondent's employees might later be called as witnesses and therefore until that time should not attend any of these hearings.

On 6/9/76 Respondent moved to subpoena all materials in the Government's possession tending to exculpate Respondent, invoking *Brady v. Maryland*, 373 U.S. 83 (1963), but the Administrative Law Judge held this rule of a criminal trial "inapposite to Commission proceedings" under *Allied Chemical Corp.*, 75 F.T.C. 1055, 1056 (1969). However, acting under the rule of *Harvey Aluminum, Inc. v. N.L.R.B.*, 335 F.2d 749, 754 (9th Cir., 1954), the Judge granted Respondent's simultaneous motion for the government to produce *Jencks*-type statements by any of five specified government witnesses, even though found in the files of another arm of the government than this Commission (which had already made such production). Despite receipt of an informal communication from the Assistant Attorney General in charge of the Justice Department's Criminal Division that the Department had nothing producible except grand jury testimony producible only at the direction of the U.S. District Court for the Southern District of New York, the Administrative Law Judge noted that a 1970 amendment to the Jencks Act [18 U.S.C. 3500(c)(3)] had brought grand jury testimony within the definition of a "statement" under that act and accordingly issued a subpoena to the U.S. Attorney for the Southern District of New York to appear at these hearings in New York in July with the specified evidence. [12]

On 6/25/76 the U.S. Attorney for the Southern District of New York moved to quash this subpoena but on 7/6/76 that motion was denied by the Administrative Law Judge. However, the return date was postponed indefinitely to afford the General Counsel of the Commission opportunity to make appropriate arrangements with the U.S. Attorney or apply for a writ of mandamus to compel him to act. Meanwhile, however, this matter had become largely moot. Respondent, in its character as defendant in the parallel criminal case, received all grand jury testimony in the Department's possession except that of one witness here (Heinz). As for the latter, on 9/28/76 the Commission directed that the matter be put over until after conclusion of the parallel criminal trial.

One of Complaint Counsel's witnesses, a former employee of Respondent named Liotta, whose grand jury testimony was obtained in the way just described, testified here twice, invoking the 5th Amendment several times and conceding perjury in earlier testimony. A motion by Respondent in open court at Liotta's testimony to strike it *in toto* was briefed at length during the ensuing recess and granted by the Judge on 12/23/76, citing the maxim *falsus in uno, falsus in omnibus*.

Respondent's parallel criminal trial in the Southern District of New York commenced on 11/8/76 and lasted until 12/28/76, following which Respondent, with certain of its officers,<sup>3</sup> were found by a jury to have been guilty of mail fraud and interstate land sales fraud and judgment of conviction was entered on 3/10/77.

Meanwhile, Respondent objected to Complaint Counsel's adding to its case certain witnesses and exhibits not included in its original turnover, most of which had surfaced during the parallel criminal trial. On 4/6/77 [13] these objections were overruled by the Administrative Law Judge, who took the position that a liberal interpretation of his 4/13/76 turnover order was required by the special circumstances of this case. Efforts by Respondent to further argue this objection were similarly denied (4/11/77).

In the course of the foregoing dispute about adding evidence which had surfaced during the parallel criminal trial, reference was made by both parties to the fact of conviction in the criminal case. As a result Respondent moved on 4/18/77 to strike "prejudicial matter" and Complaint Counsel answered, blaming Respondent for having first injected the conviction into this record but now asking the Administrative Law Judge to take official notice that the jury had found Respondent's claims as to the investment value of its land and the direction and extent of Albuquerque's growth to be false. Respondent objected on the grounds that an appeal in the criminal case was still pending and that in any event Complaint Counsel have the burden of proof here and Respondent should not be deprived of due process of law by reliance on a prior conviction.

Thereafter the Administrative Law Judge gave lengthy and detailed consideration to this question, issuing first a preliminary "*Ruling On Effect To Be Given Here To Judgment in U.S. v. AMREP Corp., et al.*" (6/10/77) in which he concluded that the doctrine of collateral estoppel should apply here, but gave both sides opportunity to argue the question further. Thereafter he issued a "*Further Ruling On Effect To Be Given Here To Judgment in U.S. v. AMREP Corp., et al.*"

<sup>3</sup> One indictee, Respondent's Senior Vice President and General Counsel, Solomon Friend, Esq., was acquitted by Judge Metzner on 12/30/76 before the case went to the jury.

(6/30/77), in which he reluctantly bowed to the joint objection of *both* parties that collateral estoppel should *not* be applied here.

The principal reason for Complaint Counsel's surprising resistance to winning this case by collateral estoppel was said to be the difficulty inherent in deciding what a jury verdict decided for purposes of justifying particular relief. Although the Law Judge was sceptical as to this proposition, he indicated reluctance to proceed in the face of opposition by both parties, particularly where most of the case-in-chief was by then already in evidence. Having reached such a [14] conclusion, the Judge stated on the record that he would not press further for a collateral estoppel and he would not approach the evidence here with any preconception arising out of the prior criminal conviction (TR 16150). [For further detail and citation of authorities concerning this important question, *see* the above-mentioned rulings of 6/10/77, copies of which are attached hereto as Appendices A1 and A2.]

Meanwhile, presentation of the case-in-chief had been resumed in Ocala, Florida from 5/2/77 to 5/6/77; in New York City from 5/16/77 to 5/25/77; in Springfield, Missouri from 6/13/77 to 6/16/77; and in Albuquerque, New Mexico, from 7/18/77 to 7/27/77. With the close of the Albuquerque hearings on 7/27/77, the case was then recessed until the Fall to allow Respondent time for preparation of its defense presentation, except that it was understood that Complaint Counsel would be allowed a day or more to complete their evidence when hearings resumed.

During the Springfield hearings to which reference has just been made it appeared that one of Complaint Counsel's witnesses, the "Reverend" Thomas Pollock, had been convicted of several felonies. The Administrative Law Judge on 6/13/77 postponed Pollock's cross-examination and ordered a government-wide search for Jencks-type statements by this witness which might affect his credibility. Although Complaint Counsel argued strenuously in a motion for reconsideration (7/22/77) that the Jencks Act does not reach statements unrelated to the subject matter of the proceeding (*i.e.*, statements bearing solely on the witness' credibility), the Administrative Law Judge on 7/22/77 held that Respondent was entitled to such a broad Jencks search and Complaint Counsel, with the cooperation of the Justice Department, thereupon complied with the search orders. Witness Pollock's cross-examination was completed, with benefit of the few materials uncovered by this search, when hearings resumed, on 11/21/77.

Although just prior to the May-July hearings (4/12/77) Complaint Counsel had been denied a broad subpoena of those of Respondent's records which referred to Complaint Counsel's own witnesses, during

the September-October recess [15] Complaint Counsel applied for and on 9/12/77 were granted a subpoena for Respondent to produce more narrowly limited categories of documents in its files in aid of Complaint Counsel's cross-examination of witnesses to be adduced by Respondent during its coming defense. The Administrative Law Judge considered it only fair, particularly after Respondent had received the benefit of the Jencks Act, that it should make a similar file search for Complaint Counsel's benefit, thus insuring a more objective decision as to which of Respondent's file documents should ultimately find their way into the record. A motion by Respondent for reconsideration was denied, with opinion, on 10/5/77.

In fairness to Respondent the time for resumption of hearings was now extended from 10/31/77 to 11/14/77 but Respondent, unsatisfied, on 10/26/77 sought an order from the U.S. District Court for the Middle District of Florida (Jacksonville Division) for Complaint Counsel to show cause why a preliminary injunction further extending Respondent's compliance time should not issue. This petition was dismissed without prejudice for plaintiff (Respondent here) to refile in the Ocala Division. However, on 11/4/77 the parties entered into a stipulation resolving several pending disputes regarding a proper subpoena return and providing that Respondent would not refile its judicial complaint. On 11/8/77 the Administrative Law Judge accepted the stipulation for filing and found most of its provisions reasonable but declined to be bound by the provision whereby Complaint Counsel renounced all right to obtain any of Respondent's attorneys' work product regardless of need therefore or the availability of equivalent alternatives. [*Cf.*, Commission Rule Section 3.31(b)(3).]

Meanwhile, a dispute had developed as to the relevance of certain requests for admissions sought by Respondent on 8/31/77 concerning seventeen other land sales companies allegedly competing with Respondent. These admissions were said to be relevant to Respondent's affirmative defenses of regulation, government review and primary jurisdiction. The Administrative Law Judge on 10/7/77 denied a motion by Respondent to compel answers to these requests, holding them irrelevant because it is [16] immaterial whether competitors follow the same practices as Respondent and *pari delicto* is no defense to a public prosecution.

During the same period much attention was also directed to Respondent's announced intention to adduce many "expert" state and federal regulators to testify to standards of fairness in the land sales business and to Respondent's compliance with state and federal regulations. By order dated 9/30/77 the Administrative Law Judge announced that in no event would he receive proof that some other official had deemed Respondent in compliance with some law, it being

this court's function to make such determination as to Section 5 of the Federal Trade Commission Act and compliance with no other law being in issue here.

With reference to "expert" testimony on proper standards of fairness, the Judge's order of 9/30/77 reminded the parties that Chief Judge Hanscom had early warned against over-litigating this issue. The present Judge, for his part, announced that he would hear no testimony on this issue unless and until briefs and argument on the subject, which seemed to him essentially a question of law, should prove inadequate. The parties both eventually submitted such briefs after the close of most of the testimony and argument was heard thereon the last day of hearings (*see* transcript of testimony for 5/18/77), obviating any necessity, for expert testimony on this subject. Evidentiary rulings during the defense case thereafter followed the pattern laid down in the Judge's above order of 9/30/77.

In response to complaints concerning Respondent's testimonial summaries, witness interviewing, etc., on 10/3/77 the Administrative Law Judge analyzed the status of 155 witnesses supposed to testify for Respondent in New York City. He concluded that 42 so-called "expert" regulators would not be heard, for the reasons set forth in the Judge's ruling of 9/30/77 but that amplification of summaries was required as to 72 witnesses. To permit this the start of the defense case was again postponed, this time to 11/28/77. [17]

On 10/13/77 the General Counsel's office forwarded for use in this case the grand jury testimony of Complaint Counsel's witness Heinz, an Albuquerque realtor, which had been sought in the summer of 1976, pursuant to the Jencks Act, and had finally been released at the Commission's request by order of Judge Metzner of the U.S. District Court for the Southern District of New York on 9/26/77. [Heinz finally testified when Complaint Counsel completed their case, on 11/21/77.]

A motion was made by Respondent on 10/20/77 to strike all of Complaint Counsel's exhibits that were obtained during the investigation out of which this Complaint grew and came into the possession of Complaint Counsel without a subpoena from the Administrative Law Judge [citing *Atlantic Richfield Corp. v. F.T.C.*, 567 F.2d 96 (D.C. Cir., 1977).] This motion was denied on 11/7/77.

During preparation for the defense case various problems arose in connection with Complaint Counsel's attempted interviews of Respondent's proposed witnesses, the most notable of which concerned the attorney-client privilege. Several of Respondent's lawyers who were listed to testify in its behalf nevertheless claimed the attorney-client privilege when interviewed by Complaint Counsel. On 10/3/77 the Administrative Law Judge ruled that Respondent must waive any

attorney-client privilege as to such persons *prior to the taking of depositions or holding of interviews*, or face preclusion of such lawyers' testimony under Commission Rule 3.38. [For further detail on the application of this rule, see Complaint Counsel's subsequent motion to strike (10/25/77), Respondent's opposition (11/1/77) and the Administrative Law Judge's order for oral argument, stressing the importance of the particular facts of each situation (11/14/77).]

Evidentiary hearings were resumed at New York City on 11/21/77. During that week Complaint Counsel completed presentation of their case, as arranged earlier. On 11/28/77 presentation of the defense began and continued daily in New York City until 1/12/78, except for the Christmas holidays. Subsequent hearings were held in Ocala, Florida between 2/6/78 and 2/16/78; in Springfield, Missouri on 3/6-7/78; and in Albuquerque, New Mexico, between 3/20/78 and 4/14/78. [18]

At the start of the defense hearings, on 11/28/77, Complaint Counsel moved the Administrative Law Judge to request the Commission to seek access to transcripts of the grand jury testimony of twelve of Respondent's anticipated witnesses, reciting the unwillingness of both Respondent and the U.S. Attorney for the Southern District of New York to turn over copies to Complaint Counsel without a court order. Reduced to nine (instead of 12) transcripts, this motion was promptly certified to the Commission, which on 12/6/77 directed its General Counsel to seek release of these nine transcripts from the U.S. District Court for the Southern District of New York. Thereafter, on 12/20/77 that Court, Judge Metzner, directed the U.S. Attorney to produce the Grand Jury testimony of all nine witnesses as a result of this Commission's showing that its "particularized need" for these transcripts in aid of cross-examination outweighed the policy of grand jury secrecy in this case. *United States v. AMREP Corp., XI Court Decisions, Federal Trade Commission, 737 (1977)*.

A month in advance of the Albuquerque hearings the Administrative Law Judge determined that Respondent's proposed presentation at Albuquerque would be excessively lengthy, in that sixty-one of Respondent's proposed 125 witnesses were expected to testify in substance merely that they were "contented customers." Citing *Basic Books, Inc. v. F.T.C.*, 276 F.2d 718, 720-21 (7th Cir., 1960), the Judge held that evidence that some customers felt they were treated fairly had no tendency to refute evidence that other customers were treated unfairly and that even if such evidence were admissible the proposed testimony was largely cumulative of previous testimony taken at other project locations. Accordingly, Respondent was directed to delete from its witness list 49 of the said 61 "contented customers",

leaving twelve who would be heard concerning Rio Rancho Estates and Eldorado at Santa Fe.

During the latter part of the defense hearings there was considerable maneuvering on both sides with reference to the proposed testimony of three of Respondent's top executives, Howard Friedman, Daniel Friedman and Chester Carity, all of whom had been convicted of mail fraud and interstate land sales fraud in the parallel criminal proceeding and all of whom, along with Respondent, had by now lost their appeals [19] to the Court of Appeals [*United States v. AMREP Corporation*, 560 F.2d 539 (2d Cir., 1977)], *cert den.*, 434 U.S. 1015 (1978).

Because of the pendency of their criminal appeals and the problems associated therewith, Respondent had been allowed by Complaint Counsel, to postpone until 1/28/78 turning over to the latter their summaries of these three witnesses' anticipated testimony. Shortly before that date Respondent moved for a further extension of time for filing testimonial summaries (until 2/27/78), giving assurance that if Respondent finally decided to put these witnesses on the stand Complaint Counsel would get "ample time" for pretrial interviews "long prior" to such testimony. With Complaint Counsel's consent, on 1/31/78 the Administrative Law Judge granted a further postponement of time for filing such summaries until 2/27/78.

However, the summaries were not, in fact, produced on the appointed date and on 3/10/78, with hearings in Albuquerque scheduled to start in 11 more days, Complaint Counsel moved to delete all three executives from Respondent's witness list. Respondent's answer on 3/14/78 explained that criminal counsel for the three executives were still too busy with a post-appeal motion based on alleged misconduct by the U.S. Attorney to permit interviews of the witnesses by counsel here. It was further explained that two of the three executives<sup>4</sup> were by now incarcerated in the Federal penitentiary at Allenwood, Pennsylvania, and not available for interviews. However, Respondent's counsel tendered summaries of what they expected the witnesses to say, prepared without benefit of consultation with the witnesses.

The summaries so tendered were not, in fact, satisfactory to Complaint Counsel, who persisted unsuccessfully in their demand for interviews with these witnesses. Still failing to obtain such interviews, on 3/31/78 Complaint Counsel [20] sought and the Administrative Law Judge granted depositions of the three, one in New York City and two in Allenwood Prison. Thereafter, however, Respondent limited its proposed witnesses to one of the three (Howard Friedman), who was interviewed by Complaint Counsel on the eve of his testimony during the final hearings in Los Angeles on 5/16-17/77.

<sup>4</sup> Apparently arrangements had been made for at least one of the three to be out of prison at any one time in order to keep AMREP's business running as usual.

The Los Angeles hearings (5/16-17/77) were mainly devoted (in addition to Friedman's testimony) to oral arguments supplementing written briefs by both parties on two principal subjects: (1) standards of fairness applicable to a proceeding of this sort in light of State laws and HUD regulations in the same general field; and (2) recommendations as to appropriate relief if a violation of Section 5 of the Federal Trade Commission Act be assumed *arguendo*. In the latter connection Complaint Counsel on 5/3/78 filed a "Supplement to Notice Order," altering the relief sought in certain respects, and on 5/10/78 filed additional comments and an additional proposal under the title "Ad-denda to Supplement to Notice Order."

In addition to considering proper standards of fairness and relief, at the final session in Los Angeles court and counsel, recognizing the unusual size and complexity of the case (approximately 25,000 pages of testimony and 1500 exhibits) joined in recommending an extension of the usual three months for briefing and decision allowed by Rule 3.51 to nine months, of which six months would be given to the parties (four months for their proposed findings and conclusions and two more for their rebuttal briefs) and the remaining three months would be given to the Administrative Law Judge to prepare and submit his initial decision. This recommendation was forwarded to the Commission on 5/22/78 and adopted by it on 6/21/78, making the Initial Decision due on 2/28/79, nine months after the closing of the record here on 5/31/78. The due date was subsequently extended by the Commission at the Administrative Law Judge's request in three steps to 6/22/79.

Since the closing of the record on 5/31/78, Respondent has made several post-closing motions. A motion to reopen the record principally for reception of [21] so-called "newly discovered evidence" of high prices for land in the core area of Rio Rancho Estates on the ground that the evidence to be offered appeared to have little if any significant probative value here. [Denial of Respondent's Motion to Reopen Proceeding by Order dated Nov. 20, 1978.] Another motion dated 5/1/79 requested the Administrative Law Judge to take official notice of new regulations promulgated as of 6/11/79 by HUD's Office of Interstate Land Sales Registration and to hold another conference or hearing for further presentation of Respondent's views as to the form and content of Complaint Counsel's proposed order. We do not believe such further argument concerning the law would be sufficiently productive to justify interruption of preparation of the Initial Decision and accordingly Respondent's motion of 5/1/79 is herewith DENIED.

All of Respondent's several other motions to reopen the record relate to a patently frivolous claim that in May-June 1978 Complaint Counsel violated the *ex parte* communication rules of this Commission

and/or the Administrative Procedure Act by seeking and obtaining authorization from the Commission to appear and comment on proposed relief in certain parallel private damage suits in the U.S. District Court for the Southern District of New York. All such motions have been denied by the Administrative Law Judge and efforts by Respondent to embroil the Commission<sup>5</sup> and the Courts<sup>6</sup> prematurely have all been rebuffed. "Respondent's Motion To Reopen Proceedings For Reception Of Evidence, Comment And Argument Concerning *Ex Parte* Communications," dated 4/24/79, was denied by the Administrative Law Judge on 6/12/79. "Respondent's Motion To The Federal Trade Commission Solely As A Matter Of Administrative Discretion And Public Policy For An Order Granting A Stay Of The Initial Determination Of The Administrative Law Judge And Deciding Whether Respondent Should, As A Matter Of Administrative Discretion And Public Policy, Have Its Opportunity To Address The Commission On The Matter Of *Ex Parte* Communications Prior To The Initial Determination By The Administrative Law Judge," dated 6/14/79, was denied by the Commission on 7/12/79. [22]

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<sup>5</sup> On 10/5/78 the Commission declined to consider a motion by Respondent for an order requiring that *ex parte* communications relevant to the merits of this proceeding be placed on the public record, referring Respondent to its normal motion to the Administrative Law Judge.

<sup>6</sup> On 2/8/79 Respondent filed suit in the U.S. District Court for the District of Columbia to enjoin further prosecution of this Complaint because of the same alleged violations of the *ex parte* rule. *AMREP Corporation v. Michael Pertschuk, et al.* (Civil Action No. 79-0491). On 4/9/79 Judge Gasch dismissed this Complaint for Respondent's failure to exhaust administrative remedies, referring Respondent to its normal review in the event of an unfavorable outcome of the administrative proceeding.

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## List of Witnesses

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Acree, Morris	3840 Crysler, Independence, Mo.	Complaint Counsel	6/17/77	8860 - 8889
Adams, James	1617 Silver Pass, Silver Springs Shores	Respondent	2/8/78	16612 - 16652
Alper, Dexter	3210 Arlington Avenue, Bronx, N.Y.	Complaint Counsel	7/26/76, 7/29/76	5406 - 5973
Amato, Angelo	47-20 188th Street, Flushing, N.Y.	Respondent	12/6/77	13432 - 13470
Aschenbach, Lillian	4601 San Jose Road, Rio Rancho	Complaint Counsel	6/15/76	1905 - 1971
Baca, Albert C., Jr.	3020 San Pablo, N.E. Albuquerque, N.M.	Respondent	3/30/78	20845 - 20893
Bachim, R. H.	3816 Zion Court, N.E. Albuquerque, N.M.	Respondent	3/29/78	20694 - 20719 [23]
Bailey, Floyd W.	502 Ashberry Court, S.E. Rio Rancho, New Mexico	Complaint Counsel	7/25/77, 3/21/78, 4/6/78	10363 - 21707
Beller, Anna M.	Route 1, Box 311, Wicks Road, Arnold, Missouri	Complaint Counsel	6/16/77	8702 - 8761
Benchhoff, Marian	Box 181, Arendtsville, Pa.	Complaint Counsel	7/14/76	4268 - 4353
Benedetto, Di Stephano	4 Elmwood Street, Baldwin, Nassau County, L.I.	Respondent	12/9/77	13790 - 13817

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Benfante, Maria	2634 West Street, Brooklyn, N.Y.	Complaint Counsel	7/13/76	4127 - 4170
Berg, Robert C.	6001 East-North Tucson, Arizona 85712	Complaint Counsel	7/19/76	4636 - 4742
Blocker, James L.	1236 Southeast 12th St., Ocala, Fla.	Respondent	2/10/78	17056 - 17068
Bondy, Otto S.	97-07 63rd Road, Rego Park, N.Y.	Complaint Counsel	5/19/77, 5/20/77	7465 - 7614
Bongers, Deloris M.	8010 Blue Ridge, Kansas City	Complaint Counsel	6/14/77	8445 - 8525 [24]
Bonnel, Ted A.	535 Cloucroft, New Mexico	Respondent	3/21/78	19515 - 19539
Bradley, James	8913 James Northeast, Albuquerque, New Mexico	Complaint Counsel	6/16/76, 6/17/76	2162 - 2205
Brand, C. Henry	2501 Riggsbee Drive, St. Louis, Missouri	Complaint Counsel	6/21/77	9072 - 9149
Bristow, Paula	Route 3, Box 605A, Pacific, Missouri	Complaint Counsel	6/22/77	9244 - 9297
Brodie, Mary	44 Countisbury Avenue, North Valley Stream	Respondent	12/15/77	14505 - 14521
Buccoa, Nicholas	287 Taylor Avenue, Levittown, New York	Respondent	12/7/77	13554 - 13579
Byers, Scott E.	1353-D Golden West Apts., Rio Rancho	Respondent	3/24/78	20253 - 20277
Calandra, Benny	25 Surrey Lane, New Hyde Park, N.Y.	Respondent	12/12/77	14008 - 14012

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Cameron, Edward A.	47 Piersall Place, Deer Park, New York	Complaint Counsel	6/20/77, 6/21/77	4881 - 4942 [25]
Carruthers, George L.	604 Ridge Place, Northeast, Albuquerque	Complaint Counsel	7/27/77, 1/28/77	10672 - 11213
Cassuto, Flora	1301 East Rio Rancho Dr., Rio Rancho, New Mexico	Respondent	3/20/78	19396 - 19496
Cavallo, Ronnie	515 Avondale Drive, North Shirely, N.Y.	Respondent	12/9/77	13818 - 13849
Cepeda, Manuel N.	921 East Silver Springs, Boulevard Ocala, Fla.	Complaint Counsel	5/4/77	6510 - 6597
Christman, Miriam	14 Stream Way, Silver Springs Shores, Ocala, Fla.	Respondent	2/8/78	16568 - 16609
Cohen, Milton	520 Bahia Circle, Silver Springs Shores, Ocala, Fla.	Complaint Counsel	5/2/77, 5/3/77	6237 - 6384
Colegrove, James B.	2922 Broadmore, Rio Rancho	Respondent	3/24/78	20278 - 20336
Cooper, Richard	168 Main Street, East Rockaway, N.Y.	Respondent	1/9/78	15352 - 15361 [26]
Cozy, John J.	38 West Court Drive, Centereach, New York	Respondent	12/6/77	13411 - 13431
Crouch, Eleanor	Forsyth, Missouri	Complaint Counsel	6/20/77	9028 - 9059
Cucciniello, Elaine	485 Ackerman Street Central Islip, N.Y.	Respondent	12/7/77	13539 - 13554

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Cummings, Clarence	P.O. Box 2568, Ruidoso, New York	Respondent	4/4/78	21243 - 21336
Daley, Leonard	17 Buehl Lane, East Northport, N.Y.	Complaint Counsel	5/24/77	7975 - 7996
Daughtery, John B.	No. 9 Conchas Loop, El Dorado at Santa Fe	Respondent	4/3/78, 4/4/78	21080 - 21211
Davis, Linda	521 Sandia Road, Northwest, Albuquerque	Complaint Counsel	6/14/76	1685 - 1717
Deitz, Roscoe	554-8 Midway Drive, Silver Springs Shores	Respondent	2/10/78	17069 - 17086
Dellacona, Janet	2324 60th Street, Brooklyn, New York	Complaint Counsel	7/21/76, 7/22/76	5058 - 5116 [27]
DeVito, Rudolph	43 Locust Avenue, Bethpage, Long Island	Respondent	12/9/77	13773 - 13790
Dickinson, George	9706 Claremont, N.E., Albuquerque, New Mexico	Respondent	3/22/78, 3/23/78	19960 - 20174
Doll, Peggy	2514 Carroll, Albuquerque, N.M.	Complaint Counsel	7/18/77, 7/19/77	9523 - 9642
Douglass, Robert	302 Villa Birdie, Rio Rancho	Complaint Counsel	7/21/77	10065 - 10083
Duda, Louise	31 Oakland Avenue, West Caldwell, N.J.	Respondent	12/12/77	14050 - 14074
Dutton, Faurest Woodrow	Oakmont Shores	Complaint Counsel	3/6/78, 3/7/78	19042 - 19217
Dykes, John Raleigh	Salt Springs, Marion County	Respondent	2/15/78	17459 - 17465

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Eckstein, Simon	153 East 57th St., New York, N. Y.	Complaint Counsel	1/10/78	15533 - 15547 [28]
Edelman, Edward	582-B Fairway Circle, Silver Springs Shores, Ocala, Fla.	Respondent	2/13/78	17260 - 17274
Elias, Claude E., Jr.	16231 Taylor Court, Torrance, Cal.	Respondent	4/14/78	23799 - 23991
Elliott, Timon	Silver Springs Shores, Ocala, Fla.	Respondent	2/8/78	16675 - 16725
Estrema, Anthony L.	144 Beachview Street, Copiague, New York	Respondent	1/4/78	15127 - 15197
Farmer, Richard	2208 Lester Drive, N.E.	Complaint Counsel	6/14/76	1616 - 1684
Fawcett, Arthur	1335 30th Street, Washington, D.C.	Respondent	11/29/77, 11/30/77, 12/1/77, 12/2/77, 12/5/77	12223 - 13308
Ferraro, Carmen	3601 Saint Andrews Dr., Rio Rancho	Complaint Counsel	7/22/77	10109 - 10210 [29]
Ferrer, John	162-41 Powells Cove, Blvd. Whitestone, New York	Respondent	12/13/77	14134 - 14165
Figliozzi, John	Arbor Hill Dr., Road 3, Pleasant Valley, N. Y.	Respondent	12/15/77	14549 - 14604
Fine, Marilyn	617-A Midway Drive, Silver Springs Shores	Respondent	2/8/78	16653 - 16674
Finklestein, Wilton, J.	591 Meadowbrook Road, Uniondale, New York	Respondent	12/20/77	14898 - 14910

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Fisher, Lavina	936 Park Avenue, Westbury, New York	Complaint Counsel	7/21/76	4996 - 5055
Fiatow, Max	430 Washington, N.E., Albuquerque, N.M.	Respondent	4/11/78	23059 - 23232
Fosco, Mary	4357 - 170th Street Flushing, Queens	Complaint Counsel	5/23/77	7826 - 7854
Fox, Irving	142 Verano Loop, Santa Fe, New Mexico	Respondent	3/22/78	19941 - 19959
Francis, Theodore F.	197-45 Nashville Blvd. Springfield Gardens, N.Y.	Respondent	12/12/77	14012 - 14050 [30]
Frapplier, R. J.	3608 Oakmont Dr., Rio Rancho	Respondent	3/29/78	20746 - 20754
Freund, Jerome	One Mink Lane, East Setauket, N.Y.	Respondent	12/20/77	14839 - 14857
Freundlich, Ida	3101 Ocean Parkway, Brooklyn, N.Y.	Complaint Counsel	7/14/76	4175 - 4255
Friedkin, Hyman	117 Circle Dr. East, Elmont, New York	Respondent	12/21/77	15024 - 15038
Friedman, Howard W.	1036 Channel Drive, Hewlett Harbor, Long Island, N.Y.	Respondent	5/16/78, 5/17/78	24008 - 24292
Mr. Friend's Grand Jury Testimony	60 East 42nd Street, New York, N.Y.	Respondent	5/24/77	7932 - 8019
Fugate, Murray Eugene	3250 Southeast Lake View Avenue, Ocala, Fla.	Respondent	2/6/78	16321 - 16350

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Gallagher, Florence	6141 Broadway, Bronx, New York	Respondent	12/22/77	15072-15089 [31]
Gallinari, Ilda	112 Rockne Road, Yonkers, N. Y.	Complaint Counsel	5/19/77	7404-7465
Gassuto, Flora	1301 East Rio Rancho Dr., Rio Rancho, New Mexico	Respondent	3/20/78	19396-19496
Gennaro, Benjamin	6036 84th Street, Elmhurst, New York	Respondent	12/13/77	14169-14191
Gennaro, Michael	2831-203rd Street, Bayside, Queens, N. Y.	Respondent	12/14/77	14320-14371
Gentile, Alphonse	33 Emerald Drive, Silver Springs Shores	Respondent	2/8/78	16725-16746
Giebel, Frances	3201 Henderson Mill Rd., Atlanta, Georgia	Respondent	2/10/78	17187-17240
Godfrey, Richard G.	457 Washington Street, S.E. Albuquerque, New Mexico	Respondent	4/12/78, 4/13/78	23480-23789
Goldman, Harold A.	223 Stilson Road, Fairfield, Conn.	Complaint Counsel	5/20/77	7614-7694
Graham, Hugh J., Jr.	7408 Osuna, Albuquerque, New Mexico	Respondent	3/20/78	19264-19395 [32]
Graw, Robert	404 Southeast 48th Ave., Ocala, Florida	Respondent	2/14/78	17359-17441
Gray, Clara	1505 Archer Road, Bronx, New York	Respondent	12/14/77	14254-14266
Greene, Daniel C.	3546 Bahia Circle, Ocala, Florida	Respondent	2/9/78	16895-16937

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Gregory, Fountain L.	Star Route, Riggsdale, Missouri	Complaint Counsel	6/14/77	8328 - 8395
Grimaldi, Paula	19 Diane Court, Clifton, New Jersey	Complaint Counsel	6/20/76	4780 - 4881
Harrison, William	504 Southeast 52nd Ave., Ocala, Florida	Respondent	2/9/78	16801 - 16833
Heinz, Paul	3700 32 Circle, S.E., Rio Rancho, New Mexico	Respondent	11/21/77	11316 - 11398
Horosko, John Vinson	163-51 86th Street, Howard Beach, N.Y.	Respondent	12/7/77	13580 - 13613
Hough, Judith	1037 East Lexington, Independence, Missouri	Complaint Counsel	6/20/77	8993 - 9027 [33]
Huckabee, Brad	9304 Avenida De La Luna, N.E., Albuquerque, New Mexico	Respondent	3/22/78	19799 - 19937
Hurza, Joseph	803 Rincon de Romos, Rio Rancho, New Mexico	Complaint Counsel	6/18/76	2395 - 2428
Hutton, James	35 Emerald Court, Silver Springs Shores	Respondent	2/8/78 2/9/78	16747 - 16801
Irizarry, Ferdinand	107 Yawpo Avenue, Oakland, New Jersey	Complaint Counsel	5/18/77	7293 - 7350
Jarrett, Michael R.	512 Washington, Avenue, Santa Fe, New Mexico	Complaint Counsel	7/25/77	10326 - 10347
Jurgens, John	3544 Jerusalem Avenue, Wantagh, New York	Respondent	2/5/78	15270 - 15295
Kantor, Annette	2200 North Central Road, Fort Lee, New Jersey	Respondent	12/8/77	13657 - 13766

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Kanninen, Virginia	19 Emerald Court, Silver Springs Shores, Ocala, Fla.	Complaint Counsel	5/6/77	6848-6889 [34]
Kaufman, Alan R.	Ass't. U.S. Attorney Federal Courthouse Foley Square New York, N.Y.	Complaint Counsel	5/23/77	7856-7880
Kearney, Mary	16 Monterey Drive, Mount Vernon, New York	Complaint Counsel	1/11/78	15869-15931
Kearns, Michael T.	609 Sycamore Street, Paramus, New Jersey	Complaint Counsel	7/13/76	4020-4127
Keaveny, R. N.	1005 Thirty-Eight Street, Rio Rancho, New Mexico	Respondent	3/29/78	20734-20745
Kimmell, Sherwood	Shaminy Woods Apartments, Croydon, Pennsylvania	Complaint Counsel	7/12/76	3877-3966
Kinney, Harry E.	3006 Vista Grande, N.W.	Respondent	3/21/78	19540-19667
Kiss, Zoltan	85-08 Britton Avenue, Elmhurst, New York	Respondent	12/20/77	14876-14897
Korn, Elias	4225 Bedford Avenue, Brooklyn, New York	Respondent	12/20/77	14910-14934 [35]
Larramore, Clyde B.	200 Southeast 52nd Ct., Ocala, Florida	Respondent	2/6/78, 2/7/78, 3/7/78	16166-19197
Lazarciki, Gregor	633 West 115 Street, New York, New York	Complaint Counsel	1/10/78	15548-15561
Lederman, Morton	475 Ignazio Boulevard, Novato, California	Complaint Counsel	6/7/76	736-831

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Levine, Alvin	16-832 - 112th Street, Bayside, New York	Respondent	12/16/77	14611 - 14633
Lewis, Richard K.	3708 Southeast 4th St., Ocala, Florida	Complaint Counsel	5/5/77	6660 - 6790
Lihn, Miles I.	1044 - 19th Street, Santa Monica, Cal.	Complaint Counsel	6/7/76	837 - 849
Lindsey, Warren A.	1 Spring Road Drive, Silver Springs Shores, Ocala, Florida	Respondent	2/9/78	16833 - 16877 [36]
Liotta, Robin	10210 Woodbine Avenue, Los Angeles, Cal.	Complaint Counsel	6/10/76, 6/11/76, 7/29/76	1246 - 5871
LoBianco, Frank	3825 Island Boulevard, Staten Island, New York	Complaint Counsel	7/19/76	4742 - 4773
LoGuercio, John	806 LaCasa de Prasa	Respondent	3/27/78	20437 - 20458
Lombardi, Ernest	21-98 7th Street, East Meadow, New York	Respondent	12/20/77	14857 - 14875
Lusteck, Joseph A.	656 North State Street, Jackson, Mississippi	Complaint Counsel	6/21/76, 6/22/76, 6/23/76, 6/24/76, 6/25/76	2537 - 3317
Mandel, Howard	3541 North 54th Avenue, Hollywood, Florida	Respondent	4/7/78	21741 - 21769
Mann, Jack	218 Brayburn Drive, Jackson, Mississippi	Complaint Counsel	6/28/76, 6/29/76	3324 - 3629 [37]
Martinez, Richard	8929 Aztec, Northeast, Albuquerque, New Mexico	Complaint Counsel	6/18/76	2447 - 2492

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Witness	Address	Sponsor	Date(s)/Testimony	Page References
Martire, Emma M.	4420 Flatlands Avenue, Brooklyn, New York	Complaint Counsel	5/23/77	7762-7825
Mastrapasqua, Mauro	1575-64th Street, Brooklyn, New York	Respondent	12/5/77	13309-13334
McCorkle, Darlene	Route 1, Box 154, China Grove, N.C.	Complaint Counsel	6/17/76	2206-2355
McEnery, Patrick	6303 Indian School Rd., Albuquerque, New Mexico	Complaint Counsel	7/26/77	10589-10622
McGuigan, Michael	640 West Avenue, Apt. 7B, New York, New York	Complaint Counsel	1/11/78	15793-15866
McTeigue, Lincoln N.	121 Salerno Drive, Santa Fe, New Mexico	Complaint Counsel	7/21/77	10007-10064
Megee, Leo	301 Sunshine, Branson, Missouri	Complaint Counsel	6/21/77	9149-9203 [38]
Meister, George D.	3 Van Dorn Place, Dover, New Jersey	Respondent	12/12/77	14077-14110
Mellenbrook, Ruth	1302 Bertha Road, Rio Rancho, New Mexico	Respondent	3/27/78	20405-20437
Miller, Patricia C.	Route 3, Box 3021 H, Albuquerque, New Mexico	Complaint Counsel	6/18/76	2358-2393
Mims, Jim	Post Office Box, 335, Silver Springs, Fla.	Complaint Counsel	5/5/77	6790-6817
Moore, Stanley	818 Lee Street, Branson, Missouri	Complaint Counsel	6/17/77	8890-8924
Morrison, William T.	1634 East Lakewood Dr., Springfield, Missouri	Respondent	9/7/78	19217-19231

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Moul, Harry	468 Arroyo Tenorio, Santa Fe, New Mexico	Complaint Counsel	7/26/77	10458 - 10573
Moutz, Willis B., Jr.	2162 East Silver Springs Boulevard, Ocala, Fla.	Complaint Counsel	5/4/77, 5/5/77	6598 - 6654 [39]
Mueller, Joachim	700 Villa Verde, Rio Rancho, New Mexico	Complaint Counsel	7/26/77	10623 - 10659
Murphy, M. J.	4112 El Alto Court, Rio Rancho, New Mexico	Respondent	3/29/78	20755 - 20788
Muzzillo, Joann	3482 East Chester Place, Bronx, New York	Complaint Counsel	5/18/77	7240 - 7292
Nash, Grover E.	4102 La Colorado Court, Rio Rancho, New Mexico	Respondent	3/27/78	20484 - 20508
Nembhard, Ethel	120 East 57th Street, Brooklyn, New York	Respondent	12/22/77	15089 - 15112
Newhouse, Craig S.	11414 Whisper Moss, San Antonio, Texas	Complaint Counsel	7/25/77	10281 - 10325
Odrobina, Robert S.	612 Cerro de Ortega, Rio Rancho, New Mexico	Compliant Counsel	7/20/77	9813 - 9879
Oliveri, Mathew, Jr.	3 Avelaine Court, North Babylon, New York	Respondent	12/16/77	14634 - 14661 [40]
Pagoda, Benjamin	1 Stuyvesant Oval, New York City	Complaint Counsel	7/16/76	4483 - 4510
Pallas, Abraham	14 Wavecrest Lane, Mattituck	Complaint Counsel	7/28/76	5728 - 5796
Parkoff, David	9 Mallow Road, East Rockaway, N.Y.	Complaint Counsel	1/10/78, 1/11/78	15588 - 15793

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Peikay, Edmond H.	5302 Edlith Boulevard, N.E. Albuquerque, New Mexico	Respondent	3/30/78	20813-20843
Perez, George O.	9317 Bahia Tract, Silver Springs Shores, Ocala, Fla.	Respondent	2/13/78	17274-17290
Peterson, Dorothy	Kirbyville, Missouri	Complaint Counsel	6/20/77	9059-9068
Pfesser, Jack	254-198 4th Road, Foral Park, New York	Complaint Counsel	1/10/78	15562-15582
Phillip, Julia C.	1500 Indiana, Northeast, Albuquerque, New Mexico	Complaint Counsel	6/18/76	2493-2504 [41]
Pieloch, Bronislaw	240-44 42nd Avenue, Douglaston, New York	Respondent	12/21/77	15038-15044
Pierce, Bruce J.	13510 Sunset Canyon Dr., Northeast, Albuquerque, New Mexico	Respondent	3/24/78	20214-20253
Pinto, Kathleen	218 South Eighth Street, Lindenhurst, New York	Complaint Counsel	5/17/77	7187-7209
Pitchford, Lorena, J.	612 Truman, Southeast, Albuquerque, New Mexico	Complaint Counsel	7/22/77	10211-10259
Pollock, Alice	Route 2, Box 232, Willard, Missouri	Complaint Counsel	6/15/77	8546-8637
Pollock, Thomas A.	Route 2, Willard, Missouri	Complaint Counsel	6/13/77, 11/21/77	8229-11310
Porreca, Otello	1409 32nd Circle, Rio Rancho, New Mexico	Complaint Counsel	7/20/77	9776-9813 [42]

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Potter, Donovan L.	6 Emerald Court, Silver Springs Shores, Ocala, Fla.	Complaint Counsel	5/3/77	6387 - 6460
Provencher, Paul	10304 Marble Place, N.E., Albuquerque, New Mexico	Respondent	3/23/78	20174 - 20211
Quinn, M.	3611 Oakmont Drive, Rio Rancho, New Mexico	Respondent	3/29/78	20719 - 20733
Raimondi, Anne	224 Yoakum Avenue, South Farmingdale, L.I.	Complaint Counsel	7/22/76	5123 - 5194
Raschke, Carl H.	10 Brook Road, Silver Springs Shores, Ocala, Fla.	Respondent	2/9/78	16937 - 17017
Rash, James A.	Box 224, Route 3, Festus, Missouri	Complaint Counsel	6/22/77	9298 - 9345
Ray, William B.	1331 SE 5th Street, Emerald Beach Estates, Golden, Missouri	Respondent	2/15/78	17444 - 17447
Reynolds, Patricia		Complaint Counsel	6/14/77	8395 - 8444 [43]
Rizzo, Ralph	596 North Kings Avenue, Lindenhurst, Long Island	Respondent	1/5/78	15249 - 15269
Roehrs, Harold	Star Route 1, Branson, Missouri	Complaint Counsel	6/16/77	8643 - 8702
Rogers, Charles H., Jr.	1224 Southeast 9th Ave., Ocala, Florida	Respondent	2/13/78	17240 - 17259
Roomey, Antoinette, M.	216 South Eight Street, Lindenhurst, New York	Complaint Counsel	5/17/77	7162 - 7186
Rosen, Louis	1560 East 33rd Street, Brooklyn, New York	Respondent	1/5/78	15295 - 15302

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Roth, Irving N.	903-J Country Club Dr., Rio Rancho, New Mexico	Respondent	4/5/78	21527-21575
Rounds, Clifton C., Jr.	P.O. Box 612, Corrales, New Mexico	Complaint Counsel	7/21/77	9965-10006
Russell, Ronald Robert	2204 Sunnybank Court, Valrico, Florida	Respondent	2/15/78	17447-17459 [44]
Rydwels, William	37-50 79th Street, Jackson Heights	Complaint Counsel	7/23/76	5199-5368
Sanchez, Irene Ann	311 Arvada, Northeast	Complaint Counsel	7/20/77	9881-9949
Sapia, Santo	14 Bahia Loop, Silver Springs Shores, Ocala, Fla.	Respondent	2/10/78	17022-17055
Sawyer, Charles B.	492 Lake Road, Silver Springs Shores, Ocala, Fla.	Respondent	2/10/78	17086-17089
Schneider, Arthur	98-01 67th Avenue, Forest Hills, New York	Respondent	11/28/77	12142-12208
Schulman, George E.	11000 Wilshire Blvd., Los Angeles, Cal.	Complaint Counsel	11/22/77, 11/23/77	11517-11863
Scirica, Luciano	355 North Long Beach Rd., Rockville Center, N.Y.	Complaint Counsel	7/27/76, 7/28/76	5516-5725 [45]
Scoville, Keith Nelson	808 Orja De Oro, Rio Rancho	Respondent	3/27/78	20509-20529
Seay, Lemuel Raymond	Flanders, N.J.	Complaint Counsel	5/16/77	6981-7049
Staraldi, Henry	7 Silver Run, Silver Springs Shores, Ocala, Fla.	Respondent	2/10/78	17124-17153

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Simmons, Florence	103 Alta Vista Court, S.E. Rio Rancho	Complaint Counsel	6/15/76	1775 – 1903
Simon, Lloyd A.	3198 Old Post Drive, Baltimore, Md.	Complaint Counsel	1/12/78	15997 – 16026
Smith, Barbara	9002 Liberty Avenue, Ozone Park, N.Y.	Respondent	4/3/78	20909 – 21068
Solana, George E.	650 Southwest 98th Lane, Ocala, Fla.	Complaint Counsel	5/6/77	6890 – 6961
Sommerhalder, John E.	6423 Via Estrada, Anaheim, California	Complaint Counsel	7/18/77	9362 – 9522 [46]
Spence, George B.M.	Middleton Branch, Amado, Arizona	Complaint Counsel	7/1/76	3804 – 3866
Stempel, Milton	44 Lyon Terrace, Bridgeport, Conn.	Respondent	12/15/77	14427 – 14503
Stowe, Paul	5 Tudor City Place, New York, N.Y.	Complaint Counsel	7/12/76	3966 – 4009
Strully, Eleanor	220–55 – 46th Avenue, Bayside, Queens, N.Y.	Respondent	12/15/77	14522 – 14549
Strunk, Harold M.	38 Harmon Avenue, Garfield, New Jersey	Respondent	12/14/77	14268 – 14290
Suchomel, George	43 Mitchell Place, White Plains, New York	Respondent	12/19/77	14695 – 14705
Swoope, John	165 Mammouth Boulevard, Ocean Port, New Jersey	Respondent	12/14/77	14291 – 14318
Tafone, Rosemarie	732 Desmond Court, Brooklyn, New York	Respondent	1/9/78	15361 – 15439 [47]

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Witness	Address	Sponsor	Date(s)/Testimony
Tennant, George	3213 Tenbrock Avenue, Brooklyn, New York	Complaint Counsel	5/16/77
Tesoriero, Umberto	1910-19th Lane, Brooklyn, New York	Respondent	12/21/77
Thuot, Paul William	Mercers Fernery Road, Deland, Florida	Respondent	2/14/78
Timpanaro, Frank	95-04 - 149th Avenue, Ozone Park, Queens, N.Y.	Complaint Counsel	7/16/76
Tischler, P.S.	3302 Rittenhouse St., N.W., Washington, D.C.	Respondent	4/11/78, 4/12/78
Torres, Herbert	3383 Jefferson Avenue, 4331 SE 20th Street,	Complaint Counsel	4/24/77
Turner, George Henry	1483 Shore Parkway, Brooklyn, New York	Respondent	2/15/78
Unich, Nicholas		Complaint Counsel	7/16/76
Van Deusen, Clayton	Silver Springs Shores, Ocala, Florida	Respondent	2/14/78
Vandewart, Floyd	14 Drake Avenue, Rye, New York	Respondent	12/17/77
Villarose, Mark Anthony	554-B Fairways Circle, Silver Springs Shores, Ocala, Florida	Complaint Counsel	2/16/78
Wagner, Irene T.	5 Ellen Place, Kings Park, Long Island	Complaint Counsel	7/30/76
Wallace, Don G.	3109 Chaparral Lane, Fort Worth, Texas	Respondent	4/5/78
Wall, Dorothy	224 Rushmore Street, Westbury, Long Island	Complaint Counsel	7/21/76
			Page References
			7059 - 7115
			15044 - 15064
			17295 - 17306
			4511 - 4580
			23248 - 23479
			7895 - 7975
			17465 - 17472
			4581 - 4628 [48]
			17334 - 17346
			14710 - 14832
			17485 - 17542
			5986 - 6072
			21376 - 21513
			4942 - 4996

Witness	Address	Sponsor	Date(s)/Testimony	Page References
Wall, James	1011 Ridgeway Drive, Liberty, Missouri	Respondent	3/27/78	20364 - 20386 [49]
Weber, L.J.	2201 San Pedro, N.E., Albuquerque, New Mexico	Complaint Counsel	6/20/77	8939 - 8988
West, Basil	1407 Anchor Drive, North Bellmore, N.Y.	Respondent	4/7/78	21771 - 21846
Westemeier, Frank X.	1200 Northeast 56th St., Ocala, Florida	Respondent	12/13/77	14121 - 14134
Wiley, James R.	2820 Virginia Northeast, Albuquerque, New Mexico	Complaint Counsel	5/5/77	6655 - 6659
Williams, Ronald A.	105 South 2nd, Branson	Complaint Counsel	6/16/76	2071 - 2161
Williams, Tony Wayne	9313 Shoshone, Northeast, Albuquerque, New Mexico	Respondent	3/7/78	19231 - 19240
Wilson, Richard	4400 Los Reos Road, Rio Rancho, N.M.	Complaint Counsel	7/19/77	9643 - 9752
Wise, Robert	67 Moya Road, El Dorado, Santa Fe	Complaint Counsel	7/28/77	10930 - 11001 [50]
Wozniak, Casimir, J.	Number 1, Bahia Silver Springs Shores, Ocala, Florida	Respondent	3/28/78	20541 - 20614
Wutka, Gerhard	Route 2, Bellevue, Florida	Respondent	2/14/78	17307 - 17334
Yarnall, Margaret B.	Peralta, New Mexico	Complaint Counsel	5/2/77	6113 - 6236
Yguado, Jose Luis	12905 West 66th St., Shawnee Mission, Kansas	Respondent	4/10/78	21867 - 22133
Yowell, Roxy Ann		Respondent	3/6/78	19026 - 19041

<b>Witness</b>	<b>Address</b>	<b>Sponsor</b>	<b>Date(s)/Testimony</b>	<b>Page References</b>
Yuknes, Veronica	2375 Stuart Street, Brooklyn, New York	Complaint Counsel	7/26/76	5384 - 5405
Zaknich, Peter	517 Covered Bridge Rd., Cherry Hill, N.J.	Complaint Counsel	6/8/76, 6/9/76, 6/10/76	876 - 1242
Zdebski, Charles	75 Tracy Lane, East Islip, New York	Complaint Counsel	5/25/77	8023 - 8066 [51]

**FINDINGS OF FACT***Preliminary and Jurisdictional Findings***I. RESPONDENT'S IDENTITY**

1. Respondent AMREP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 16 West 61st Street, New York, New York (Complaint ¶ 1 and Answer ¶ 1).

**II. CONTROL OVER SUBSIDIARIES**

2. AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of the following sales and other related corporate subsidiaries, as shown in Figure 1: [52]

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Figure I  
Respondent's Corporate Subsidiaries

Type of Activity	Name	State of Incorporation	75% ownership <sup>1</sup> or more since	Majority of Officers <sup>2</sup> and Directors since	Evidentiary References
<b>Subdivision Subsidiaries</b>	Rio Rancho Estates, Inc.	New Mexico	1961	1961 <sup>3</sup>	R/A 1-2, CX 1P
	Silver Springs Shores, Inc.	Florida	1962	1962	R/A 13-15, CX 1P
	Eldorado at Santa Fe, Inc.	New Mexico	1970	1970	R/A 25-27, CX 1Q
	Oakmont Shores, Inc.	Missouri	1971-75	1971-75	R/A 37-39, CX 1Q, CX 5 XX
<b>Sales Subsidiaries</b>	A&C Realty Corp.	Illinois	1967	1967	R/A 73-75, CX 1P
	A.M.R. Realty Corp.	Utah	1971	1971	R/A 84-86, CX 1Q
	A.S.M. Realty Corp.	New York	1971	1971	R/A 95-97, CX 1Q
	A.T.C. Realty Corp.	New York	1963	1963	R/A 106-108, CX 1P
	B.R.X. Realty Corp.	Massachusetts	1969	1969	R/A 117-19, CX 1Q
	B.T.G. Realty Corp.	New York	1967	1967	R/A 128-30, CX 1P
	C&A Realty Corp.	Colorado	1967	1967	R/A 139-41, CX 1P
	D.C.R. Realty Corp.	Kentucky	1968	1968	R/A 150-52, CX 1P
	D.N.R. Realty Corp.	New York	1968	1968	R/A 161-63, CX 1P
	F&D Realty Corp.	New Jersey	1967	1967 <sup>3</sup>	R/A 183-84, CX 1P
	Garden Realty Corp. <sup>4</sup>	Pennsylvania	1967	1967	R/A 205-07, CX 1P
	G.L.B. Realty Corp.	Virginia	3	3	R/A 876-78, CX 1Q
	G.S.R. Realty Corp.	Nebraska	1968	1968	R/A 216-18, CX 1P
	H.C.F. Realty Corp.	Maryland	1967	1967 <sup>3</sup>	R/A 194-95, CX 1P
	H.N.Y. Realty Corp.	New York	1972	1972 <sup>3</sup>	R/A 228-29, CX 1R
	I.D.P. Realty Corp.	Texas	1971	1971	R/A 238-40, CX 1Q
	Irving N. Roth Realty Inc.	New York	1972	1972 <sup>6</sup>	R/A 480-81, CX 1Q
	J.D.M. Realty Corp.	Connecticut	1971	1971	R/A 249-51, CX 1P
	J.V.C. Realty Corp.	Michigan	1971	1971 <sup>3</sup>	R/A 260-61, CX 1Q
	K.G.R. Realty Corp.	Pennsylvania	1967	1967	R/A 271-73, CX 1P
	K.L.X. Realty Corp.	Oregon	1968	1968	R/A 282-84, CX 1P
	L.J.B. Realty Corp.	Michigan	1971	1971	R/A 293-95, CX 1Q
	L.T.A. Realty Corp.	New York	1969	1969	R/A 304-06, CX 1Q
	L.T.P. Realty Corp.	Indiana	1971	1971	R/A 315-17, CX 1Q
	M.B.X. Realty Corp.	Iowa	3	3	R/A 898-900, CX 1Q
	M.D.F. Realty Corp.	Michigan	1971	1971	R/A 337-39, CX 1Q

	M.I.L. Realty Corp.	Minnesota	1971	1971	R/A 370-72, CX 1Q
	O.L.T. Realty Corp.	Illinois	1972	1972	R/A 381-83, CX 1R
	P.M.A. Realty Corp.	Illinois	1969	1969	R/A 392-394, CX 1Q
	Rio Rancho Estates of Nevada, Inc.	Nevada	1971	1971	R/A 403-05, CX 1Q
	R.S.G. Realty Corp.	New York	1968	1968	R/A 414-16, CX 1P
	S.G.R. Realty Corp.	New Jersey	1967	1967	R/A 425-27, CX 1P
	Silver Springs Shores of Georgia, Inc.	Georgia	3	3	R/A 920-22, CX 1P
	S&J Realty Corp.	Tennessee	1968	1968	R/A 436-38, CX 1P
	S.W. Realty Corp.	Washington	1967	1967	R/A 447-49, CX 1P
	T.L.F. Realty Corp.	Ohio	1972	1972	R/A 469-71, CX 1Q
	T.M.R. Realty Corp.	Texas	1968	1968	R/A 458-60, CX 1P
	Albuquerque Utilities Corp.	New Mexico	1961	1961	R/A 491-93, CX 1P
	Eldorado Utilities, Inc.	New Mexico	1973	1973	R/A 509-11, CX 1P
	Florida Ridge Utilities, Inc.	Florida	1969	1969	R/A 500-02, CX 1P
	Shores Sanitation Service, Inc.	Florida	1973	1973	R/A 518-20, CX 5W
	Holiday Shores Tours, Inc.	Florida	1970	1970	R/A 572-74, CX 1Q
<b>Utility Subsidiaries</b>					
<b>Tour Subsidiary</b>					
<b>Motel Subsidiaries</b>					
	Panorama Inns, Inc.	New Mexico	At least since 1969 <sup>6</sup>		CX 4 SS
	Panorama Inn of Florida, Inc.	Florida	At least since 1973 <sup>7</sup>		CX 1Q
	Panorama Inns of Missouri, Inc.	Missouri	At least since 1973 <sup>8</sup>		CX 1Q
<b>Title Insurance Subsidiary</b>	Sterling Title Company	New Mexico	3		CX 1Q
<b>Miscellaneous</b>					
	Carity Hoffman Associates	New York	1971	1971	R/A 663-65, CX 1R
	Sales Research Corporation	New York	1966	1966	R/A 687-89, CX 1P

<sup>1</sup> Refers to ownership by Respondent of at least 75 percent of subsidiary's voting stock.

<sup>2</sup> Refers to officers and directors of subsidiary who are also officers or directors of Respondent.

<sup>3</sup> Majority of directors only.

<sup>4</sup> Originally known as M.R.C. Realty Corp. (See objection to R/A nos. 909-19 for admission of change of name.)

<sup>5</sup> Year of incorporation not available.

<sup>6</sup> Majority of directors only. Also from sometime in 1965 or 1966 to December 1971, Roth Realty was owned by Irving Roth (TR 21528-29, 21544). Roth Realty sold local real estate on Long Island and also represented Amrep Corporation in the sale of its Rio Rancho and Silver Springs Shores properties (during 1965-1971) (TR 21529).

<sup>7</sup> Amrep Corporation has owned substantially all of the voting securities.

<sup>8</sup> Amrep Corporation has owned more than 50 percent of the voting stock of Sterling Title Company.

[53] 3. Respondent controls or has the right and power to control the activities of these corporate subsidiaries primarily through its ownership of all or most of their voting stock and the interlocking of its own directors and/or officers with those of such subsidiaries as indicated in Figure 1. It has exercised said control continuously and pervasively from its executive offices in New York by such means as the following:

1. Laying down company policy in memoranda (CX 50-51, CX 103-04; RX 1557, 1562, 1571, 1586, 1659).
2. Requiring its subsidiaries to make reports to Respondent (TR 847, 877, 890, 892, 1164, 1167, 4682-83, 6408, 6413, 6422, 9364).
3. Preparation of speakers' dinner-party presentations (TR 880, 3881, 3968, 4695-97, 7490, 7627) to be varied only to adjust to the speaker's personality (TR 893, 3994, 7626-27).
4. Preparation and review of promotional materials such as sales brochures and films (CX 98D, CX 103A, CX 104, CX 260B; TR 1161-62, 3884, 6396, 7630-32, 8247-49, 8577, 14646).
5. Observation of sales practices (TR 893-98, 911, 3886, 4670-72, 8246-47, 8570, 10336, 10941-42, 14644-45, 24206).
6. Audit of tape-recorded sales presentations (TR 896-98, 990, 1222, 7993, 21757; CX 156-59, CX 455) per company policy (CX 451-52).
7. Setting of selling prices for subsidiaries; land (CX 41 through CX 57; TR 7640, 24108-35). [54]

### III. COMPETITION INVOLVED

4. The development and sale of unimproved land, in which Respondent is principally engaged, is a competitive business (CX 5L). Respondent competes primarily with developments in other parts of the sunbelt and more particularly those sunbelt developments that possess effective sales representation in New York and other metropolitan markets of the north, where Respondent has always made most of its sales (CX 5D, L-M, CX 459 O-P). The dinner-party technique of selling sunbelt lots up north is by no means limited to Respondent. One consumer, for example, told of attending some 40 such dinner-parties in New Jersey over a period of a year and a half; only 15 were given by Respondent (TR 2410-11).

### IV. INTERSTATE COMMERCE

5. Although the land which it is Respondent's business to develop and sell obviously never moves in interstate commerce, the unfair and deceptive practices incidental to Respondent's substantial sales of land all over the United States are in interstate commerce. From a New York headquarters (Complaint ¶ 1, Answer ¶ 1), Respondent's

top executives direct a 20-state sales operation (CX 4J) that has marketed tens of thousands of lots in New Mexico, Florida (and, from 1971 to 1975, Missouri) (R/A 728) for tens of millions of dollars (Complaint ¶ 5, Answer ¶ 6). Respondent concedes that:

In the course and conduct of its business as aforesaid, respondent now causes, and for some time past has caused, its advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other States of the United States (Complaint ¶ 5, Answer ¶ 6).

Moreover, many if not most purchasers of Respondent's land personally travel in tours organized by Respondent to New Mexico, Florida (and, from 1971 to 1975, Missouri) from their homes outside those states to decide whether to exercise their contractual privilege to rescind their purchases within six months of purchase (R/A 730-31).  
[55]

#### V. NATURE OF BUSINESS

6. Respondent AMREP Corporation (hereafter "Respondent") was incorporated as American Realty & Petroleum Corporation under the laws of Oklahoma on 12/27/55 (CX 4D). Its name was changed to its present form on 9/28/67 (CX 4D). Until 1961 it was engaged exclusively in the operation of oil and gas properties in Oklahoma but for many years such oil and gas interests as it retains have been of no major significance to its operations (CX 4D).

7. In August 1961 it entered the business of subdividing large tracts of unimproved land, and selling homesite lots and, to a lesser extent, houses, in such developments by acquiring 31 Florida corporations which were the owners and developers of Rainbow Lakes Estates, a 10,000 acre subdivision a few miles west of Ocala, Florida (CX 4D). [This complaint does not concern Rainbow Lakes Estates.]

8. Respondent's principal business today remains the subdivision of large tracts of raw land, the sale of lots (primarily what it calls "homesite" lots) and, increasingly, the construction and sale of single-family houses and condominium apartments at its subdivisions. (CX 5B, CX 459E).<sup>7</sup> From its main office at 16 West 61st Street in New York City (CX 459A)<sup>8</sup> it directs three subdivisions: Rio Rancho Estates, its largest project, near Albuquerque, New Mexico; Silver Springs Shores, somewhat smaller, near Ocala, Florida; and Eldorado at Santa Fe, New Mexico, much the smallest. All are dealt with individually here-

<sup>7</sup> Although independent contractors now do some building at Respondent's subdivisions (TR 2167, 10069) when this complaint was brought in 1975 Respondent had built most of the homes constructed there (CX 57).

<sup>8</sup> Complaint ¶ 1 and Answer ¶ 1.

after. A fourth subdivision, named Oakmont Shores, in Missouri's Ozark country, was owned and operated briefly by Respondent between 1971 and 1975 (CX 5 XX), and is one of the subjects of this complaint. [56]

9. As indicated by the following table, Respondent's sales of so-called "homesites" (*i.e.*, land developed to some extent<sup>9</sup> but not yet improved with a structure) have always accounted for most of its business and, despite a late fall off, still do, as shown in Figure 2.

Figure 2

**Respondent's Homesite Sales As A Percentage Of Its Total Sales (1969-76)<sup>10</sup>**

1969	83%
1970	74%
1971	74%
1972	70%
1973	65%
1974	63%
1975	59%
1976	49.3% [57]

The upward progress and late fall-off of Respondent's recorded lot sales for *all* subdivisions during recent years is shown in Figure 3:

Figure 3

**Respondent's Recorded Lot Sales At All Its Subdivisions (1969-76)<sup>11</sup>  
(in \$ millions)**

1969	\$23.5
1970	\$36.3
1971	\$50.0
1972	\$47.4
1973	\$43.7
1974	\$52.3
1975	\$27.6
1976	\$ 7.5 <sup>12</sup>
Total	\$288.3 [58]

10. Most purchasers of Respondent's lots buy on conditional sale, paying a small part (typically 10%) of the price down and the balance

<sup>9</sup> The degree of development (chiefly roads and utilities) necessary to make a lot a "homesite" is an issue in this case, dealt with hereafter under the heading "Development Misrepresentations".

<sup>10</sup> CX 1C, CX 5C, CX 459E. Years are fiscal years ending April 30.

<sup>11</sup> CX 1E, CX 5E, CX 459H. Years are fiscal years ending April 30.

<sup>12</sup> During fiscal years 1975 and 1976 more residential lots were restored to inventory due to cancellations than were sold (CX 459H).

in monthly installments (typically over a 5 to 8 year period) (CX 5D). Collections (exclusive of interest income) initially tend to lag behind sales (because only a portion of the price is paid immediately) but for the same reason collections tend to hold up longer, if and when sales later fall off.<sup>13</sup> These trends are apparent from a comparison of Figures 3 and 4:

*Figure 4*  
Collections (Exclusive Of Interest Income) From  
All Respondent's Subdivisions (1969-76)<sup>14</sup> (in \$ millions)

1969	\$ 9.3
1970	\$13.8
1971	\$21.9
1972	\$24.3
1973	\$30.4
1974	\$34.6
1975	\$29.6
1976	\$21.2
Total	\$185.1 [59]

11. During the same recent years Respondent's average lot sale price (regardless of lot size) has climbed approximately 50 percent, as shown by Figure 5:

*Figure 5*  
Average Contract Price, All  
Subdivisions (1969-76)<sup>15</sup> (in dollars)

1969	\$3232
1970	\$3458
1971	\$3548
1972	\$3736
1973	\$4018
1974	\$4624
1975	\$4853
1976	\$4899

12. The overall financial operations and financial condition of Respondent and all its subsidiaries, as shown in their consolidated income statement and balance sheet for each of the last four years

<sup>13</sup> Respondent's own books account for the total price as income shortly after sale, although for tax purposes future installment payments are not treated as income until the year of receipt. CX 5 QQ, CX 5 SS. Years are fiscal years ending April 30.

<sup>14</sup> CX 1E, CX 5E, CX 459H.

<sup>15</sup> CX 1E, CX 5E, CX 459G. Years are fiscal years ending April 30. Note carefully that these prices are not necessarily for the same mix of lot sizes each year. For that or some other reason they fail to reflect the steepness of Respondent's continual price increases during these years, as illustrated by Figure 9, below at page 67.1 [p. 1420], which records prices *per acre*.

preceding issuance of this complaint in March 1975, are indicated in Figure 6: [60]

*Figure 6*

**Selected Extracts From Respondent's Consolidated  
Financial Statements (1972-76)<sup>16</sup>**  
(In \$ millions unless otherwise indicated)

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
Revenues	\$ 59.0	\$ 73.5	\$ 89.4	\$ 69.1	\$ 45.9
Cost and expenses	\$ 51.0	\$ 65.6	\$ 83.3	\$ 72.7	\$ 49.5
Pre-tax income (loss)	\$ 3.9	\$ 3.7	\$ 6.1	(\$ 3.7)	(\$ 3.6)
After-tax income (loss)	\$ 3.7	\$ 3.8	\$ 3.1	(\$ 1.7)	(\$ 1.9)
Per Share net income <sup>17</sup>	\$ 1.16/ share	\$ 1.07/ share	\$ .90/ share)	(\$ .50/ share)	(\$ .56 share)
Assets	\$115.8	\$138.0	\$150.7	\$128.0	\$109.1
Liabilities	\$ 76.3	\$ 94.3	\$105.0	\$ 84.0	\$ 66.9
Stockholders' Equity	\$ 39.5	\$ 43.6	\$ 45.8	\$ 44.0	\$ 42.2[61]

Although Figure 6 indicates that Respondent's total revenues from 1972 through 1976 amounted to \$291 million, Respondent, in response to a request by Complaint Counsel, admitted only that its consolidated gross sales during the much longer period from 1962 through 1976 exceeded \$250 million (R/A 728).

13. Other financial information in the record is grossly unsatisfactory. For what it is worth, Howard Friedman, Respondent's President from 1968 to 1977, now a so-called "consultant" since he and Respondent were convicted of criminal fraud in that year (TR 24010-11), testified here on 5/16/78 that Respondent's "investment"<sup>18</sup> in Rio Rancho *exceeded* \$100 million (TR 24022), and its "investment" at Silver Springs Shores *exceeded* \$50 million, both figures as of May 1978 (TR 24029). He further testified that Respondent's "initial investment" in Eldorado at Santa Fe was a little over \$7.5 million but he made no current estimate (TR 24040). He also estimated that Respondent had something like \$10 million invested in Oakmont Shores "at its peak" (TR 24037) but Respondent had withdrawn in 1975 from that development with a "net loss" of \$4-5 million (TR 24037). [61.1]

<sup>16</sup> CX 1-HH, CX 1 NN, CX 459Z-30 (balance sheets), CX 1-II, CX 1-00, CX 459Z-31 (income statements). Years are fiscal years ending April 30. See exhibits for further details.

<sup>17</sup> In dollars per share.

<sup>18</sup> Friedman defined "investment" as "all the money that has been put into the development of the property that by the company. Some of that money has been turned over and sold, such as homes, but in essence the company itself invested that money into the property and then it resold some of the, most of the homes, as a matter of fact" (TR 24029).

## VI. DESCRIPTION OF SUBDIVISIONS

A. *Rio Rancho Estates*

14. A visitor flying into Albuquerque, New Mexico is confronted with an unusual sight. As shown by aerial photographs in evidence [CX 196A-B, attached hereto as Appendix B] there is a spectacular view not only of the big, burgeoning city of Albuquerque on the east side of the Rio Grande River (bottom center) but also of a strange, vast checkerboard of roads on the west side of the river (upper left). East and west this vast grid of roads stretches as much as 15 miles; north and south as much as 10 miles (CX 263, p. 68, attached hereto as Appendix C). Only in the southeast corner is there any suggestion of human habitation. Most of the grid is made up simply of miles and miles of desert crisscrossed by miles and miles of dusty roads which purport to stamp the imprimatur of civilization on the desert but which, in fact, carry little if any traffic, pass almost no houses and otherwise show few signs of life.<sup>19</sup> One consumer witness described it as "a lot of scrub brush, sand cactus, and *just a tremendous expanse of nothing*" (TR 5537) (emphasis added). This is Respondent's biggest real estate "development": Rio Rancho Estates.

15. Rio Rancho Estates is made up of two huge adjoining tracts of arid rangeland,<sup>20</sup> the first of which (about 54,000 acres) was acquired by Respondent in 1961 at \$178 per acre (CX 1F, CX 20) and the second of which (about 37,000 acres) was added by Respondent between 1969-71 at \$223 per acre (CX 1F, CX 459H-I). The vastness of the combined 91,000 acres is difficult to appreciate. It [62] amounts to 142 square miles or a little more than double the 68 square miles of the whole District of Columbia.<sup>21</sup> Indeed, Rio Rancho Estates is almost twice the size of the sprawling city of Albuquerque, whose satellite Rio Rancho is supposed to be.<sup>22</sup>

16. All but about 6,000 of the two tracts' combined total of 91,000 acres have by now been platted (*i.e.*, subdivided into individual lots as shown on so-called "plats" deposited in the county land records) (TR 24240). Moreover, Rio Rancho Estates is saved from being just a "paper subdivision" by the network of roads (described above) that have been constructed by Respondent, following the pattern of its platting. True, only 30 of the 1500 miles of roads are paved (macadamized), leaving the other 98 percent to compacted dirt, clay or

<sup>19</sup> Elementary descriptive material of this sort reflects in part three guided tours through Rio Rancho Estates arranged for the Administrative Law Judge in 1976, in 1977 and again in 1978 by Respondent with the consent and cooperation of Complaint Counsel. See tape recording of commentary by Respondent's local manager and counsel in CTX 2.

<sup>20</sup> CX 162N. Average annual rainfall is 8 inches.

<sup>21</sup> Webster's New International Dictionary, 2d Ed., Pronouncing Gazetteer, p. 3052 (title: District of Columbia).

<sup>22</sup> TR 2661-62. See also TR 2739 and make visual inspection of CX 196A-B.

caliche (CX 1625). But the roads are real and more than almost anything else make Rio Rancho seem like a real "development".

17. Beyond plats and roads, however, Respondent has done virtually nothing more to develop and improve any part of Rio Rancho outside the so-called "building areas" in Unit 16 and immediately adjacent land in the southeast corner of Rio Rancho (all of which we shall henceforth refer to as "the Unit 16 Complex").<sup>23</sup> In the Unit 16 Complex, which inspection of Appendix C (CX 263, p. 68) shows to make up less than 5 percent of all Rio Rancho, were concentrated the 1800 residential units that were occupied [63] when this complaint was brought (after 14 years of "development") in 1975.<sup>24</sup> Moreover, the excessive cost of extending utility services to individuals whose lots are located in the hinterland, significantly beyond the slowly advancing frontier of the relatively populous "building area",<sup>25</sup> makes it virtually certain that most of Rio Rancho will not be settled for many years to come.<sup>26</sup>

18. Despite this absence of significant development (other than the platting and road network) over the 14 years from 1961 to 1975 and despite the unlikelihood of real development occurring for years to come, the hinterland that makes up 95 percent of Rio Rancho has proved eminently saleable in Respondent's hands. Of a total of 100,186 platted lots, by 4/30/76 Respondent had sold 75,134 lots.<sup>27</sup> Respondent concedes that "the vast majority" of the lots being sold are situated in the hinterland (*i.e.*, outside the Unit 16 Complex).<sup>28</sup>

19. A former top-ranking sales executive of Respondent's, Zaknich, testified that in all his years of observing Respondent's sales dinner parties in metropolitan areas all over the United States he never saw a lot in an "improved" area offered for sale at such a dinner party (TR 901) as distinguished from sales at Rio Rancho itself (TR 903). Since dinner parties in the metropolitan areas of this country have long been the [64] principal vehicle for Respondent's sales (CX 4J), it follows and we believe it to be the fact that most of Respondent's success has been in selling virtually undeveloped desert lots at dinner parties in New York and other distant metropolitan centers to people who for

<sup>23</sup> For several years after 1961 all building was concentrated in Unit 16 but by the time this Complaint was brought in 1975 small portions of Units 7 and 11 had been classified as "building areas". See lots marked "B/A" in CX 162 EE *et seq.* Respondent's brief here claims that parts of Unit 17 have "most recently" been opened for building but cites no record evidence to such effect.

<sup>24</sup> CX 162N. Respondent's manager (Bailey) in 1978 reported another 600 houses sold in 1977 and 800 more a-building in 1978 (TR 19675, 19680).

<sup>25</sup> See detailed discussion of the utilities cost problem under heading "Developmental Representations" below.

<sup>26</sup> Complaint Counsel's expert, Mann, testified: ". . . We see no potential for any type of utilization in the near future due to the lack of utilities or the prospect of installation of utilities" (CX 263, p. 22). Semble: p. 26 ("Once again, due to the absence of any utilities we see no foreseeable utilization of this lot.")

<sup>27</sup> CX 459-I. In terms of acres instead of lots, Respondent was able to sell 51,193 acres out of a total of 100,186 platted acres.

<sup>28</sup> CX 459-I ("in areas where utilities have not yet been installed").

some reason or reasons are not seriously concerned that they are buying currently useless land.

20. Respondent's explanation of this phenomenon is an unusual provision of its land contract,<sup>29</sup> commonly called "the building exchange privilege," which permits a buyer of a lot in the hinterland later to exchange the lot there for one in a "building area" (originally on an equal size, later on an equal value basis<sup>30</sup>) if utilities have not reached this part of the hinterland within 90 days of the time the buyer wants to build a residence.<sup>31</sup> Respondent's theory is that this privilege makes it immaterial to such a purchaser whether his hinterland "homesite" will *ever* be reached by the utilities.

21. There is some logic to Respondent's position if it could be relied on to honor the privilege. As long as only a few purchasers want to exercise the privilege there may be no trouble. However, if many of Respondent's 75,000 lot buyers were to begin to exercise their privilege [65] at about the same time, it seems doubtful that Respondent could find enough building lots with utilities ready to serve more than a fraction of such lot buyers.<sup>32</sup>

22. Moreover, Respondent has recently acknowledged that it might well lack the economic resources to have utilities extended to the hinterland on any large scale and, in any event, has not escrowed or otherwise guaranteed funds for such purpose (CX 162J). Under these conditions it would be understandable that many buyers of lots in the hinterland placed little reliance on their exchange privilege.

23. Complaint Counsel, for their part, would explain the purchase of barren lots in the hinterland largely in terms of high-pressure selling and deceptive practices by Respondent's salesmen who first allegedly minimize the whole problem of incomplete development by directing attention to other matters and then, if necessary, assure customers, without adequate basis, that development generally and utilities in particular will be available shortly.

24. The answer to the question why people buy practically undevelopable land may depend in part on whether such people are buying for residence or investment. It appears from information reported routinely in the large number of purchase contracts in evidence here that approximately 80 percent of the people who have bought lots from Respondent at Rio Rancho (and other subdivisions) say they are doing so far a purpose other than to maintain a principal

<sup>29</sup> See sample form contract for Rio Rancho Estates, CX 155B (§ 4).

<sup>30</sup> Respondent's earlier contracts used an equal size formula while later ones used an equal value formula. There was an intervening period (1970-72) when the formula was ambiguous and there has been considerable dispute here between Complaint Counsel and Respondent over whether some consumers were deceived or at least confused as to what formula properly applied to their particular situations.

<sup>31</sup> The privilege does not apply to so-called "commercial" lots.

<sup>32</sup> An analogy to the "runs" on banks which precipitated the great bank crisis of 1933 is obvious.

residence there.<sup>33</sup> [66]

25. To some extent purchasers for investment share the concerns of purchasers for residence, because just such concerns affect the resale potential (and thus the investment value) of the land. However, the concern of a purchaser for residence as to whether particular land is really ready for building is essentially different from the concern of an investor. Residential buyers, except those with many years of employment left, must build shortly. A purchaser for investment, on the other hand, has an option to disregard the state of development of his lot if other factors such as the likelihood of profitable resale regardless of development, can be impressed on him with sufficient effect.

26. Respondent's phenomenal sale of 75,000 largely undeveloped desert lots over a decade and a half has no doubt owed something to the reasonableness of the exchange privilege and something to the deceptive assurances of Respondent's salesmen that development was just around the corner but the primary explanation of the phenomenon is Respondent's administered structure of steadily rising prices which carries its own warranty that such regular price increases will continue in the future, as in the past, *regardless of the condition of the land.* [67]

27. Figure 9 (page 1420) is a graphic representation by the Administrative Law Judge of the trend of Respondent's prices from 1962 to date, as shown in CTX 34, for one acre of land in Units 1 and 2, on the far west side, about 10-12 miles from the Unit 16 Complex in the southeast corner of Rio Rancho Estates.<sup>34</sup> Since these units are about as far as possible from the Unit 16 Complex, it may be assumed that Respondent's prices for the rest of the hinterland that makes up 95 percent of Rio Rancho (and of course the Unit 16 Complex) were as high or higher.<sup>35</sup>

28. Against an original raw land cost to Respondent of about \$200 per acre, Figure 9 shows that Respondent started selling land in Units 1 and 2 in early 1962 for about \$1,000 per acre; almost doubled that

<sup>33</sup> In an attempt to satisfy Section 226.9(a) (right to rescind certain transactions) of the Federal Reserve Board's Regulation "Z" (12 C.F.R. 226) pursuant to the requirements of the "Truth in Lending Act" (15 U.S.C. 1601), Respondent's "Reservation And Purchase Agreement" (CX 105A, CX 106A, CX 152A, CX 154A, CX 155A) since 1973 has contained a clause which states:

Each buyer must initial where applicable:

I do \_\_\_\_\_

I do not \_\_\_\_\_ expect to use the above property as my principal residence.

There are 173 agreements in evidence which contain this clause. In 167 instances the consumer made a choice. In 80-85 percent of all such choices (depending on whether an exchange was involved and whether we examined Complaint Counsel's or Respondent's exhibits) the consumer indicated that he was *not* expecting to use the property as his principal residence.

<sup>34</sup> See Appendix C (CX 263, p. 68).

<sup>35</sup> CTX 34 also contains partial prices for Units 23, 24 and 26, in the far northwest hinterland, which tend generally to confirm this statement.

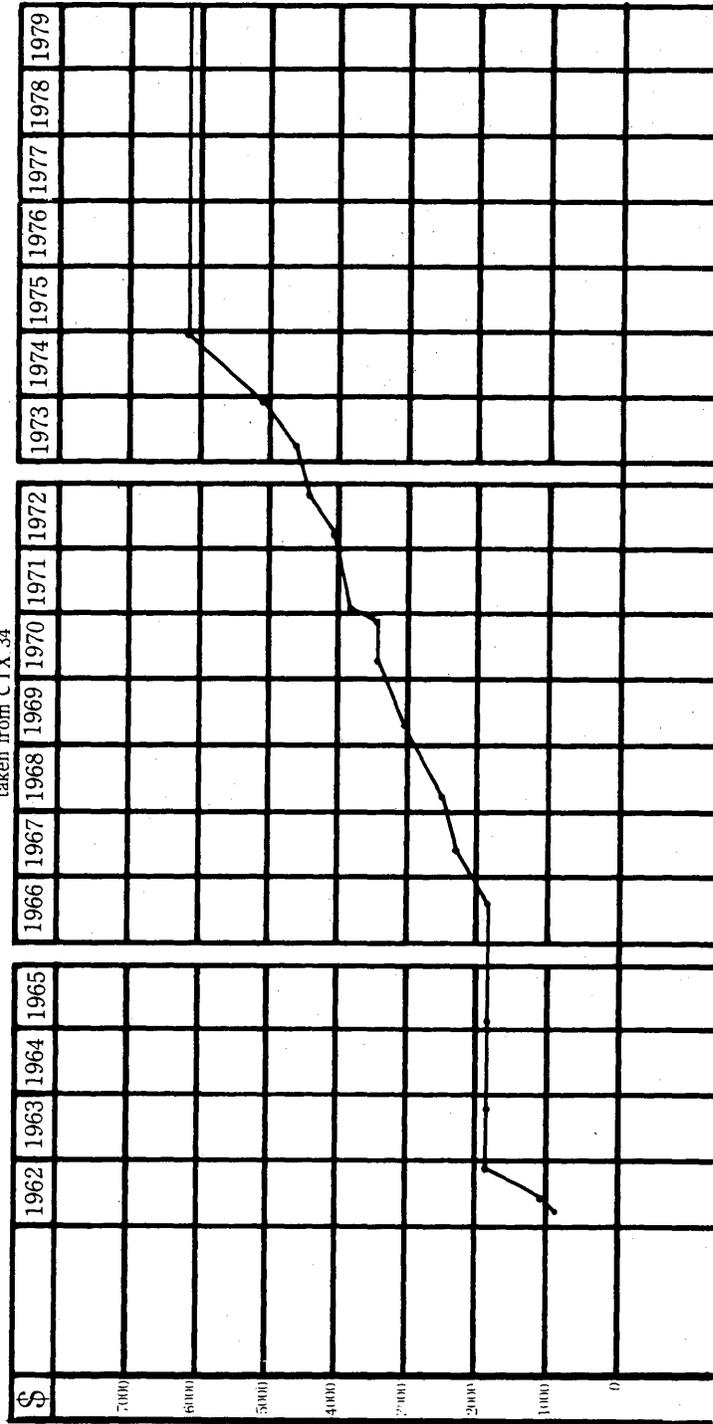
price by the end of the year; maintained a \$2,000 price until mid-1966; then began a steady succession of price increases, annually through 1969 and about twice a year thereafter. Finally, in late 1974 Respondent jumped the price from the \$5,000 level it had by then reached to about \$6,000 per acre. This complaint followed shortly thereafter (3/11/75) and Respondent's 1974 list price apparently remains in effect for such sales as Respondent has made since the start of this litigation.

29. By application of these minimum per acre prices to the 50,000 acres of "homesites" sold by Respondent at Rio Rancho (CX 459-I), we can calculate that its gross proceeds of hinterland sales<sup>36</sup> must have been more than \$100 million (at \$2,000 /acre) but less than \$300 million (at \$6,000/acre). \$200 million would not seem inconsistent with [67.1]

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<sup>36</sup> Lots in the Unit 16 Complex were, of course, sold at much higher prices.

Figure 9  
Rio Rancho - Units 1 & 2 - Company Prices Per Acre  
(1962 to Date)  
taken from CTX 34



[68] Respondent's admission here that its total sales from 1962 thru 1975 have exceeded \$250 million (R/A 728) nor its 1969 statement that "on an accrual basis total sales of homesites at . . . Rio Rancho Estates have far exceeded the total costs of the land<sup>37</sup> sold and related selling expense."<sup>38</sup>

30. Whatever the extent to which sales proceeds "far exceeded" Respondent's sales costs, the principal significance of Respondent's regularly and steeply rising list prices for its lots at Rio Rancho Estates was that customers for a good investment could be shown an unbroken record of price increases that boded no ill for the future. The higher prices that might ordinarily scare off customers in this case actually served to make "the product" even more attractive to investor buyers. "Nothing succeeds like success."

#### B. *Silver Springs Shores*

31. Respondent's first land development, known as Rainbow Lakes Estates, consisted of 10,000 acres and, like Silver Springs Shores is located in the central part of Florida. Rainbow Lakes was not, however, included within the scope of this Complaint.

32. Ocala, near which Silver Springs Shores is located, is a city of about 22,583 population (1970) located in Marion County in the north central part of Florida (CX 2E). [69] Basically it serves a surrounding agricultural economy including orange groves and horse farms (CX 476F. See maps at CX 499C or CX 164D). A notable tourist attraction has long been nearby "Silver Springs", where glass-bottom boats reveal the wonders of semi-tropical underwater life (CX 58P, T).

33. Three miles southeast of Ocala's city boundaries (CX 498B) and about 10 miles from Silver Springs (CX 58P-Q) lies a tract of about 18,500 acres (CX 459J). Respondent bought about 12,000 acres in 1962 at \$183/acre and another 7,000 acres in 1969-70 at \$327/acre (CX 1H, CX 2W-X, CX 3S-T, CX 4Q-R, CX 5G; TR 16973-82). The terrain ranges in elevation from 45 to 170 feet above sea level (CX 498B). The soil is sandy and affords good drainage above 55 foot contours (CX 164G). The development contains many typical Florida fresh-water "lakes" to which have been given such enticing names as "Lake Sparkle" (RX 1747; CX 58L).

34. As of 4/30/76, 16,268 acres of Silver Springs Shores' total (18,477) were platted; of these platted acres, 5,521 had been sold or contracted while 5,389 platted acres were still unsold or uncontracted as

<sup>37</sup> Raw land cost, of course, remained only \$200/acre. The principal expense was the construction of 1,500 miles of roads but, as noted above, these were 98 percent unpaved. Maintenance was always understood to be a County responsibility (CX 30J) and the County was actually paying 60 percent of maintenance cost by 1975 (CX 162J)

<sup>38</sup> CX 4J (15 percent).

of that date (CX 459R).<sup>39</sup> It will be observed that Silver Springs Shores is not nearly as "sold out" as Rio Rancho Estates. Thus, it may be calculated that 93 percent of Rio Rancho's acreage is platted and 60 percent of its platted acreage is sold or contracted. In contrast, although 88 percent of Silver Springs Shores' acreage is platted, only 34 percent of its platted acreage is sold or contracted. This probably reflects in part the fact that despite Respondent's original intention to begin selling lots at Silver Springs Shores in late 1963 or early 1964, adverse publicity about the land sales industry and uncertainties about the route of the cross-Florida barge canal (TR 24021) led to the postponement of development until 1970 (CX 2W-X, CX 3S-T, CX 4R; TR 24021). [70]

35. Most of the lots sold or contracted at Silver Springs Shores have yet to be occupied. By early 1976, 19,426 lots had been sold or contracted (CX 459K) but there were still only about 661 homes completed and another 38 under construction (CX 164G). Thus, over 96 percent of the lots sold by Respondent at Silver Springs Shores had not yet been occupied nearly a year after this Complaint was brought.

36. When we turn to other aspects of Silver Springs Shores' "development", we find little done. Although Respondent anticipates paving another 265 miles of roads eventually (TR 16205), only 140 miles of roads had been even "substantially" completed by 1976 (CX 164G). Until paving is complete, lots are accessible only by graded roads (CX 164G). Respondent's arrangements with Marion County for paving these roads contemplate fairly long compliance periods (5, 10, 15 years, depending on lot location) (CX 164G).

37. By early 1976 Respondent's wholly-owned Florida Ridge Utilities Corporation had completed central water and sewer systems serving nine units (1, 2, 3, 11, 15, 43, 47, 48, 49) and parts of two others (4, 40) pursuant to its plan for ultimate supply of piped water and sanitary sewer service to "the more populous areas" (CX 164H).

38. All others must rely on individual water wells (estimated cost \$800) and septic tanks (estimated cost \$400) unless and until a certain population density be reached (CX 164G-H). In the latter case the cost of such individual facilities would be lost because lot owners must connect to central facilities if they become available (CX 164H).

39. From all the foregoing it appears that Silver Springs Shores lacks the clear dichotomy between Rio Rancho's tiny core area (the Unit 16 Complex) and vast surrounding hinterland that makes up 95 percent of the whole subdivision. Because Silver Springs Shores' "immediate building areas" are sandwiched in all through a relatively small subdivision, the contrast between its more and less well developed portions is less obvious than at Rio Rancho. However, the func-

<sup>39</sup> Another third (5,355 acres) were devoted to road and community facilities.

tional distinction is real and much if not most of what we found to be true of Rio Rancho's development pattern is true also of Silver Springs Shores. [71]

40. One distinction much pressed by Complaint Counsel is that Silver Springs Shores' form land contract does not contain the same exchange privilege clause as Rio Rancho's. Both permit an exchange (value for value) for another lot, presumably not in a building area, anytime within five years after purchase (CX 154B, ¶ 3, CX 155B, ¶ 3) but only Rio Rancho's contract grants (CX 155B, ¶ 4) an exchange into a building area (value for value) anytime the hinterland lot owner wants to build (within the next 90 days). Respondent's testimony, however, is that its *policy* has, in fact, been to give Silver Springs Shores lot owners the same privilege to exchange into the building area (apparently without reference to the five year limit) as is given by *contract* at Rio Rancho Estates (TR 7677).

### C. Eldorado at Santa Fe

41. Respondent's third remaining development, Eldorado at Santa Fe, is located about 14 miles southeast of the historic and colorful capital of New Mexico.<sup>40</sup> Against a distant majestic mountain backdrop in most directions the near terrain is gently rolling with moderate small timber cover at elevations ranging from 6,500 to 7,000 feet above sea level (CX 161L, CX 83A-B). The air is normally dry, with 12 inch rainfall and 32 inch snowfall annually; the temperature ranges from 19 degrees to 51 degrees during the winter months and 49 degrees to 84 degrees during the summer months (CX 161L).

42. Eldorado is much the smallest of Respondent's remaining three developments. Although the tract originally acquired by Respondent approximated 26,600 acres (CX 5X) about 4,000 acres were early set aside for a wild-life preserve and outdoor recreational facilities (CX 5J). Difficulty with the County government over its refusal to accept 1,371 lots or some half of Respondent's first platting (2,810 lots) (CX 5J) led Respondent to conclude it could not get the necessary approvals for development consistent with its so-called "master plan" (CX 5 XX). Accordingly, it wrote down the fair market value of 16,600 acres by about \$1.9 million and determined to hold it for bulk sale (CX 5J, CX 5 WW-XX). Eldorado is thus now effectively limited to [72] approximately 6,000 acres, as compared with Rio Rancho's 93,000 acres and Silver Springs Shores' 18,000 acres.

43. The sale of lots at Eldorado started in January 1973. By April 30, 1976 (more than a year after this complaint issued) 351 lots had been contracted and an additional 98 lots had been conveyed to pur-

<sup>40</sup> CX 161L. The "7 miles" claim of CX 83B is wrong.

chasers.<sup>41</sup> However, as of mid-1975 there were only 21 occupied homes in the whole subdivision (CX 161L).

44. Roads and utilities at Eldorado are few and far between. Twenty-nine miles of *roads* are installed throughout the subdivision but in mid-1975 only seven were even graveled, leaving twenty-two to be similarly "improved" (CX 161H). Purchasers can be assessed to reimburse Respondent through the Community Association (which is controlled by Respondent until 7/1/82 or until half of all lots are deeded).<sup>42</sup>

45. Central *water* is available only from a developer-affiliate and only to 112 lots in "the immediate building area" (Unit 3) where hook-up charges of \$250 apply; a purchaser who drills his own well will probably spend between \$1,750 and \$3,500, an investment he *must* abandon if and when central water reaches his area (CX 161H-I). *Sewage* disposal is entirely by septic tank, installed by each lot-owner at a cost ranging from \$500 to \$900 (CX 161K).

46. The *electric* company (not an affiliate of Respondent) will extend service to any lot but only if the lot purchaser advances the full cost of the extension, which, for the lot furthest from the area then served was estimated in 1975 to cost \$31,258.<sup>43</sup> Similarly, *telephone* service [73] is presently available (also from a non-affiliate of Respondent) but only in parts of the subdivision and the cost of extending service to the most distant possible user could run \$7,814, it was estimated in 1975 (CX 161J).

#### D. Oakmont Shores

47. Oakmont Shores is a 3,500 acre recreational/resort development (CX 1-I) adjoining a 56 miles long man-made lake (Table Rock Lake) in the hilly Ozark country near Branson, in southwestern Missouri (CX 1-I). Elevations range from 936 feet to 1,360 feet above sea level (CX 165J). Temperatures range from 24 degrees to 55 degrees during the winter and from 59 degrees to 87 degrees during the summer (CX 165J). Average annual rainfall is about 42 inches (CX 165J).

48. Respondent owned and operated this subdivision for almost four years from June 1971 until April 1975. It was acquired on credit in 1971 from the trustee in bankruptcy of an earlier (unrelated) developer, Ozark Paradise Village, Inc. ("OPV") (CX 5 XX, CX 165K) under an arrangement whereby payment would be taken out of sales proceeds (RX 1773). At the time Respondent took over OPV, there were about 60 occupied homes (CX 165J) and 62 miles of roads, about 90

<sup>41</sup> CX 459L. Cf. 456 contracts and 69 deeds on 4/30/75 (CX 5J). It would appear that some lots must have been restored to inventory as a result of cancellations.

<sup>42</sup> As of 4/30/76 only 98 out of 2,810 platted lots had been deeded (CX 459L).

<sup>43</sup> CX 161-I. It should be added that the initial purchaser will get refunds as other purchasers hook up to the line but even so the initial investment could be staggering.

percent (CX 1J). Significant sales of land by Respondent did not begin until the summer of 1972 (CX 1-I). By 4/30/73, Respondent had contracted to sell 803 lots and deeded 29 more (occupying approximately 500 acres) out of a total of 2,300 platted lots (CX 1-I).

49. The record apparently contains no more statistical evidence of further lot sales at Oakmont Shores; testimony indicates that shortly thereafter sales fell off badly and the reason, according to Respondent's witnesses, had to do with a nationwide business recession and particularly a shortage of gasoline which allegedly discouraged touring and acquiring distant recreational homes after the Arab oil embargo of late 1973 (TR 21404). Losses of between \$3-4 millions led to cessation of Respondent's promotional efforts (TR 19138, 21402). [74]

50. As for utilities, *water* was available at Oakmont Shores only from individual wells, which cost from \$525 to \$1,525, plus \$600 to \$1,000 for a pump, tank and accessories (CX 165H). *Sewage* disposal was available only by use of individual septic tanks or individual sewage treatment plants (CX 165G). The estimated cost of such septic tank or treatment plant varied from \$300 to \$1,200 (CX 165G). There was a disagreement between Respondent and the Missouri Water Pollution Board as to whether septic tanks and tile fields would function well in this area; in the event their use resulted in pollution of surface and/or subsurface waters, purchasers of lots faced the possibility of an assessment by the Oakmont Community Improvement Association to install an appropriate sanitary sewage system, if required to do so by the State (CX 165G). *Electricity* was available from two nearby cooperatives (one in Missouri, the other in Arkansas) which had indicated that they would expand their facilities to serve additional lots as and when demand should develop, although they were not legally required to do so (CX 165H). *Telephone* service was available from the Missouri Telephone Company, although subject, however, to its usual service extension policies (CX 165-I).

51. In April 1975 (about a month after the filing of this Complaint) Respondent gave up its effort to develop Oakmont Shores, reconveying to the trustee in bankruptcy of the former owner all unsold land, a building, the leisure facilities and personal property, in return for release from a \$3.1 million promissory note (CX 5 XX). Respondent retained, however, an option to buy 1,935 acres of adjoining land which could appreciate in value as Oakmont Shores is developed. This withdrawal arrangement was made on 4/15/75 and approved by the Federal District Court soon thereafter (RX 1829; TR 21424-26). [75]

*Respondent's High Pressure Marketing Techniques*

## I. RESPONDENT'S DINNER-PARTY/TOUR ROUTINE

52. Most people have a hard time selling land "site unseen". Such a sale would seem particularly unlikely in the case of distant, desert-like land such as Rio Rancho Estates. Yet, as we have seen, Respondent has been phenomenally successful in doing just that. By 4/30/76, it had disposed of 75,134 lots at Rio Rancho (CX 459-I); 19,426 lots at Silver Springs Shores (CX 459K); over 832 at Oakmont Shores (CX 1-I); and about 449 at Eldorado at Santa Fe (CX 459L). The question naturally arises: What sales techniques has Respondent used to achieve such astounding success?

53. Significantly, in the case of each of Respondent's subdivisions, a heavy preponderance of the lot buyers have been people living elsewhere than in the state where the subdivision is located. Thus, a mail survey by Complaint Counsel revealed that of 106 Rio Rancho lot buyers, only 10 resided in New Mexico<sup>44</sup> and of 86 Silver Springs lot buyers, only six resided in Florida (CX 568, p. 21). The Oakmont Shores buyers were all out-of-staters (CX 568, p. 21). [No Eldorado sales were surveyed.] These out-of-state sales were generally made in the metropolitan areas of the North, particularly, it seems, in New York.<sup>45</sup>

54. Until 1965, Respondent marketed its land largely through direct selling to tourists passing by its projects and especially (40 percent) to purchasers by mail (CX 4J, CX 393P). In the latter part of the 1960's, however, it switched to a strikingly successful new method of marketing, sometimes by brokers and sometimes by its own sales force (CX 4J) but either way using (1) the appeal of a free [76] dinner-party where prospects are wined and dined and signed up to buy lots site unseen and (2) the appeal of a holiday air-tour to the subdivision in question to inspect the lot and exercise—or more usually *not* exercise—the contract's pivotal option to withdraw within six months after purchase.

55. A background familiarity with the routine of these dinner-parties and holiday air-tours is necessary for an understanding of the high-pressure sales tactics and deceptive practices which were carried on by Respondent. For no other purpose than such a general orientation we reprint here Respondent's concise statement of its own sales routine, which, with one important exception,<sup>46</sup> we think to be a fair

<sup>44</sup> Respondent reported in 1969 that 98 percent of all lots sold at Rio Rancho were sold to out-of-staters (CX 4R).

<sup>45</sup> Respondent has told SEC that during six months in 1975, over 75 percent of its Rio Rancho lot sales were made in New York (CX 459P). However, the time period was atypical, following hard on the heels of this Complaint.

<sup>46</sup> We specifically do not concur in the impression given that guests are kept busy reading the property reports and other protective literature which the Government insists on but which, in fact, we later find Respondent's salesmen tend to conceal or minimize as much as possible. See Finding #83.

statement thereof.

*A. Respondent's own description*

56. Respondent describes its sales routine at RPF 14-18 as follows:

**Dinner Sales Program**

Since 1964 or 1965, the principal method of selling lots at Respondent's projects has been the dinner sales program. (When the dinner sales program was instituted, the previous method of selling, by mail order, was discontinued (Roth 21533)). In the dinner sales program, potential customers were invited to sales presentation dinners given by various licensed brokers throughout the country. At typical dinners, customers were greeted and escorted to small tables. Usually two or three couples and one sales representative were assigned to each table. In the center of the table were copies of the property reports required by state and federal law, together with some brochures about the project. (In New York, New Jersey, Florida and similar states, all such brochures had previously been submitted to and approved by appropriate government authorities.) [77] After an introductory period of perhaps half an hour, during which customers could examine the property reports and brochures and talk to each other, the speaker gave a short welcoming talk from the front of the room. Dinner was then served. Again, the customers had ample opportunity to examine the property reports and to question the sales representative. After the dinner was concluded, a film or slides explaining the project were shown and a sales presentation was made by the speaker. Frequently satisfied lot owners attending the dinners were introduced and expressed their positive feelings for the project. Each sales representative then discussed specific lots with the couples at his table and presented a form of contract. If the customer wanted to buy a lot, he was asked to sign a contract and was given a receipt and copy for his records along with a copy of each required property report.

**Six-Month Visitation Privilege**

Respondent's sales presentation at the dinners stressed a six-month visitation privilege expressly set forth in all contracts. If a customer purchased a lot without seeing it, he had the right within six months of his purchase to visit the property and, if he did not wish to retain his lot, he had the option of cancelling his purchase and receiving a full refund of his monies paid. To avoid any confusion or doubt about the exercise of this option, Respondent devised and consistently employed forms to be signed by the lot purchaser on each registered inspection of his lot on which he could indicate his acceptance or rejection of the lot or could indicate his wish to exchange for another lot. The practical effect of the six-month cancellation privilege was to insure that all customers had the opportunity to view their lots prior to the time when their purchase became final. [78]

**Tour Program**

To facilitate personal inspection by lot purchasers of their property, Respondent also stressed at the dinners an extensive tour program to visit the projects. Respondent arranged for, and partially subsidized organized visits by purchasers to see the projects, the surrounding areas and the particular lots that had been purchased. By the 1970's two or three plane loads of purchasers were visiting their projects each week, partly at Respondent's expense, on four and five day organized tours. On a typical visit to Rio Rancho, for example, customers would be taken to the four corners of the city as well as to their property at the project and side trips, e.g., to Santa Fe, were provided. Customers also had ample free time in which they could talk to residents, explore the

city and do as they pleased. Similar schedules existed at Eldorado and Ocala. Of those purchasers who did go to see their lots, a majority decided to retain them. The minority of customers who wished to cancel were permitted to do so and received their refunds.<sup>47</sup>

#### Exchange Privilege

One other important feature of the sales program should be noted. From the earliest days, Respondent's sales presentation stressed an exchange privilege, whereby a purchaser of a lot at Rio Rancho could exchange it for a building area lot served by utilities if at the time he was ready to build, the lot which he owned was not serviced by utilities.<sup>48</sup> This provision in effect guaranteed that a lot purchaser [79] could always use his lot for or towards a homesite in a developing area, even though the lot might be located at a substantial distance from the part of the subdivision at which utilities were installed.

#### B. Consumer Scirica's description

57. Dozens of consumer witnesses here testified to their experiences during Respondent's dinners and tours. One such consumer whose testimony we believe was very credible and stood up well under lengthy cross-examination was Luciano J. Scirica. His experience was fairly typical of that of many other consumers. His entire examination, including cross-examination, is found at pages 5516-5642 and 5652-5725 of the transcript of testimony. Pages 5516-5541, which relate most closely to the dinners and tours, are attached hereto as Appendix D. *Its reading at this time is recommended to get the flavor of the case.*

### II. RESPONDENT'S "ORGANIZED OFFENSE"

#### A. Element of deliberateness

58. It is important to recognize preliminarily that the success of Respondent's dinner parties in selling distant land "site unseen" and the success of its tours in confirming such sales even after the buyer sees the land—has not been unplanned. Virtually everything that happens at Respondent's dinners and on its tours is the product of organizational forethought and preparation for battle. It is not surprising to find this battle of wits ending thousands of times in favor of Respondent.

59. A striking piece of evidence confirms Respondent's full consciousness of its inherent advantage over its customers in this respect. In a taped pep-talk to his salesmen<sup>49</sup> (which really ought to be heard to be fully appreciated), Respondent's Sales Manager for eastern

<sup>47</sup> See discussion under "Tours", *infra*.

<sup>48</sup> See discussion under "Exchange Privileges", *infra*.

<sup>49</sup> CX 108A-U (transcript of tape, CX 156, Slide B). At trial, Respondent attacked the Hollander tape on grounds that it was old (1968) and that Hollander was later reprimanded by the National Sales Manager (one Mandel) for saying such things (TR 21743-47). We attach no credit whatever to Mandel's testimony. Indeed it is a close question whether the tape (CX 108B) does not indicate that Mandel was personally present at the lecture. In any event, Hollander himself was never called to testify for Respondent.

United States, one Hollander, unabashedly laid out for his salesmen the secret of Respondent's marketing success: [80]

These people who come to our party [are as?] you against the Green Bay Packers. *We serve them with an organized offense against a disorganized defense. We can kill them. We could walk all over them. And we do, until we become disorganized, until we no longer cooperate with our speaker, until we no longer do things that we have been organized to do. . . .* (emphasis added) (CX 108T)

And with organization goes planning and standardization:

We have a planned format. We have a program, an idea. We have a concept, a concept that has produced millions of dollars worth of business. . . . (CX 108P)

### B. Salesmen's advantages

60. It may be that Hollander's language is more colorful than that of some of his cohorts but there is no serious question that his cold-blooded marketing techniques have been those of Respondent generally. The "organized offense" starts with a "sales training manual" (CX 39, CX 309) that goes into such details as the best way to seat two couples at a dinner table (CX 39F-G, CX 309D). Long before the event it reviews the best answers to the most commonly asked questions, such as:

I don't buy what I can't see.

To which "an excellent answer" is provided by Respondent:

Look—right here in the contract it says you have six months to change your mind by making an inspection. There is nothing binding on your part until you have seen the lot, and here it says you have the right to make an exchange—any time.

You have nothing to lose and plenty to gain (CX 39L, CX 309-I).<sup>50</sup> [81]

<sup>50</sup> Other likely questions and party-line answers taught one salesman by his superior were explained as follows:

- Q. Could you tell us what you were trained to say when somebody made one of these objections?  
\* \* \* \* \*
- A. For example, if the subject came up, "Well, I would like to take this paper to my lawyer" one of the ways to overcome that objection at that time was to say, "Fine, I'd be happy to meet with your lawyer". If you would set up an appointment we will all go down to his office, but keep it in mind, most importantly, you are relating to this particular parcel that you are buying by seeing it, by actually going down there and relating to it.  
\* \* \* \* \*
- Q. What did Mr. Miller [his superior] tell you to say if you got the objection, "I won't buy anything site unseen"?
- A. Of course Mr. Jones . . . we want you to see it and we make it quite convenient, as you heard [from the speaker]. We do have these monthly tours, we charter flights and we do want you to see it. We make it quite easy, and inexpensive for you to do so.
- Q. What did Mr. Miller tell you to say if a customer said he was not ready to purchase?
- A. Again, you use that six month refund guarantee as an offset (TR 7470-71).

### C. Customer's disadvantages

61. In comparison with this well-prepared and highly motivated<sup>51</sup> "land consultant" (as Respondent prefers to call its salesman) the typical purchaser may [82] own his own home but otherwise has usually had little if any experience with land sales and land law. He is invited to conduct this business in a social atmosphere. Moreover, his "defense" is affirmatively "disorganized" by a social setting where "wining and dining" is not just a figure of speech. Indeed, in contrast to the salesman—who is specifically warned by his sales training manual *not* to drink alcoholic beverages in such situations (CX 39V, CX 309R)—prospects are regularly served alcoholic beverages at Respondent's parties, both in the metropolitan areas where purchasers are first acquainted with Respondent's program and on tours to "inspect" Respondent's projects.<sup>52</sup> Respondent can hardly be oblivious to the natural and probable effect of even a little alcohol on such purchaser's judgment. [83]

### D. Brochures

62. Respondent's "organized offense" next provides its salesman with slick promotional brochures for dinner guests cleverly designed to direct a prospect's attention to the attractive core areas and improved lots of the particular project involved and thereby divert his attention away from the barren character of the unimproved and largely undeveloped parts of such project, *where the only lots for sale at Respondent's metropolitan dinner parties are located* (TR 903).

62.1. Consider, for example, one of Respondent's two principal Rio Rancho sales brochures, entitled "How To Live-Retire-Invest in the Sunny Southwest" (CX 30). Much space is occupied by pictures of Albuquerque's Spanish "Olde Town", Sandia Crest (a mile above the city) and other colorful scenes *outside Rio Rancho* (e.g., CX 30B-E, L-M, O, S). As for *Rio Rancho* itself, there are generally two sorts of pictures:

<sup>51</sup> Respondent reported in 1969 that commissions including the salesman's share, were averaging 15 percent of sale price (CX 4J).

<sup>52</sup> One of Respondent's witnesses testified:

I believe we normally set up the arrangements for dinner and cocktails with the restaurant. I think it was about two drinks per person.

(TR 20403). This statement was made with reference to tour parties but we know no reason to doubt that the same standards of generosity applied at similar dinner parties in the metropolitan areas of the North, e.g., New York (TR 5224, 7527); St Louis (TR 9081); and New Jersey (CX 111A, D). For other references to serving alcoholic beverages at Respondent's parties, see TR 5026 ("Q. Did she tell you she liked what they had seen down there? A. She liked the wining and dining they did for her.") TR 5067 ("... they wined and dined us for the days we were there.") TR 9254 ("a cocktail party"); TR 9543 ("Q. Nobody forced them to attend the cocktail party, did they? A. No, sir, but they came.") TR 20371 ("dinner and a cocktail party," "all meals and cocktails.") TR 20394 ("cocktail parties"); TR 20402 ("cocktails" were included in package price for tour); TR 20403 ("[T]he New Yorkers seem to drink more than the Mormons do. We try to hit a happy medium.") Note also the employment of cocktails at a meeting of company officials with dissident buyers in the vicinity of York, Pennsylvania (TR 17540-41).

(1) Most pictures portray attractive homes, gardens, recreational facilities and other indicia of civilization, all necessarily located in the small "core" or "built-up" area of Rio Rancho (CX 30A [Figure 7] F, H, I, J, M, N, Q, V, W, X), without ever revealing what a relatively small part of the whole is characterized by such homes, etc.—or, indeed, that *any* part of the rest is not like this.

(2) A goodly part of the rest of the pictures in this brochure are of the apparently broad, blue Rio Grande River and the shady green picnic spots along its banks (CX 30F, K, N, P, R, S, T), no more than three miles of which adjoin Rio Rancho Estates and none of which is even visible from most locations in the subdivision.<sup>53</sup> [83.1]

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<sup>53</sup> This was an observation of the Administrative Law Judge during his views of the project. See CTX 2.

Initial Decision

102 F.T.C.

Figure 7  
(from CX 30A)

IND 6

## FACTS & FIGURES

*Advantages of acquiring a homestead in the suburbs of sunny Albuquerque, New Mexico, for Relocation - Retirement - Investment.*

- ★ How you can acquire a homestead in the Albuquerque area on easy terms or just a few dollars monthly.
- ★ Why the Southwest is the fastest growing region in the U.S. today.
- ★ Why Albuquerque is called "The Climate Capital of the Southwest."

**HOW TO LIVE - RETIRE - INVEST in the SUNNY SOUTHWEST**

**Rio Rancho Estates**  
New Mexico  
A MASTER-PLANNED COMMUNITY OF AMREP CORPORATION, A PUBLIC COMPANY LISTED ON THE NEW YORK STOCK EXCHANGE.

Cop. Rio Rancho Estates, Incorporated

[84] *Out of a total of 24 pages there turns out to be only one page in this brochure which pictures the hinterland that Respondent's dinner guests are being asked to buy.*<sup>54</sup> The inevitable result is an erroneous impression that the many pictures similar to the happy, happy barbecuers on the patio of a house in a built-up area (CX 30A) [Figure 7] are the *norm* and the "tremendous expanse of nothing" out in the hinterland (TR 5537; CX 30Q) is *exceptional*.

#### E. Motion pictures

63. Respondent's "organized offense" also makes available to its salesmen the incalculable assistance of motion pictures which start the intensive indoctrination of the evening at Respondent's dinner parties. One must actually view these quasi-documentary color films like "Albuquerque's West Side Story" (CX 168); "Eldorado, A Gift Of The Sun" (CX 172); "Something New Under The Sun" (CX 174) and "The Race For Space" (CX 170)—in order to appreciate how well they are done. As with the brochures, however, what these films show has precious little to do with the largely undeveloped and undevelopable hinterland.

64. Complaint Counsel also press lesser deficiencies about Respondent's movies. They see deception in Respondent's use of a Chamber of Commerce-type organization of which Respondent was a member to front for it as producer of a promotional film to the making of which Respondent was the largest contributor. They further object to Respondent's editing out shots of competing developments when it used the resulting film at its own dinner parties (CCPF 240-41).

64.1. They also see deception in the making of another of Respondent's promotional films, "Eldorado, A Gift Of The Sun", where the not-very-green grass of the Santa Fe country got an artificial assist from a spray of green paint before the picture was shot (CCPF 215). [85]

64.2. These seem like fairly minor matters and we are loathe to clutter up the record by mentioning them. However, we have no doubt that the charges are true and they do illustrate well the extent to which Respondent goes in planning its high-pressure and deceptive sales offense.

#### F. Oratory

65. Respondent's "organized offense" then supplements these literally "moving" pictures with oratory of a more old-fashioned kind by Respondent's sales executives or ranking salesmen. Again, one of

<sup>54</sup> Even that page is mildly deceptive. It is captioned: "Other views of the property *before the march of development starts*" (CX 30Q) (emphasis added). A funeral procession might afford a better analogy.

these "podium speeches" must be heard to be really appreciated. The scripts are carefully prepared by headquarters in New York and distributed from there to the field, to be followed exactly (TR 886, 3881, 4695, 7490, 7627), except for very minor variations, if necessary, to inject some of the speaker's own personality (TR 893, 3994). Such speeches, like the brochures and movies that preceded them, are concerned with everything but what they are selling—undeveloped lots of land. If the appeal is successful, the audience is raised to the proper pitch of interest and excitement.

#### G. Peak excitement

66. This is the critical time of the evening when the prospects will be turned over to their "land consultants" (salesmen). They must be properly prepared. Urging his salesmen to applaud heartily when a company speaker completes his presentation, Hollander explains:

... [W]hen that speaker says 'thank you very much' you applaud loud and clear. Let's practice it right now: 'Thank you very much.' [Applaud]. Loud and clear because that puts money in your pockets. *You create in that room an electricity. You create an aura that the people cannot understand. When they walk into that room they have a feeling of something happening and they want to get in on it* (emphasis added) (CX 108C). [86]

The whole aim of an "organized offense", he further explains, is to work customers up to a high-pitch of emotion and then quickly sign them up before this emotion state dies away.

Selling is emotional. It's like making love. *You bring the people to emotion, to the peak of emotion, and then you sign them up* (emphasis added) (CX 108C).

67. That such a deliberate effort to inhibit thought by creating emotion can be very successful is evidenced by the testimony of a consumer here. Cross-examined as to how he could have gone ahead and bought a lot if he had really felt (as he said) that a moving picture of one of Respondent's subdivisions was misleading, Consumer Weber could only say:

*Sometimes you get carried away. You are easily swayed* (emphasis added) (TR 8957).

\* \* \* \* \*

They go through this so fast and so briefly at these dinners and even after we get out and select the lot we are *so excited* about purchasing it, I am afraid we didn't—we were guilty of not reading it correctly; not taking the time for it (emphasis added) (TR 8759-60).

## H. "Holds"

68. In the creation of excitement as the time for signing up purchasers arrives, Respondent's "organized offense" is at its best. All salesmen have so-called "allocation sheets" which list the only lots available for sale at this particular party on this particular night. This is intended to create an illusion of scarcity.<sup>55</sup> If a salesman can [87] evoke a spark of interest in a particular lot—and perhaps even if he can't—he is taught to call out a "hold" on that lot (by number) so that the lot will not be sold to someone else until the salesman's customer has had a chance to make up his mind about it. Theoretically, the purpose of this exercise is to avoid confusion and duplicative purchases. Actually the purpose is to create general excitement at a critical moment, as the evidence makes quite clear.

69. Respondent's sales training manual lays it right on the line:

## Call Out A Hold

*Help create excitement. Build it up to a real sales climax (emphasis added) (CX 39-O, 309V).*

One of Respondent's former sales managers testified in somewhat more detail:

Q. Now, when you finished with the close portion of your presentation, what happened immediately after you were finished?

A. At the close of my presentation we would have a calling of the holds.

Q. How would that work?

A. It was the job of the land consultant that was sitting at the various tables with the prospective customers, with the people invited, to call a hold, and the hold would mean he would jump up and raise his hand and create a lot of excitement and enthusiasm in the room and said he would like to have a hold and refer to a number, he would say, 'Mr. Bondy, I would like to call a hold on number 2, and number 2 he means he wants to put a temporary hold on that particular property that is indicated on the allocation sheet. It's very difficult to do it without an allocation sheet. It [88] means he is going to tie up, temporarily, without any commitment, a piece of property that was indicated on this particular form.

Q. Why do the salesmen do this?

A. To create excitement, to create an urgency.

Q. Were they told to do this?

A. It was part of our training.

JUDGE TEETOR: You mean you were told to do it, and you told others to do it?

THE WITNESS: Yes. (TR 7499-7500)<sup>56</sup> [89]

<sup>55</sup>The Sales Training Manual on "Allocations" reads: "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 39V, CX 309R) (emphasis added).

<sup>56</sup>Bondy subsequently added:

Q. Did you ever discuss the use of holds in the time that you were employed at AMREP and ATC?

A. When you say discuss the calling of the holds, with whom?

Q. The salesmen and managers.

A. Very much so.

(footnote cont'd)

For passing references to the use of "holds" at Respondent's dinner parties, see TR 885-86, 3882-83, 4497-4500, 4675-76, 6243, 10625-26 and CX 108L. [Similar use of radioed "holds" and "deletions" during physical lot inspections at a subdivision site is dealt with below under the heading of "tours".]

### I. "Deletions"

70. In addition to calling "holds" as a temporary "protection" for customers, salesmen have also been instructed to call "deletions" from the allocation sheet when a customer finally decides to buy the lot in question.<sup>57</sup> An ex-salesman explained the distinction between "holds" and "deletions":

The salesman did call holds on a particular piece of property he thought would be something they could talk about, to a particular couple that he had chosen. They were then taken, if there was a deletion, if they did get a customer to go along, they would call a deletion. *This was done for general motivation in the room* and, well, that was it (emphasis added) (TR 3889).

71. There is some evidence that "deletions" may be falsified. The same former sales manager testified that about once a week such a thing happened:

. . . [S]ometimes to create enthusiasm, to add credibility to the product, we did call deletions that were not sold. . . .

For example, let's say a salesman had a couple at the door and he was with them a long time and he couldn't make a sale. He would walk them to the door and when they got out of earshot he would say [to the salesman up front] "Would you please delete item so-and-so?" and he [the salesman up front] would delete something. The code word was "please", which would let the [90] salesman [up front] know it was not an actual sale. It was, again, to add credibility to the fact that the people that walked out didn't actually walk out of the room (TR 7512-13).

We do not doubt that such instances of abuse happened but we are more concerned with the normal use of "deletions", like "holds", to raise the emotional temperature of the room to the boiling point.

### J. "Now or never"

72. With excitement about as high as it is likely to get, it now becomes the job of each salesman to "close" a deal with the couple or couples at his table with whom he has been getting acquainted during dinner, movies, speech, etc. If such a deal can ever be brought off, this

Q. What was the reason for using holds?

A. The testimony that I just gave: so there won't be double decking; and another very important reason was to create urgency, to create excitement (and) enthusiasm in the room (TR 7588).

<sup>57</sup> One consumer apparently confused the two terms "hold" and "deletion" (TR 4180).

is the time to do it—and the opportunity will not last long because fires do go out. As the sales training manual puts it:

*Close while they're hot* (emphasis added) (CX 39R, CX 309-O).

And a former sales manager explained the reason quite simply:

*This is the type of sale that if you do not make it that evening, you do not make the sale* (emphasis added) (TR 10939).

Similarly, a question to ex-salesman Kimmel about anything he had said from the podium that would encourage people to make a buying decision that night, elicited this simple response:

*The entire program was geared to that goal* (emphasis added) (TR 3899).

73. So important does Respondent deem it to “strike while the iron is hot” that its sales training manual teaches its salesmen—after verifying the prospect’s [91] ability to pay his interest in investment or residence, etc. (CX 309F)—to “get down to brass tacks” immediately:

Bring out an agreement. Start filling in the specific allocation at the specific terms.

*Customer:* Don’t write that up for me! I haven’t decided yet!

*You:* Let me show you what it looks like on paper. If it’s not to your liking, we’ll just tear it up. You’ve nothing to lose (CX 39L, CX 309-I).

#### K. “Assuming the sale”

74. This technique of preparing a contract for signature even before any agreement is reached is sometimes called “assuming the sale” (TR 7501) and it reflects the concern felt by Respondent’s marketers lest mere mechanics delay and thus endanger getting the customer’s signature on a land contract,<sup>58</sup> once the customer is ready to sign up. The ever-colorful Sales Manager Hollander, in his taped training session elaborates revealingly on how to prepare properly for a fast closing. His advice is worth reporting in detail:

Now, gentlemen, I’m going to show you how to close. And I don’t want you to ever forget this again, because you have. Mr. Smith, be good enough to have to get me a contract, please, and I’m gonna show you how to close. A blank contract, just any one at all.

\* \* \* \* \* [92]

<sup>58</sup> The contract in question is a form contract prepared by Respondent. See CX 152 (Oakmont Shores); CX 154 (Silver Springs Shores); CX 155 (Rio Rancho Estates); and CX 106 (Eldorado at Santa Fe).

[Mr. Hollander] Watch. You already have the people sitting at the table. The speaker from the floor has already shown them a reservation form and contract, purchase agreement. The speaker has already shown them an allocation sheet. We'll just use this as a sample, just right now. The speaker's already shown them an allocation sheet, a price list if you will, and a contract, if you will. From the floor, we've put it in their hands. They've held it. It is no longer a stranger to them. This is not a stranger to them, this is not a stranger to them, because the moment they have come to the door, somebody at the door says, "Would you please sign your name here on our register." And then when they sit down, then you use the profile sheet, again, you put a pen in their hands, and you ask them to fill out the profile sheet. You use the profile sheet.

\* \* \* \* \*

[Mr. Hollander] The profile sheet. Whether you fill it out or they fill it out is immaterial. Do it your way. Continue to do it your way. Actually, what you are doing, you are preparing the people to recognize the fact that you are going to do writing. So they're accustomed to it. They had a pen in their hand. Now, they see you with a pen in your hand. It's no longer a stranger.

\* \* \* \* \*

Let's see, today's is the . . . what's today's date? It's the 1st of October, that's right, 1968.

Now, the unit that we're talking about is Unit 10, and the size is one acre, and the purchase price over here. Let's see, is \$2,895, and the total price of \$2,895, [93] and the net purchase price, of course, because there is no discount on this. And the downpayment is \$145. Let's see. \$145. That's \$5. That's \$7. That's \$2,750.

Mr. Jones, would you please check my arithmetic over here to see if I did that correctly.

[Voice] Yeah, that's right.

[Mr. Hollander] Now, Mrs. Jones, I imagine you're the one that handles the pay check, you know, and everything like that.

Ah, usually we have our payments fall due on the 1st, 5th, the 10th, the 15th, 20th, 25th, or the 30th of the month. If you were to do something like this, which one of those days would you like your payments to fall due on?

[Voice] The 15th.

[Mr. Hollander] That's \$35 a month, payable on the 15th of the month. This is the first. I can give you 45 days. So, I can give you until November 15th, before you have to make a payment. Isn't that nice? Now, you're, now I know your last name is Jones, and that's J-O-N-E-S, isn't that right? Now do you use a middle initial when you sign checks? What is the middle initial? [Unintelligible] I see. And your first name is John. Mary, do you use a middle initial when you sign checks?

[Male voice] No, just Mary.

[Mr. Hollander] Just Mary.

[Laughter]

And your correct address right here on this card. And that's your correct zip code number and everything. Read it off to me, would you? While I . . . [94]

[Voice] 1357 Harlan, 80212 is the zip code.

[Mr. Hollander] 80212. And the town is what?

[Voice] Denver—Now, I'm not buying anything tonight.

[Mr. Hollander] Of course not.

[Voice] I don't know why you're filling that out now.

[Mr. Hollander] Well, because this is very simple. This is my job, and you certainly

wouldn't want my manager to come over here and see me not doing my job and getting me fired, would you?

[Voice] No, of course not.

[Mr. Hollander] That's the only reason I'm filling it out. What is your telephone number?

[Voice] 238-5309.

[Mr. Hollander] And the zip code?

[Voice] 80212.

[Mr. Hollander] No. I didn't mean that. I meant the area code.

[Voice] 303.

[Mr. Hollander] See, now our code number in this office. What is our code number, Mr. Smith?

[Mr. Smith] 104.

And the brokers C & A Realty Corp., and my name is Hollander, H-O-L-L-A-N-D-E-R is the way you spell my name. And my number is 01. Now, if you were to do this, you would do it together? You and your wife, together, in joint tenancy, wouldn't you? Now, I have to give you a restrictive covenant. This is the list of the restrictive covenants that I have to give you. [95] So, would you please initial over here that I have given you these restrictive covenants. Right over here. Just initial right here.

[Voice] Well, I'm not signing anything tonight.

[Mr. Hollander] No, just initial the fact that I've given you these restrictive covenants.

[Pause]

[Voice] Well, this is the . . .

[Interrupted by speaker.]

[Mr. Hollander] Okay, now let's stop at this point. I will again repeat my offer. I will give any one of you a \$5 bill, any one of you a \$5 bill, any time somebody does not permit you to get up to that point, providing you give me a \$1 for every one who does. Do I have the names of the people who want to take me on on that? Mr. Smith. Those who want to take me on on that, would you stand up and give Mr. Smith your names. Then really and truly there is no reason for you not to fill out our contract every night, is there?

Really and truly. Do you know that these contracts cost us money? Do you know that they, we don't get them for nothing. And do you know that they are very valuable to us and we don't want you to waste them because any time anybody wastes contracts in this company, it's gonna be a terrible thing, and we may even get that guy fired. And do you know how you waste them? By not filling them out.

Fill them out every night. That's the first thing you do before the map comes out, before any further explanation, before anything else because . . . ladies, if you'll forgive me, I must tell you this. [96]

*Selling is emotional. It's like making love. You bring the people to emotion, to the peak of emotion, and then you sign them up. Now, how is it best to bring them to the peak of emotion? Like I just did? By having it all ready for them to put their signature down? Or by bringing them to the peak of emotion and then start filling out a contract, and then watch that enthusiasm wane. Because once it gets to the top, it can only go in one direction, and that's down. So, you sit at that table, and when the speaker finishes, you applaud, you get up, you call your hold, you sit down, explain the hold, and fill out the contract. I have seen salesmen sit at a table with two couples and hand one to this woman and one to this woman and one to this woman and this woman a pen and this woman a pen. Now follow along with me, and you write what I tell you to, and they*

do it. And they do it. If you don't believe it, try it some night (emphasis added) (CX 108 I-O).

#### L. *Closing fast*

75. The strategists who laid down the rules for Respondent's "organized offense" were convinced that the time for parlaying excitement into a contract was usually remarkably brief. The sales training manual states categorically:

It is mandatory that the close last no more than 10 minutes—sometimes 15 minutes at the evening party. If the sale is not consummated in this period, it is time for a T.O. (CX 39T, CX 309Q).

Elsewhere the same authority again stresses that:

Time is of the essence at a party. You cannot spend all night on one customer. So, if you haven't moved into an effective close within 10 minutes or so, get somebody to "T.O." for you—speaker, manager or another salesman (CX 39P, CX 309M). [97]

#### M. *"T.O." system*

76. The "T.O." system just referred to was explained by one of Respondent's employees as follows:

"T.O." is a takeover. Let us say you were sitting with a couple and for some reason you had a problem communicating with them or they did not like the length of your hair or something; anyway you had a problem with them. You would invite another salesman over. For instance, let us say a man was interested in housing and you knew you were not really getting along with him too well. You would introduce another salesman: "This is Mr. So and So. He is our housing expert, Housing Manager". He would sit down and he would take a shot at them and see if he could do anything with them. In the meantime, you get up and go get some coffee or something. That is basically how it worked (TR 10341-42).

Another of Respondent's employees had had similar experience:

Q. . . . [I]f you had not made a sale, what did you do next?

A. We tried to refine the problem that they had in their mind. Then, if it was a financial one—or whatever it was—T.O. (bring in another salesman to consult with them) and say, "He is an expert in", if it was money, "financial matters (and) I think he could be a great deal of assistance to you and help you help answer your questions on that."

Q. Was the person that was brought in—this financial expert—was he in fact a financial expert?

A. He was just one of us. We would take turns rotating. But it was just a way to make them feel comfortable if somebody else was going to come in. [98]

Q. If the T.O. was unsuccessful, what was the next thing to be done?

A. Well, if in that salesperson's analysis this was a hard person to sell but still a potential (buyer), the Sales Manager could be brought in (TR 10301).

77. A third employee of Respondent described the tactics employed by him as the second (T.O) salesman:

Q. Were you ever the second salesman in such a situation?

A. Oh, yes, many times.

Q. And what did you say different when you were the second salesman?

A. Well, the pad was there, yellow pad that we used with the felt pen. I could see what ground the other man had covered so I would not go back over the same thing. It was nice to know anyway when you get to the table and one would go on to something else. Sometimes I would ask them if they understood this other situation, if I was lost for words or something. But as a rule I closed a lot of them as the second salesmen. If the salesmen had only covered one or two items [pitches] we would go into three or four but we did not handle them any further than that (TR 9662).

78. Respondent's sales training manual gives salesmen this "warning":

Don't wear the customer out before you call in the T.O. man. Make sure he has a starting point. The best time to ask his help is when you have run into a specific obstacle that you cannot overcome. Then tell your helper before he reaches the table. *T.O.'ing is especially good when a prospect is indecisive* (CX 39P, CX 309M). [99]

In this passage Respondent recognizes that the mere pressure of numbers, which is commonly known as "relay salesmanship"—at least in the context of an "organized offense"—can have some effect on an undecided customer at the critical moment when Respondent's "organized offense" is about to succeed or fail.

79. In the relatively brief period of no more than half an hour from the end of the speaker's presentation (CX 39P, T, CX 309M, Q), the sale is either made or not.<sup>59</sup> Assuming that a sale has been made, Respondent's job is to keep it intact. This is not an easy thing to do, as we are about to see, but the burden has now shifted: all the forces of inertia will operate hereafter to protect the integrity of the sale, despite two serious challenges which it must undergo.

#### N. *Seventy-two hour cancellation privilege*

80. The first and less important challenge comes quickly. The occasion is a customer's option, pursuant to law and contract, to withdraw from the transaction anytime during the first three days after signing up. 24 C.F.R. 1710.208(f)(3) gives an interstate land developer a choice between (1) furnishing a prospective buyer with a copy of the developer's governmentally-required "property report" at least 48 hours before a purchase or (2) waiting until the purchase and giving a copy to the purchaser with an option to back out of the deal for 72 hours<sup>60</sup>

<sup>59</sup> ("This is the type of sale that if you do not make it that evening, you do not make the sale.") (TR 10939).

after receiving the report. This second option is embodied in Respondent's form "Reservation and Purchase Agreement" (e.g., CX 155A).

81. Respondent apparently finds it better strategy to take the second option, thus keeping prospective purchasers in ignorance of the considerable information to be found in a property report until they arrive at the dinner party, where they are not very likely to read this [100] lengthy and complex document and Respondent's salesmen are not very likely to encourage them to do so.<sup>61</sup>

82. Having opted for keeping the prospect ignorant of the contents of the report until the time of purchase, Respondent must now worry about whether the purchaser may, in fact, decide to withdraw within his 72 hours. Happily (from Respondent's viewpoint), the basic situation has not changed: the purchaser still has not seen the site he bought. The excitement may be gone but that is now less important since Respondent has the purchaser's signature on the dotted line.

#### O. "Buyer's remorse"

83. There is such a thing, however, as "buyer's remorse" and Respondent's "organized offense" is ready for this, too. A former sales team captain explained "buyer's remorse" this way: [101]

Q. Let's talk about buyer's remorse. What is buyer's remorse?

A. By buyer's remorse, it simply means that a customer came to a dinner and at that particular time he was very enthusiastic in what he saw, and he made a commitment. And the commitment was that he was reserving a piece of property. And usually a buyer's remorse would take place within the first 48, maximum 72 hours. But I would say in 85 percent of the cases, you would hear about it the following day.

Q. What would happen in a buyer's remorse situation, what is a typical situation?

A. All right. The buyer would call you the following morning in the office and he would give you what I used to refer to at that time as a lot of excuses as to why not.

Q. Why not what?

A. Why he wants to get out of his previous night's commitment of the property that he reserved or purchased with Rio Rancho at the dinner party. It was my job, as a team captain, the following morning to reconfirm with the client; if I knew his business number I would call him at business, but most of the time you would not be able to do

<sup>61</sup> A property report is a fairly lengthy and complex legal document. See for example CX 162 (Rio Rancho Estates) and CX 164 (Silver Springs Shores). One very literate consumer tried to read one during a dinner party but didn't get beyond page 2 (TR 1794) and one salesman testified that it was "very rare" for a property report to be read in its entirety (TR 3978). Moreover, Complaint Counsel maintain, with some support from the record, that property reports have been effectively hidden under stacks of other documents (TR 10337), stuffed into literature kits sent home with purchasers (TR 7512, 9664-65, 10320), and even placed under bread boxes (TR 7486) (although the "bread box" witness agreed that this was not Respondent's official policy) (TR 7486). There was also some evidence that property reports were gotten to purchasers late (in a subsequent mailing) or even not at all (TR 1912, 1938, 4299, 5135, 5140, 5210, 5388, 9925, 10658, 14559), but the ultimate fact was left in doubt by Respondent's regularly initialed receipts for reports and other evidence cited in RRB at 247. Complaint Counsel are certainly right about the absence of any mention of the existence of property reports in the speaker's script for Respondent's dinner parties. (See, e.g., CX 36 and CX 37). It seems a fair inference from all the evidence that Respondent's excitement about its lots did not extend to property reports and that while it did not officially condone their effective concealment at its dinner parties, it did nothing about it, either, despite our reasonable certainty that some effective concealment did occur.

this, or we would talk to the housewife. And it was the manager's job to say, all the papers have been sent, some reassurance; well Mrs. Smith, this morning I spoke to Albuquerque, we are forwarding all the papers down there. And the receipt that we would give the customer that night was a temporary receipt; the official receipt came with his payment books and it also had the corporate seal on it. And it was usually signed by an officer of the company, the vice-president, comptroller, or even someone on the property that was in an executive position. [102] And he would get another copy with the seal on it, which was exactly the same copy that he signed, because that was a snap-out form with about four or five copies inserted.

Q. What happened in the typical situation of a buyer's remorse; let's get back to that.

A. He would call up and say, look, I don't have the money. And after I thought it over, it is something I cannot afford. Your greatest objection was money, that he just did something that he realized that he could not afford. And you must remember, during these type of sales transactions—

Q. Just, Mr. Bondy, is it correct that there were cases where a buyer would call up the day after the sales presentation, the day after he signed, and say he wanted to get out, and in fact you permitted him to get out?

A. Well, I had no choice, really; I had no choice. In the first place, it was the law, there were these rescission notices where a customer had three or five days, they change from time to time. One was a State law, one was a Federal law. I think the Federal law gave a little more time than the State law, or vice versa. So, by law if the customer called you up and said he is cancelling, plus the fact, if I recall correctly, also at the back of the contract, some piece of paper we had to give to the customer, there was this rescission thing, where he simply signed it and mailed it back to us, that shows that he cancelled. But, in most cases, the customer paid us by check and, as most people that are displeased with something, they call up the bank and they will stop payment on the check. [103]

Q. So that if somebody decided to cancel within the cancellation period, and he called you up and told you about it, he was permitted to cancel?

A. Yes.

Q. And that was company policy, is that right?

A. Yes.

84. The way Respondent handles "buyer's remorse" was explained by Sales Manager Hollander to his salesman as follows:

You [salesmen] are cheating yourselves if you do not invite these people back to a party the very next morning. And you get them on the telephone, "Mrs. Jones", cause usually you'll get the woman, the husband is not there. "Mrs. Jones, this is Sid Hollander. I spoke to you last night, do you remember at the party? I just want to call to thank you very much for coming to our dinner, and there's one thing I did neglect to tell you when you were there. Do you know that now, as one of our investors, that you are entitled to come to any one of our parties anytime you want and get a dinner, and we will pick up the tab? And not only that, that you may bring a guest, your guest, and we'll even pick up the tab for your guest. By the way, we are having another party down here at the Holiday Inn on the such-and-such a date. Can you and Mr. Jones make it? And can you bring your neighbor?"

That's your telephone call for tomorrow morning, that's your telephone call for tomorrow morning, you smack her right between the eyes, and you know just ten minutes ago, or an hour ago, or two hours ago, or last night when they climbed into bed together: "Do you know, honey, we shouldn't have done that. You know we shouldn't have involved ourselves with that. [104] Oh, God, what'd we do." You know,

buyer's remorse. Did you ever hear of it? Did you ever go out and buy that new car, and that you've been waiting to buy for months and months and months, and then you buy it, and you get behind the wheel, and you drive out of that show room, and you're going down the street, and you're thinking of \$3,000 worth of payments. Oh, my God!

So, if it happens to you, why shouldn't it happen to them? It's buyer's remorse. The only difference is that you can look out that window, and you can drive up to your house, and your neighbor comes by and says, "My, what a beautiful car. Lots of luck." So, you've got the physical automobile to eliminate the buyer's remorse. So, you now get on the telephone the next morning, and you now say to Mr. and Mrs. Jones, or whoever you get on the phone: "Do you know that you can come to any one of our dinners any time you want, and we'll pick up the check?" And, buddy boy, have you eliminated buyer's remorse? Bing. "Any time your old man feels like taking you out and enjoying some of that capitalist muck, Mrs. Jones, why give us a call, and we'll send you to one of our parties, and you'll have dinner."

#### P. *Six months cancellation privilege*

85. The second and more important challenge comes sometime within six months after purchase. The occasion is another option in Respondent's "Reservation and Purchase Agreement," this time for the purchaser to cancel out and get his money back if he makes a personal inspection and—for any or no reason—he just doesn't like it.<sup>62</sup> Since [105] most purchasers at the dinner parties up North are asked to buy a lot site unseen, such a cancellation option is obviously the greatest importance in persuading dinner guests and any other purchasers to enter into an agreement. But the price of this important sales advantage is the risk that once the site is seen the purchaser will back out.

#### Q. *"Moment of truth"*

86. There is good reason for anyone to back out, particularly at Rio Rancho Estates. Most lot-owners who have been fed a diet of pictures of the attractive little built-up area of Rio Rancho (e.g., Figure 7, at p. 83.1 [p. 1432]; CX 30A) hardly fail to be somewhat shocked and disappointed when they see the reality of the barren hinterland (e.g., Figure 8, at p. 105.1 [p. 1446]; CTX 36 or even CX 30P). At most locations in Rio Rancho, in the Administrative Law Judge's experience,<sup>63</sup> one scans the barren horizon for miles in all directions without seeing human habitation or even power lines that might herald a future advance. One consumer witness said simply: "[I]t was desert" (TR 2397) (emphasis added). Another noted that "[y]ou really had to

<sup>62</sup> The Rio Rancho form contract contains the following provision. "Refund Guarantee. Buyer shall have six months from the above date [of purchase] to make a registered personal inspection of Rio Rancho Estates on a Company-guided tour and have every penny paid to Seller refunded if he is not satisfied in any way, provided Seller is so notified at the time of initial inspection on a form provided by Seller. . . ." (CX 155A) For similar provisions re the other projects, see CX 154A (Silver Springs Shores) and CX 106A (Eldorado at Santa Fe). The Oakmont Shores (CX 152) did not contain this "Refund Guarantee".

<sup>63</sup> With the consent and cooperation of all parties the Administrative Law Judge took several views of the subdivisions under investigation. A tape recording of a tour conducted by Respondent's manager at Rio Rancho Estates in 1976 will be found in CTX 2.

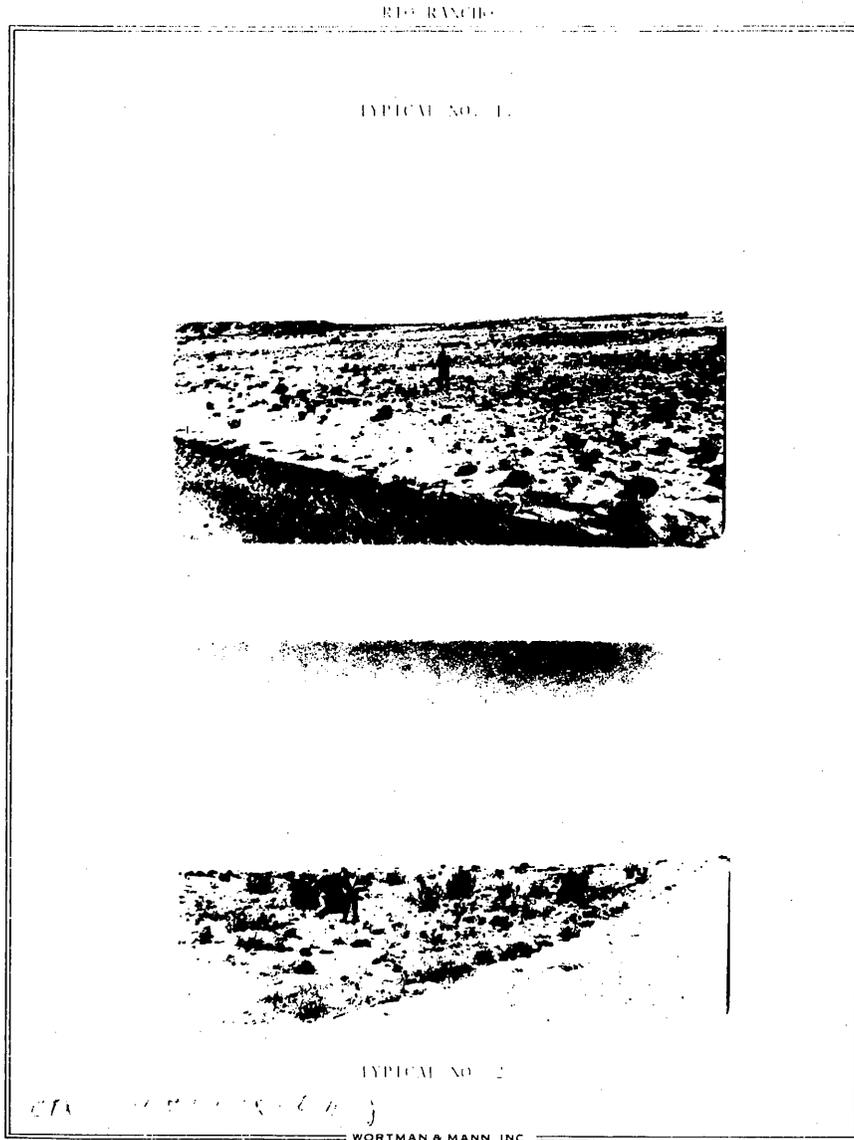
look hard to find the lot stakes" (TR 5537). A good idea of the reaction which many others must have felt is found in the testimony of Consumer Cuccinello:

Q. Did you see your lot?

A. Yes, we went there on the day before the last day [of an inspection tour]; a salesman took us out. [105.1]

*Figure 8*

(Photographs of Appraiser Mann Standing on Typical Lots #1-2 at Rio Rancho)



[106] Q. Who was that?

A. I really don't know his name.

Q. What happened when he took you out?

A. Well, he just showed us this property. It was a corner property and we were assuming it was ours and he said "This is your property". We got out of the car, looked around. *That was it. There was nothing more you could do. There was nothing more there.*

Q. Did he say anything to you?

A. In reference to what?

Q. Just in general.

A. No, he just let us get out of the car and walk around (TR 13550-51) (emphasis added).

87. Similar if less extreme reactions characterized the moment of truth at other subdivisions. At Silver Springs Shores, for example, Consumer Grimaldi described her guided trip out to see her lot:

A. We drove and drove and drove. We got to this blank piece of nothing with weeds up to here—(pointing)—on all ends.

Q. How high are you indicating.

A. I have never been to Africa but that is the closest description to bush country I could think of.

Q. Do you think the weeds were one foot high or two feet high?

A. The car had to drive through it to push it down.

\* \* \* \* \* [107]

Q. What else did you see at your lot?

A. *Nothing. Just blank, blank land with lots of high weeds.* The salesman could not find the lot itself. The signs were nowhere to be seen. He was looking for the block number and the lot number and he says: "This, I think, is where it is". Of course, when we saw it, we almost fainted quietly (quite away?) because it was nothing that we had in mind to see. I mean it was a very big disappointment, to say the least (TR 4788-89) (emphasis added).

88. In the face of such unfavorable reactions to the first sight of the site, it is surprising to learn what a small proportion of purchasers take the logical step of exercising their contract privilege to cancel out and get their money back. One of Respondent's ex-sales managers estimated that only five percent to 10 percent of all buyers who visit Rio Rancho to inspect their properties proceed to cancel out (TR 7582). Respondent's own records, which we see no reason to doubt in this respect, indicate a somewhat higher percentage of cancellations by inspecting purchasers: 13 percent of these who were on organized tours shepherded by Respondent's sales personnel and 31 percent of those who made the inspection on their own (CX 151L-M). It thus appears that Respondent has persuaded something like two-thirds to nine-tenths of the purchasers who come to see what they have bought that they should not cancel out—despite the barrenness, isolation,

largely undeveloped character and unpromising future of what they see. How has Respondent managed such a merchandising miracle?

### R. *Tours*

89. Many of the marketing techniques employed by Respondent to sign purchasers up at its dinner parties find their counterparts in the methods used to hold on to such purchasers after the parties. In the first place Respondent does not sit idly by, leaving its purchasers to make their own individual inspection trips. As early as the dinner party where the purchase takes place, buyers are told enthusiastically about Respondent's organized [108] airplane "tours" (TR 7646, 21275; CX 36-I) waiting to take them on a "mini-vacation" (CX 36-I, CX 456-I) to see the distant subdivision where they are to inspect their lots (RRB 210). A dinner speaker's script reads:

We wine you and dine you in some of the finest restaurants and night clubs. We really and truly, ladies and gentlemen, do show you one wonderful time (CX 36-I).

90. These tours are group affairs (commonly 120-185 purchasers at a time on a big chartered plane) at which a holiday mood prevails, perhaps even more than at the dinner parties (TR 5216, 7514). They usually last 2-5 days (preferably encompassing a weekend) (TR 1690, 20367, 21205). The tourists are put up in style at Respondent's Panorama Inn,<sup>64</sup> where there is frequent partying, including the usual alcoholic beverages (TR 7090, 20371) except when the tourists are on Respondent's guided tours of local sights such as Spanish Olde Town and Sandia Crest in Albuquerque and the famous horse farms and underwater wonders of Silver Springs outside Ocala (TR 20374-75; CX 456-I).

91. The tendency of such a holiday atmosphere and busy schedule<sup>65</sup> is patently to keep the tourists' minds off such mundane matters as inspecting their lots. Some time during this 2-5 day tour, however, Respondent does [109] give each tourist something like a half hour opportunity to see his lot. A local company salesman<sup>66</sup> drives the "HSO" (Respondent's abbreviation for "homesite owner") to the "homesite", where, as we have just seen, the moment of truth occurs, with results which differ from individual to individual.

<sup>64</sup> Respondent's hotel at each of its subdivisions is called "Panorama Inn".

<sup>65</sup> Respondent's Counsel concede that the tour is a "mini-vacation" (RRB 210) and that consumers are "shown a good time" (RRB 210-11). Complaint Counsel claim the schedule is so tight that a tourist cannot even find time to look at competitive developments in the area (CPF 185) but Respondent's evidence was that there is slack time in the schedule and rent cars are available to anyone who wants to go off on his own (RRB 213).

<sup>66</sup> Although the buyer's salesman back home (in his metropolitan area) may accompany the tour to the subdivision, the buyer's dealings with Respondent at the subdivision are entirely through a *different* (local) salesman.

### S. *Consumer's decision*

92. In preparation for this moment all salesmen are instructed to leave their two-way radios on in order to communicate with headquarters and particularly to call "holds" on lots for HSO's who want to buy or exchange for other lots (still in the hinterland, of course). This is not an implausible explanation but the record strongly suggests that a more basic purpose is to create an impression of bustling trade in lots much the same way "holds" are used to create excitement at Respondent's dinner parties. There is some evidence that salesmen abuse the system by calling in phony "holds" (as sometimes at the dinner parties) but we think the normal use of "holds" to create an atmosphere of active trade in lots and thereby help the salesman over the customer's moment of truth is more significant than occasional abuse of the system.

93. If the moment of truth does precipitate thoughts of cancelling out on the part of the disillusioned "homesite owner", Respondent's "organized offense" calls for reference to the building exchange privilege. An example will illustrate this. Pressed as to why a newly disillusioned "HSO" should continue to hold on to an unpromising site, Respondent's salesman responded:

Because when (you) buy a piece of property at Rio Rancho, regardless of its location, it's like buying every piece of unsold property at Rio Rancho because of the exchange privilege, and they had their [110] choice of any area that they wanted to go into when the time for development came. So it was really of no consequence when development was taking place in their unit because they didn't have to wait until that time to be able to derive the benefit from the use of their property (TR 21155).

94. There is, of course, more than one way to skin a cat. A disillusioned "HSO" may also be kept in line by a convincing assurance—necessarily deceptive—that development is rapidly approaching and will be at this site before long. [The evidence as to employment of such deceptive assurances by Respondent's salesmen is reviewed hereafter.] And, of course, a buyer for investment may hold on even if barrenness and isolation affect him emotionally as long as he is afforded ground to believe the investment will somehow pay off, anyway.

95. By deceptively dramatizing the active trade and profit potential of these lots, by deceptively suggesting recourse to a practically valueless exchange privilege, by deceptively assuring customers that civilization is approaching swiftly—by these and other means most of Respondent's customers are somehow persuaded *not* to cancel out and get their money back. Whether such deceptions would be enough to achieve this result in the absence of the holiday/tour experience and

the feelings of well-being and loyalty to Respondent created thereby is a question we need not try to answer. [111]

*Respondent's Deceptive Practices*

I. GROWTH REPRESENTATIONS

96. We turn now from Respondent's marketing methods and particularly its high-pressure tactics to the substantive deceptions which it employed so successfully to convince prospects that buying a building lot at one of its subdivisions was a good idea. These substantive deceptions fall into three major categories: (1) misrepresentations as to the advantageous location and resultant growth potential of each of its subdivisions; (2) misrepresentations as to its subdivisions' investment value and profit potential; and (3) misrepresentations as to the state of development of each subdivision. Within each category we deal with the evidence as to each subdivision separately.

A. *Rio Rancho Estates*

97. Probably the most important part of Respondent's scheme to unload nearly one hundred thousand acres of barren New Mexico land at its hundreds of "dinner parties" in dozens of cities up north has been its theme that the Albuquerque area has had and will continue to have an extraordinary growth and that for certain reasons, to be discussed shortly, that growth must *all* be in the direction of Rio Rancho. The success of this theme of the scheme is evidenced by 75,000 buyers who have been intrigued enough to pay hundreds of dollars for "homesites", site-unseen. Our question is whether Respondent's sales campaign that achieved such success has been expressly or impliedly deceptive or otherwise unfair. We discuss first the quantum and then the direction of Albuquerque's likely growth. [112]

1. Magnitude of Albuquerque's growth

98. Respondent's promotional materials, its speeches and its salesmen all touted the growth of Albuquerque as extraordinary. A few examples of the language used are "booming", "growing fast" (TR 4643); "growing at an unprecedented pace" (CX 81, CX 203); "population explosion" (CX 203); and "wonder city of the Southwest" (CX 30T). Perhaps the most colorful phrase used is "bursting at the seams" (CX 35C-D, CX 38E).

99. Such sales talk is not deceptive, however, because Albuquerque really *is* one of the fast-growing cities of America's sunbelt. We take notice that Census statistics published by the Department of Com-

merce<sup>67</sup> show the following population growth pattern for the Albuquerque standard metropolitan statistical area ("SMSA") in recent years:<sup>68</sup>

<u>Year</u>	<u>Population</u>	<u>Percentage increase over previous 10 years</u>
1960	276,000	80%
1970	333,000	20%
1975	385,000	15% (over 5 years)

The latest projection of metropolitan Albuquerque's future population by the Census Bureau's affiliate, the Bureau of Economic Research of the Department of Commerce<sup>69</sup> is as follows: [113]

<u>Year</u>	<u>Projected Population</u>	<u>Percentage Growth Over Previous Decade<sup>70</sup></u>
1980	369,000	11%
1990	423,000	15%

While Albuquerque's percentage rate of growth, as indicated by these figures, has been notably less since 1960 than during the earlier periods from 1940 to 1950 (110 percent)<sup>71</sup> and 1950 to 1960 (80 percent)<sup>72</sup> (when Albuquerque was turning from a small town into a big city), its continued healthy growth, though at a reduced rate, is real and we so find.

100. Respondent has not, however, been content to tout Albuquerque's growth in non-quantitative terms but has sometimes used illustrative statistics calculated to exaggerate the city's growth potential. For example, the 1961 version of a standard Rio Rancho promotional brochure on "How To Invest Profitably In Southwest Real Estate" estimated that Albuquerque's 1970 population would be 550,000 (or twice its 1960 population) (CX 393B; TR 3843). As it turned out, this was way off-target. The 1970 Census found Albuquerque's population to be 333,000 or only 20 percent more than in 1960.<sup>73</sup> [114]

101. Respondent's counsel argues that what concerns us here is not whether a prediction turned out to be right but whether it was reason-

<sup>67</sup> *Avnet, Inc.*, 78 F.T.C. 1562, 1563, fn. 2 (1971).

<sup>68</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1977*, p. 19.

<sup>69</sup> U.S. Dept. of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis, *Area Economic Projections, 1990 (1974)*, p. 76. The same source was used with minor modifications by Lusteck, Complaint Counsel's "real estate planning consultant" (TR 2645).

<sup>70</sup> Calculated by Administrative Law Judge.

<sup>71</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1952*, p. 16 (largest percentage increase of any SMSA in the United States).

<sup>72</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1977*, p. 19.

<sup>73</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1977*, p. 19.

able when made (TR 24073),<sup>74</sup> and we do not argue with the general corrections of such a proposition. However, such a serious discrepancy as we have here between projection and ultimate truth must prompt careful scrutiny of the reasonableness of the projection at the time it was made. In this instance it is plain from other references in the same brochure (CX 393) that Respondent assumed Albuquerque had doubled its population each previous decade<sup>75</sup> and cavalierly predicted that the same thing would continue through the coming decade:

... Albuquerque, which has gained 700% in population during the past 30 years now expects to add more people in the next 9 years than in all its previous history (CX 393V).

102. Confirmation that during the '60's Respondent was, indeed, basing its predictions on a simple double-every-decade assumption is found in a 1968 version of its standard "speaker's presentation" for dinner parties:

I'd like to pass along one final conclusive statistic. Albuquerque has established a historic growth pattern over the past 40 and 50 years, of doubling in population every 10 years. *By this estimate* Albuquerque's population by 1975 will be close to 600,000 people (emphasis added) (CX 38D).<sup>76</sup> [115]

As might be expected, this "projection" proved wide of the mark. Albuquerque's 1975 population in fact turned out to be only 385,000<sup>77</sup> instead of 600,000. Stated slightly differently, Albuquerque's total population *increase* between 1960 and 1975 (the approximate period covered by this complaint) was only 109,000 persons compared with Respondent's irresponsible doubling prediction, as late as 1968, that the total *increase* between 1960 and 1975 would be 324,000 persons.<sup>78</sup>

103. The wonders that a geometric progression can effect statistically are known to every school boy. Every school boy knows, too, however, that to maintain a geometric progression of growth becomes extremely difficult as the absolute numbers get bigger. That knowledgeable real estate professionals like Respondent's executives could really believe Albuquerque's population would automatically keep on doubling every decade is impossible to accept. Such a belief had to be as unreasonable as it was, in fact, wrong.

104. It obviously makes quite a difference to Respondent's "bursting at the seams" argument that during the whole decade and a half from

<sup>74</sup> ("[Y]ou can't look at things that were reasonable at the time retroactively for validation or invalidation purposes").

<sup>75</sup> Even the doubling assumption was not entirely accurate. While it is true that Albuquerque had more than doubled its population in some earlier decades, the rate of increase had fallen from 110 percent during the '40's to 80 percent during the '50's.

<sup>76</sup> Accord: CX 36H.

<sup>77</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1977*, p. 19.

<sup>78</sup> U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstract of the United States for 1977*, p. 19.

the founding of Rio Rancho to the filing of this complaint Albuquerque had a maximum spill-over potential of only 100,000 rather than 300,000 people. That Respondent well understood the critical importance of maximizing the potential spill-over is clear from its contemporary effort to shore up its irresponsible double-every-decade prediction by invoking—falsely—the blessing of the U.S. Census Bureau. The same 1968 “speaker’s presentation” just quoted continues: [116]

But ladies and gentlemen, the U.S. Government Census Bureau in Washington, D.C. is even more optimistic. They estimate that Albuquerque’s growth will accelerate at an even faster pace (CX 38D).

The script does not identify either the figure referred to or its documentary source. It could not. We take negative official notice of the fact that the Census Bureau makes no projections of future growth either for cities or for standard metropolitan statistical areas (SMSA’s). Respondent’s effort to fortify its sales talk by falsely claiming support of the Census Bureau reflects badly on the good faith and reasonableness of its “projections”.

105. At the hearing of this matter a great deal of time was spent developing alternative projections by others from whom Respondent might have borrowed its figures and also evidence of contemporary warnings received by Respondent about the unreliability of such alternatives.<sup>79</sup> At least as respects Respondent’s predictions during the 1960’s, however, we think all this is irrelevant, because the evidence just reviewed shows that borrowing other people’s figures was not the way Respondent came to its “projections”. *All it did was to adopt a puerile theory that Albuquerque’s population could be expected to double every decade.* That being the way Respondent got its figures, it seems quite immaterial whether others such as the City Planning Department were making valid or invalid alternative population studies.

106. We turn next to the period 1970–75, which differs from the period 1960–70 in that population forecasters by now had available the results of a decennial Federal census [117] in April 1970 (released preliminarily in June 1970 (CX 577) and revised finally in February 1973 (CX 576)). The 1970 Census surprised many people by revealing that Albuquerque’s population was growing at a much reduced rate: +20 percent for the decade 1960–70 vs. +80 percent for the decade

<sup>79</sup> In 1965 a consulting firm named Harmon, O’Donnell & Henninger warned Respondent that the Albuquerque Planning Department’s population projections were probably “too optimistic for Rio Rancho planning bases” (CX 231Q).

1950-60.<sup>80</sup>

107. The record here contains several post-census predictions by Respondent, mostly made around the year 1972, which purport to estimate the population of Albuquerque. We note preliminarily that these predictions are not consistent with each other, either from brochure to brochure or even within the same brochure. Thus, the 1972 version of one of Respondent's principal sales pamphlets called "This Is My Land" projected Albuquerque's 1980 population on one page at over "500,000" (CX 32G, CX 631-I) but on another page as "exceeding 600,000" (CX 32M, CX 631-0).

108. A subsequent explanation by Respondent of the sources for these inconsistent projections indicates that the projection of 500,000-plus population by 1980 came from a source referred to as "the Albuquerque Planning Department's Current Report, as cited by the Chamber of Commerce" (CX 631Z-1-A, CX 631X) while the 600,000-plus figure is explained only as coming from "population predictions—Albuquerque Planning Department" (CX 631X). Since there are no such "current reports" in our record and City Planner Carruthers confirmed (TR 10796)<sup>81</sup> that the Albuquerque Planning Department actually made no more projections of future population after completing a major study in 1962 (CX 251) and a supplement thereof in 1964 (CX 546), we must assume that the 1962-64 Planning Department projections are what Respondent's researchers were referring to. [118]

109. These 1962-64 Planning Department studies had made three (low, medium, high) projections of the Albuquerque SMSA's likely population in each of three years (1970, 1980 and 1985) (CX 251). The "medium" (most likely) projection for the year 1980 was 567,500 (try CX 251Z-56-7 and Z-89) and such a figure would provide a reasonable basis for "This Is My Land's" predictions of 500,000 or 600,000 people in Albuquerque by 1980—assuming that projections made in the 1962-64 period still had validity after the decennial Census of 1970. But the 1970 Census had by then shown that almost every pre-1970 prediction concerning Albuquerque's growth had been much too optimistic.

110. Thus the City Planning Department's medium projection for 1970 had been 388,100 and even its low projection was 336,400 (CX 251-Z-89). The 1970 Census, however, actually turned up only 315,774 people.<sup>82</sup> Accordingly a reasonable person would have concluded

<sup>80</sup> See page 112 above. [p. 1450]

<sup>81</sup> He explained that the University of New Mexico's Bureau of Business and Economic Research now supplies the Albuquerque Planning Department with population projections on contract. An example (forecasting a population of 468,000 for Albuquerque in 1995) is in evidence here as CX 551B. There are certain other BBER projections in the record but *only* as bases for opinions of Respondent's expert, Fawcett, and *not* as competent independent proof of the facts alleged therein.

<sup>82</sup> The preliminary count, released in June 1970, was 315,774 (CX 577) but adjustment to reflect inclusion of Sandoval County in the Albuquerque SMSA brought the final result to 333,000 (CX 576).

that the Planning Department's medium projection for 1980 (567,500) was no longer valid and that even its *low* projection (433,900) was now probably *too high* (CX 251-Z-89). Respondent's willingness to close its eyes to the implications of the 1970 Census for the Planning Department's pre-Census predictions resulted in statistics for "This Is My Land" which exaggerated Albuquerque's likely 1980 population by 100,000 to 200,000 people. The difference between a predicted population increase of, say, 100,000 during the '70's as contrasted with a predicted increase of 200,000 or even 300,000 could obviously make a great difference for present purposes.

111. Respondent had to be aware that population projections of a magnitude of 500,000 or 600,000 by 1980 were probably no longer valid after the 1970 Census. That [119] Respondent was familiar with the results of the 1970 Census appears from the 1972 version of another of Respondent's standard brochures entitled "How To Live-Retire-Invest in the Sunny Southwest" (CX 30):<sup>83</sup>

The most recent (1970) U.S. Census shows that the metropolitan area has soared well past the 300,000 population mark. And planning experts predict another 32% growth by 1980 (CX 30N).

Whence came the alleged 32 percent growth factor we know not but the end result of such a calculation—a population of the magnitude of 400,000 by 1980—could not be too far off the mark. However, whatever credit Respondent might claim for this recognition of the effect of the 1970 Census on earlier projections is largely dissipated.

112. Despite the fact that neither actual nor projected population figures for the Albuquerque metropolitan area—with one exception—ever reached the 800,000 range, Respondent's former President, Howard Friedman, wanted to testify that figure (800,000) was the one he had always had in mind in this connection and that he had understood this to be the City's projection, never changed to his knowledge.<sup>84</sup> What Friedman had to be referring to [120] was the "high" of three alternative projections by the City Planning Department in 1964 predicting that on certain assumptions the metropolitan area's population could reach 830,000 by 1985 (in contrast to a "medium" 685,000 and a "low" 500,000) (CX 546M-O).

113. If Friedman ever bothered to make any inquiry into this

<sup>83</sup> The "How To Invest" series had a long history. Its changing titles reflect the gradual sophistication of Respondent's investment appeal from CX 393 ("How To Invest Profitably In Southwest Real Estate," dated 1961) to CX 632 ("How To Invest In A Better Life In The Sunny Southwest," dated 1974).

<sup>84</sup> Respondent's counsel wanted to show not only the general tenor but the details of what Friedman had learned from conversations in Albuquerque. Counsel offered to show that "the witness will testify that he was aware that the City was projecting a population in excess of 800,000 people. And that he had no reason to doubt that projection. And that so far as he is aware, the City has never changed that prediction. And he would also say that this was a matter of common knowledge. . . ." (TR 24059)

unique prediction he must have found that its use was, in fact, expressly restricted to planning permanent municipal facilities rather than to making economic studies or undertaking other planning purposes (CX 546-O). Moreover, Respondent's files reveal that it was expressly warned by a private consultant only a year later (1965) that the City Planning Department's projections were all "too optimistic for Rio Rancho planning bases" and that the "high" (830,000) figure should *not* be used by a private developer (CX 231Q). Friedman testified that he never bothered to read the consultant's report, because, he claimed, one Carity, his predecessor as President (and fellow convict in the New York criminal fraud case) told him the report was "all wet" (TR 24068). We attach no credit to Friedman's testimony and would have attached no more to the testimony offered improperly by Respondent's counsel. Friedman's "800,000 population" defense is rejected. Clearly, Respondent had no adequate basis for its constantly and substantially exaggerated projections of Albuquerque's probable population growth.

114. A related piece of evidence on this subject deserves mention here. Respondent's promotional film "Your Golden Future", which was originally prepared on 2/6/69 but revised on 3/15/72, contains a very brief reference to the "tremendous growth" which Mountain States Telephone & Telegraph Co. foresees for the west side of the Rio Grande River, where Rio Rancho is located (CX 24L). Only four months earlier Mountain States' Forecast Supervisor, one Seay, had made a forward projection for cable Route 41 out of its Corrales office (including Rio Rancho), which indicated that its 925 residential phones there in August 1971 would by 1991 grow to 15,975 installations (implying 57,800 people at an assumed density of 3.4 persons per household) (CX 238 QQQQQ; TR 7034-41).

115. The addition of an average of 800 new phones a year for 20 years may or may not have seemed like [121] "tremendous growth" to telephone company employees<sup>85</sup> but it is hard to see how it could have seemed like "tremendous growth" to Respondent in the context of convincing lot buyers that Rio Rancho would soon be a populous city. Assuming for the moment the correctness of a prediction by Respondent's expert Fawcett that the area of Rio Rancho can ultimately take about 374,578 people, the population foreseen by Mountain Bell by 1991 would amount to only about 15 percent of Rio Rancho's capacity, leaving some 85 percent of the subdivision as barren, isolated and largely undeveloped as ever. In that context Respondent's representation to potential lot-buyers in "Your Golden

<sup>85</sup> This projection was not admitted to evidence its truth but merely for the limited purpose of showing what low growth numbers Respondent had or should have had before it when representing in its movie that Mountain Bell thought "tremendous growth" was coming to the West Side.

Future" that the telephone company sees "tremendous growth" coming seems deceptive.

## 2. Direction of Albuquerque's growth

116. It is important for Respondent to convince prospective buyers of Rio Rancho lots not only that Albuquerque is growing fast (so that sooner or later there must be a spill-over of the big city's potential population) but also that such spill-over must redound to the benefit of Rio Rancho in particular. Even a spill-over in all directions would be worth something, of course; but Rio Rancho would obviously get a much greater benefit if for any reason the spill-over is especially likely to flow in its direction. Such has been Respondent's claims. [122]

117. The earliest sales brochure in this record, "How To Invest Profitably In Southwest Real Estate" (1969) shows that during its first year of business at Rio Rancho Estates Respondent procured from the Sandoval County Commissioners a somewhat unusual resolution reciting that this tract was

excellently suited for homesites . . . because the tract lies *directly and immediately* in the path of the City of Albuquerque's and City of Bernalillo's rapidly-expanding outward growth (CX 393J).<sup>86</sup>

118. Sometime thereafter this sales pitch was refined. Instead of merely referring to an apparent trend of growth toward Rio Rancho, Respondent began pointing to plausible reasons why such a trend was *inevitable*—a twist of considerable importance to investors looking for a "sure thing". Here is part of a taped speaker's November 1977 presentation of what Respondent calls its "frame" theory:

Albuquerque has a very serious problem growthwise. It's growing very fast. Now they have 350,000 people<sup>87</sup>; by 1975 it is predicted that Albuquerque will have over a half-million people<sup>88</sup> . . . (surrounded) [123] . . . *on three sides* either by mountains or government reserved land. *There is only one open area that it can grow.* And who do you think is sitting right in the path of that one area that it can grow? Directly to the northwest. Of course. Rio Rancho Estates, and that's a fact and *its got to grow directly towards us*, if it grows anywhere. And its got to grow to accommodate people (CX 111B) (emphasis added).

<sup>86</sup> Respondent's unusually friendly relations with the Sandoval County Commissioners is indicated by another recital in the same resolution: "WHEREAS, the fine reputation of the developers for building sound, well-planned communities is known to us."

<sup>87</sup> What was then the Census Bureau's latest (1967) *Statistical Abstract of the United States*, at p. 18, would have informed Respondent's speaker that metropolitan Albuquerque's population a little more than a year earlier (1965) was only 288,000.

<sup>88</sup> The only comparable figure for 1975 in this record is a 600,000 projection in a 1968 speaker's presentation which we found above was based on the indefensible "double every decade" theory.

119. A 1968 speaker's presentation elaborates further on Respondent's "frame" theory (TR 19294-96):

We've seen the charts and diagrams so certainly we must know by now that Albuquerque is indeed *surrounded on three sides*. There is *only one direction in which the City can expand* and that direction happens to be firmly straddled by Rio Rancho Estates. It is *utterly impossible* for the City of Albuquerque to expand beyond Rio Rancho Estates without first going through it (CX 38-O) (emphasis added).

\* \* \* \* \*

Yes, ladies and gentlemen, Albuquerque is a growth city, an exciting dynamic and vibrant city. But Albuquerque does happen to have one very serious problem. And this very peculiar problem happens to be to our very great advantage. Albuquerque is *surrounded on three sides* by high mountain ranges and government reserved (sic) land which cannot be built on. *Albuquerque is bursting at the seams yet the city can only expand in one direction—to the Northwest*. And this is precisely where Rio Rancho is (CX 38E) (emphasis added).

And from the same year comes another tape of a similar presentation:  
[124]

[W]hat we are suggesting, ladies and gentlemen, is an opportunity today for profits tomorrow. However, in this area, Albuquerque has one very serious problem. You notice I said "serious"; pardon me, but I'm smiling just a little bit, because this happens to be to our advantage and it can be to everyone's advantage in this room, if you will let me. You see, Albuquerque is bursting at the seams. *We're locked in by three sides*. To the East of us is the Sandia Mountains and to the North and South is government reserve lands on which nobody can ever live and there is *only one logical direction for this fantastic growth to continue* and this happens to be the North and Northwest of Albuquerque, and this is where your host, American Realty and Petroleum, has 55,000 acres, a little over 90 square miles where we are creating and developing a brand, brand new city (CX 110F) (emphasis added).

120. A 1972 version of the standard speaker's presentation followed the same general format, adding such strong phrases as "*surrounded by . . . real estate that is owned by Uncle Sam . . . that will never, ever be for sale*" and "(a)s a matter of fact, today it is *physically and geographically impossible* for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us. Because this entire growth area is straddled by Rio Rancho Estates" (CX 36-I) (emphasis added). See also a 1973 speaker's presentation ("*surrounded on three sides by high mountain ranges and government reserve land . . . on which you can never, ever build*") (CX 35C) (emphasis added).

121. We return now to the standard sales brochures. The 1972 edition of "How To Live-Retire-Invest in the Sunny Southwest" states:

No one can predict the future with any certainty, but because Albuquerque is *surrounded on three sides by Federal, Reserved (sic) or Canyon lands*, the Northwest Mesa where Rio Rancho Estates is located *appears to us to be in the logical path of progress* (CX 30E)

(emphasis added).

\* \* \* \* \*

Albuquerque's future expansion is already *limited on three sides by mountains and other barriers (such as government lands)*. Thus, the city *must* grow toward the west and northwest suburbs—in the general direction of Rio Rancho Estates (CX 30M) (emphasis added).

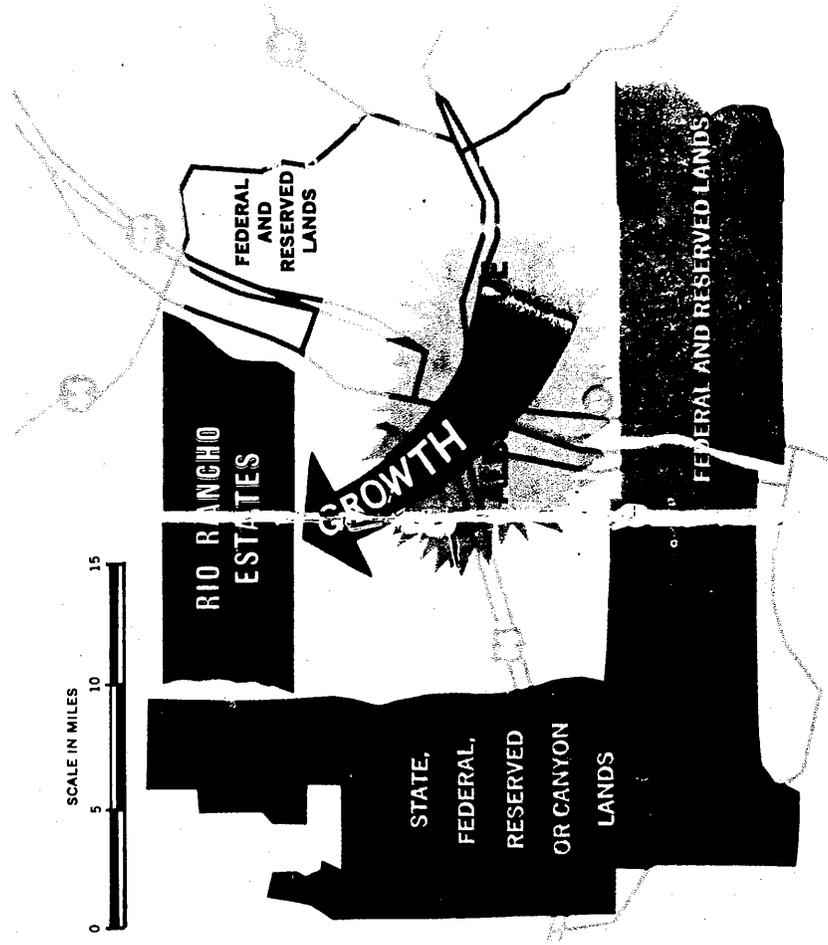
[The 1974 edition of "How To Invest . . ." (CX 632G, CX 632-O), although it embodied a number of textual changes, did *not* amend either of the foregoing statements from the 1972 edition.]

122. The most elaborate exposition of Respondent's "frame" theory is found in the 1972 edition of Respondent's sales brochure, "This Is My Land" (CX 32). Accompanied by a color scale map on which an action arrow dramatizes expected population movement from Albuquerque to Rio Rancho in an area otherwise completely boxed-in (see Figure 10; CX 32A-I), the text reads as follows:

In the case of Albuquerque and her future growth, *limitations on her boundaries have always existed*. 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* (emphasis in original). *Expansion is destined to take place in the general direction of Rio Rancho Estates*. This is where some of the most exciting growth activities are taking place today. This, too, is where the experts indicate the increased populations of tomorrow will settle . . . (emphasis added except as noted otherwise) (CX 32H).

123. The message that Albuquerque is surrounded on three sides by constraints to growth and that therefore it can grow *only* to the Northwest (and particularly Rio Rancho) is a tale told many times. Salesmen have been taught to [126]

Figure 10  
(from CX 32H-I)



[127] repeat the message of the brochures and speakers to prospects at dinner parties<sup>89</sup> and have done so.<sup>90</sup> Tour guides in Albuquerque have made sure visitors who have come to inspect their properties get a good view of the constraints on Albuquerque's future growth—and the open road to Rio Rancho.<sup>91</sup> The great daily newspapers of the North have carried Respondent's advertisements (CX 203)<sup>92</sup> and in sundry other ways Respondent has spread its "frame" theory far and wide.<sup>93</sup>

124. We proceed now to analyze the nature of the "constraints on growth" said to surround Albuquerque on three sides. The first thing to be noted is a distinction between physical and legal "constraints". Only on one [128] side to the east, where the Sandia Mountains rise precipitously to a height of 10,000 feet (CX 552), can it fairly be said that Albuquerque's growth is "constrained" physically.<sup>94</sup> It is true that the Sandia Mountains are not impassable; we have seen small settlements all through the Tijeras Canyon to the east and further growth in that area may be expected (TR 23750). In general, however, the mountains are, indeed, a true *physical* barrier to any eastward expansion of the City. Accordingly, we have no trouble with Respondent's many promotional brochures and statements by its employees referring to constraint of the Sandia Mountains, by name (CX 36-I, CX 110F; TR 1847, 2364, 2375, 4999, 9564) or as "(high) mountain ranges" (CX 35C, CX 38E; TR 3972) or just "mountains" (CX 24-I, CX 30M, CX 32H, CX 36-I, CX 81, CX 111E, CX 203; TR 10593-94) (in such cases sometimes explicitly mentioning their location on the east side (CX 24-I, CX 32H) but more often just assuming the reader knows where the mountains are).

125. When, however, we turn from the obvious *physical* constraint of the Sandia Mountains on the east to what are sometimes called *legal* constraints, there is more vagueness about what makes up the rest of the "frame". For the most part Respondent's brochures and advertisements simply refer to Albuquerque's being "surrounded on

<sup>89</sup> TR 7474 ("surrounded . . . and the growth can only go in one direction").

<sup>90</sup> TR 3972 ("the only growth pattern"); TR 1286 ("could only grow one way"); TR 2364 ("blocked off on all sides except to the northwest"); TR 4999 ("boxed in on three sides"); TR 1847 ("trend of everything would be toward Rio Rancho and through Rio Rancho"); TR 4161 ("all of the growth was going toward Rio Rancho"); TR 2397 ("everything in Albuquerque was going to the west").

<sup>91</sup> TR 9564 ("three areas on three sides of Albuquerque that kind of socked in Albuquerque"); TR 2375 ("the only way the city could extend itself is to the northwest"); TR 2241 ("view of surrounding areas").

<sup>92</sup> *N.Y. Times*, 8/29/71 ("because it is surrounded on three sides . . . it can grow in only one direction"); CX 81, *N.Y. Daily News*, 1/22/73 ("surrounded on three sides . . . its further growth can move in only one direction").

<sup>93</sup> TR 2226 ("everything was blocked off except Rio Rancho Estates"); TR 2227 ("no other place for Albuquerque to go"); TR 10593-94 ("the only avenues were the growth to . . . the west and north"); CX 24, promotional movie "Your Golden Future" ("already hemmed in on three sides") ("logical path for Albuquerque's most dynamic growth and expansion").

<sup>94</sup> Respondent's expert, Fawcett, tried to make the north-south "escarpment", located about 4 or 5 miles west of the Rio Grande River, a similar "physical" constraint but it is plain from the testimony of City Planner Carruthers that the only significance of the escarpment is as a handy demarcation line between lands to which the City will or will not willingly extend utilities (TR 10833).

three sides, either by mountains or government reserved land," usually without specifying the nature of the "government reserved land" or stating on which side(s) of Albuquerque such land is to be found.<sup>95</sup> Respondent's graphic representation of its "frame" theory in its 1972 "This Is My Land" brochure makes it clear, however, that the phrase "federal and [129] reserved land" is used by it for lands north and south of Albuquerque and for some of the lands west of the Rio Grande River (labeled therein "state, federal, reserved or canyon lands") (CX 32H-I).

126. From examination of oversize map (CX 552)—an invaluable if clumsy exhibit with which every reader should make himself familiar—and other evidence,<sup>96</sup> it appears that the "government reserved land" referred to on the North side is Indian land (Sandia Reservation); on the South it is both Indian land (Isleta Reservation) and military land (Kirtland AFB) [plus the large holdings of the University of New Mexico for investment]. To the Southwest is more of the Isleta Indian reservation, while the large Atrisco and Pajarito Spanish grants occupy the central part of the West side. We must now examine each of these and lesser "legal" (*i.e.*, nonphysical) restraints to see whether their existence will really require Albuquerque to grow toward the Northwest and Rio Rancho.

a. *The North*

127. It is appropriate to look first for vacant land beyond the Northeast of the City because the main thrust of Albuquerque's internal expansion has for many years been to the Northeast (TR 1804-05, 7017; CX 546 and CX 546Z-28). Thus a representative of Mountain States Telephone and Telegraph Company testified that from 1965 to 1975 the number of telephones in the northeast quadrant of Albuquerque grew from 18,252 to 53,555 or an increase of 35,303 phones, while the whole west side, including the Corrales exchange that services Rio Rancho Estates, grew from 3,159 to 13,747 telephones (an increase of only 10,588) (TR 10804). [130]

128. There is still a good deal of vacant (TR 10806) plateau land just north of the east side of the City, between the Rio Grande River Valley and the Sandia Mountains (which are here several miles from the River). Respondent's local real estate expert Godfrey estimated that there are some 3,000 acres left in these "Northeast heights" (exclusive of North Albuquerque Acres) which, at his density factor of 5-7 per-

<sup>95</sup> See this or substantially similar phrases in CX 35C, CX 38E, CX 81, CX 111E, CX 203, CX 632G.

<sup>96</sup> The clearest statement is found in saleswoman Miller's testimony about representations at New York dinner parties "that Albuquerque was blocked off on all sides except to the Northwest; that to the North there was Indian land and directly East was (the) natural barrier of the Sandia Mountains. So the growth couldn't go that way. And to the South is military and Indian land; and directly to the West, Spanish land grant(s) or more Government land or Indian land" (TR 2364) (substance repeated at TR 2375). The Indian land "to the west" must refer to Indian land far to the west, beyond the Rio Puerco.

sons per acre (TR 23751-52), would mean room for 15,000-21,000 people.<sup>97</sup>

129. The same land in the Northeast heights was apparently referred to by City Planner Carruthers as the Sims Property (or the Elena Gallegos Grant), which contains about 2,000-3,000 acres beyond the city limits.<sup>98</sup> Carruthers conceded that two major arroyos create flood problems in this property but pointed out that the major capital investments for flood control (retention dams and major channelization) have already been made by the Flood Control Authority and the City of Albuquerque (TR 11174-76).

130. As noted, the foregoing 2,000-3,000 acres do *not* include North Albuquerque Acres, a 7,500 acre development in this area, with an interesting history (TR 10810-12).<sup>99</sup> About 1932 this land was sold in one acre parcels by mail order to customers all over the United States and ownership is now in the hands of thousands of people (TR 11171). Unfortunately the straight gridiron platting system installed by the original promoters does not seem to bear any relationship to or provide space for the arroyos which flood about a third of the area (TR 11170-72). The property must [131] be settled and replatted (TR 11172) and for the present about 80 percent of North Albuquerque Acres cannot be redeveloped (TR 11172).

131. However, 20 percent is immediately available for redevelopment (TR 11172) and, in fact, some reassembly has already been done by an enterprising local builder.<sup>100</sup> The Albuquerque Planning Department has recently studied the reported "Legal Alternatives to the Reassembly of North Albuquerque Acres" (TR 11173-74) and while the first results have been disappointing, the mere fact that such an effort is being made tends to confirm the opinion of Respondent's witness Godfrey that "as time passes, I'm sure portions of North Albuquerque Acres will be put back together. . . ." (TR 23753) We conclude that redevelopment of North Albuquerque Acres may yield about 1,500 acres in the near future and another 6,000 can eventually be retrieved.

132. The great question on the North side concerns the developability of certain Indian land owned by the Sandia Pueblo. [See area marked "SI" on CX 552] As with the Isleta Pueblo to the South of Albuquerque (to be discussed shortly) the question is whether there is any real likelihood of non-Indians ever being able to buy or lease

<sup>97</sup> Calculation by Administrative Law Judge. Note that Godfrey himself actually testified that 35,000-40,000 people could be accommodated but the Law Judge assumes a mistake in Godfrey's calculations on the stand.

<sup>98</sup> TR 11139 (3,000 acres); TR 10813 (2,000 acres). Annexation was in progress in 1977 (TR 11159). Identified on CX 552 as "EGG".

<sup>99</sup> Identified on CX 552 as "NAA".

<sup>100</sup> See Bellman's Loma del Norte project, marked on CX 552 as "LDN".

any of this obviously considerable extent of vacant land.<sup>101</sup> Respondent Friedman assumed that "those (Indian) lands generally are not available" because "Indian lands can't be sold" (TR 24050).<sup>102</sup> Indeed, it is principally on this assumption, as we shall see, that Respondent bases its "frame" theory that Albuquerque has no place to expand except to the Northwest (and Rio Rancho). We have consulted [132] the authorities on this question<sup>103</sup> and have concluded that in the short-run Respondent has the better of the argument but that ultimate availability is a real possibility.

133. Although under Spanish and Mexican rule the Rio Grande Pueblos were required to obtain the permission of high governmental authorities to alien tribal land, during the Territorial Period that followed cession to the United States it was held that the Pueblo Indians—in contrast to the Plains Indians—had a right to alien their lands without governmental approval (and a corresponding liability to lose them by adverse possession).<sup>104</sup> After statehood came in 1912, however, there developed considerable controversy and confusion on this matter. In 1924 Congress passed the Pueblo Lands Act,<sup>105</sup> which provided for resolution of various pending controversies and simultaneously laid down in Section 17, an absolute rule that: [133]

... no sale, grant, lease of any character or other conveyance of lands or any title or claim thereto, made by any Pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or equity unless the same be first approved by the Secretary of the Interior.

A decade later Congress went further and barred all transfers of tribal land except such as are made in exchange for lands of equal value (and have the approval of the Interior Department).<sup>106</sup> This is still the law.<sup>107</sup>

134. However, it is important to recognize that an approval requirement is *not* the same thing as an absolute prohibition against disposal of tribal lands. As recognized by the regulations of the Bureau of Indian Affairs, it is always possible to obtain a special Act of Congress

<sup>101</sup> Recent population estimates (for 1965-66) show 150 Sandia Indians occupying a 23,000 acre reservation. U.S. Dept. of the Interior, Bureau of Indian Affairs, *Indians of New Mexico* (1968), p. 5.

<sup>102</sup> In fairness to Respondent it should be noted that City Planner Carruthers had the same understanding. TR 11005 ("Indian land, as I understand it, cannot be sold").

<sup>103</sup> See U.S.C. 177 and 25 C.F.R. 121.1 *et seq.* The history of the law as it relates to the Rio Grande Pueblo Indians is collected in U.S. Dept. of the Interior, Office of the Solicitor, *Federal Indian Law* (1958), pp. 889-927. See also U.S. Congress, 81st Cong., 2d Sess., House of Representatives, Committee on Public Lands, Subcommittee on Indian Affairs, *Compilation of Material Relating to the Indians of the United States and the Territory of Alaska, Including Certain Laws and Treaties Affecting Such Indians* (1950), pp. 451-458 (relative to the Pueblo Indians of New Mexico). For a more general history, see Tyler, S.L., *A History of Indian Policy* (1973).

<sup>104</sup> U.S. Dept. of the Interior, Office of the Solicitor, *Federal Indian Law* (1958), pp. 890-92, 903-04.

<sup>105</sup> "An Act to Quiet Title to Lands Within Pueblo Land Grants and for Other Purposes," 43 Statutes 636.

<sup>106</sup> 48 Statutes 984.

<sup>107</sup> 25 U.S.C. 464. See also 25 U.S.C. 177 and 25 C.F.R. 121, particularly Section 121.21-22.

authorizing a conveyance.<sup>108</sup> Whatever the red tape and/or potential problems likely to be encountered in obtaining Congressional approval of a proposed subdivision of part of a Pueblo Indian Reservation, Friedman's testimony that "Indian land can't be sold" (TR 24050) is simply incorrect. Given a reasonable case for an Indian subdivision of some reservation land to meet Albuquerque's expansion needs, Congressional approval seems by no means unlikely.

135. Indeed, relatively recent legislation has affirmatively sought to open up Indian land to business enterprise by permitting mortgages and long-term leases.<sup>109</sup> An official history, referring to the period around 1960, explains: [134]

Generally under prior laws Indian land could be leased for periods no longer than five years for some purposes and ten years for others. . . . The absence of authority to grant long-term leases discriminated against Indians who owned restricted lands that were suitable for the location of . . . *residential subdivisions* . . . or for other purposes that required a substantial outlay of capital by the prospective lessee. . . . In such cases prospective lessees were willing to undertake these expensive improvements only if guaranteed tenure by a long-term lease. (emphasis added)<sup>110</sup>

In response to this problem, applicable Federal law now provides, in pertinent part:

(a) Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for . . . business purposes, including the development or utilization of natural resources in connection with operations under such leases. . . . All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico<sup>111</sup> . . . which may be for a term of not to exceed ninety-nine years. . . . Leases for . . . business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not [135] to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. . . .<sup>112</sup>

136. It seems clear that recent governmental policy is to assist such business ventures as the subdivision of Indian land for outsiders and the record here reveals that such has already been happening to the northeast of Albuquerque. There the Sandia Indians have already

<sup>108</sup> 25 C.F.R. 121.22(b).

<sup>109</sup> Of course, Interior Department approval must be gained, usually with such safeguards as appraisal, advertising and bidding where appropriate. See Section 121.33 *et seq.*

<sup>110</sup> Tyler, S.L., *A History of Indian Policy* (published by U.S. Dept. of Interior, Bureau of Indian Affairs, in 1973), p. 187.

<sup>111</sup> It appears from the legislative history of the amendment excepting land outside New Mexico reservations from the 25-year lease limit that neither the Sandia nor Isleta Pueblos have any such land. U.S. Congress, 92nd Cong., 2d Sess., Sen. Rept. 1110 (1972).

<sup>112</sup> 25 U.S.C. 415.

prepared a "master plan" to develop part of their land for "other people" (TR 10838) and have actually executed long-term leases of some of their land in Sandia Heights (TR 10807). These seem significant straws in the wind. It may be that no part of the Sandia Pueblo will be subdivided in the immediate future but we cannot call it unlikely in, say, another 10 or 20 years—assuming that there is really enough economic demand for such land to put it on the market in any quantity. Certain it is that Respondent has no reasonable basis for assuming that Indian land is an absolute "constraint" on Albuquerque's growth to the Northeast in the sense that the Sandia Mountains are a "constraint" on growth to the East.

b. *The East*

137. On the east side of the City, Sandia Heights, a fairly expensive development already referred to above, has pushed up into the foot hills of the Sandia Mountains (particularly in the neighborhood of the Tramway to Sandia Crest) about as far as it is feasible to go (TR 11176).<sup>113</sup> [136] Part of the northern portion is being considered for residential use (TR 10814-15). By and large, however, the Sandia Mountains now operate as a true, absolute constraint on population growth to the East, with one exception: the Tijeras Canyon area.

138. Although there is very little usable land in the National Forest that encompasses the Sandia Mountains (TR 23750), the east side contains several little "mountain subdivisions" in the Tijeras Canyon area (through which Interstate 40 makes its way to the East). Respondent's real estate expert Godfrey estimated a present population of 5,000 people there (TR 23750) and also thought that the Tijeras Canyon area as a whole could take as many as 20,000 to 25,000 more residents (probably at the same time that new population is moving to the Northwest) (TR 23750).<sup>114</sup>

c. *The South*

139. In general, the Southeast Heights have changed little since 1960, according to City Planner Carruthers (TR 10800). There are a number of relatively small parcels of vacant land just beyond the City's Southeast quadrant. One called Montessa Park has 200 developable acres (TR 10823).<sup>115</sup> Three parcels adjacent to Four Hills could yield 300 acres in toto (TR 10819).<sup>116</sup> Albuquerque's Public Schools own a 420 acre vacant tract (TR 10818)<sup>117</sup> but it is not clear on this

<sup>113</sup> The houses here range from \$80,000 to \$120,000 in price. Identified as "SH" on CX 552.

<sup>114</sup> Tijeras Canyon stretches eastward about 15 miles from the City's eastern boundary to Bernalillo County's eastern boundary.

<sup>115</sup> Identified on CX 552 as "MP".

<sup>116</sup> Identified on CX 552 as "4H".

<sup>117</sup> Identified on CX 552 as "APS".

record whether it was included in the City's Vacant Land Studies (referred to later), so it will be disregarded here to avoid double counting. [137]

140. There is one very substantial and very available tract of vacant land immediately beyond the City's South boundary. This is a tract of some 11,000 uninhabited acres lying just east of the Rio Grande Valley between the City Limits and the vast Isleta Indian Reservation (TR 10820, 11166, 23741).<sup>118</sup> All this land is held by the State of New Mexico for the benefit of the University of New Mexico, for investment, not for use (TR 10819-20). There is no restriction on development of any or all of this land for the University's profit and, indeed, that would seem to be a most logical way for the University to profit from its ownership (TR 10819-20).<sup>119</sup>

141. The difficulty with development of the University's tract for residential purposes is not a legal but a practical one. A glance at the map (CX 552B) will show the proximity of the "UNM" tract to the Airport and Kirtland Air Force Base. The eastern two thirds of the tract is subject to high noise levels due to airplanes flying the approaches to the airport, so much so that restriction of such flights and also of test flights at Kirtland AFB would be desirable to make the UNM tract more liveable. Even if this problem prevents two thirds of the tract from being "immediately available", however, there remain about 3,500 acres "immediately available" for new residential use (TR 10820).

142. Just South of the UNM tract and the Airport and Kirtland AFB, stretching east and west for miles, lies the huge, sparsely settled Isleta Indian Reservation.<sup>120</sup> As with the Sandia Indian Reservation on Albuquerque's north, the great question is whether and if so when this land will be made available for subdivision and development. [138] City Planner Carruthers made it very clear that both Indian reservations are "developable" in a topographic sense, and that development is economically feasible, at least east of a southward projection of the so-called "escarpment" (west of and parallel to the Rio Grande River) beyond which the City of Albuquerque does not want to establish roads and utilities (TR 10831-33). Carruthers testified to his own opinion that an Indian Reservation could be developed to accommodate migrants to New Mexico "in the same way that Rio Rancho or any other development was put together." It takes developing a utility system and the whole development program, he agreed, but that is possible (TR 10920).

<sup>118</sup> Identified on CX 552 as "UNM".

<sup>119</sup> The University has already developed the large, new Winrock Shopping Center, holding the land and leasing out the store buildings.

<sup>120</sup> There were an estimated 2,100 Isleta Indians on a 211,000 acre Reservation in 1965-66. U.S. Dept. of Interior, Bureau of Indian Affairs, *Indians of New Mexico*, p. 5.

143. He could cite no example (TR 10920) and knew of no plans to dispose of any Isleta land to private developers (TR 11004-05) but pointed out that such development had not hitherto been thought necessary "because our population projections really do not support a need for developing that area, so we [the Albuquerque Planning Dept.] have not yet set a time limit" (TR 10918).<sup>121</sup> He did know that the Isleta Indians had built some housing for themselves on the west side of the river, near the freeway and, like the Sandia Indians, had actually designed a master plan to govern development of parts of their reservation land for *others*, although they had not pursued it thus far (TR 10838). As for timing, Carruthers said frankly that he had no idea when the Reservation would be developed: "It could be tomorrow or it could be a hundred years from now" (TR 11002). While he did not think it likely that people would be "flocking" to the Indians "in the near future" (TR 11154), he warned that "they (the Indians) could proceed with the development if they chose to *very soon*" (TR 11003) (emphasis added). It need hardly be said that developers' access to the vast Isleta Indian Reservation would, even more than in the case of the Sandia Reservation, revolutionize the land supply and demand situation in the Albuquerque Metropolitan Area. So, again, examination of the facts makes it clear that there is no absolute constraint on Albuquerque's growth to the South merely because Isleta is an Indian Pueblo. [139]

144. Discussion of Albuquerque's south side does not end with the Isleta Indian Reservation. Beyond that Reservation (which extends about 7 miles North and South) lies a 10-12 mile stretch of land which follows the Rio Grande River and Interstate Highway 25 from Los Lunas (pop. 2,000) to Belen (pop. 4,500-5,000, not including Horizon Corporation's gigantic Rio Communities) (TR 23736, 23743-47).<sup>122</sup> Respondent's local real estate expert, Godfrey testified that the land around Los Lunas is developable (TR 23754); that there are scattered residential developments all the way from Los Lunas to Belen (TR 23737), and that this area could relieve some of the alleged pressure of population on Albuquerque (TR 23738, 23742-43). However, he thought the area too far south to meet the tests of contiguity and ready access to Albuquerque, which he deemed essential for present purposes (TR 23737). Accordingly, he doubted that the Los Lunas area could handle the population he thinks likely to go to Rio Rancho and the West Side (TR 23742-43). [Interestingly, Godfrey was unable to think of any reason why Respondent's major competitor, Horizon

<sup>121</sup> He added (at TR 10919-20): "It is possible to do it now if there was any need to do it."

<sup>122</sup> In a 1969 report to the SEC, Respondent referred to Horizon's Rio Communities at Belen as consisting of "over 100,000 acres" (CX 4R).

Corporation, would have located its massive (100,000 acres plus) Rio Communities development at Belen (TR 23753-54; CX 4R).]

d. *The West*

145. The City of Albuquerque has annexed much land in irregular patterns on the West Side of the Rio Grande River. (See red areas on CX 552). Largely to the west of these complex boundaries lie two huge Spanish land grants, the Pajarito Grant<sup>123</sup> being the southerly and the Atrisco Grant<sup>124</sup> the northerly. Taken together they are about 12 miles [140] square and stretch westward to the Canyon of Rio Puerco River.<sup>125</sup>

146. City Planner Carruthers testified, however, that only the part that lies east of a steep north-south lava-flow known as "the escarpment" can be considered developable (TR 10833). Because the cost of providing roads, utilities and other services becomes prohibitive west of "the escarpment", he explained, the City will not now provide such services and expects most of the land west of the escarpment to continue to be used for grazing, except perhaps for a new community center for the Pajarito Grant (TR 10831-33, 11081-82).

147. Even if attention be limited to those portions of the Pajarito and Atrisco Land Grants which lie east of "the escarpment" line, any potential developer faces a problem in either grant. The title to most of this land is in a state of confusion. The record here reveals little about the nature of the legal problem, except that it has to do with the way title was passed down among the heirs to the original Spanish land grants and the effect on title of the Treaty of Guadalupe-Hidalgo, which concluded the Mexican War and ceded New Mexico to the United States (TR 11178). There are thousands of heirs of the original owners, known and unknown (TR 11179). Title insurance is not available for large portions of these grants and much of each is involved in a quiet title action filed in 1976 (TR 11179).

148. Despite the seriousness of the title problem, substantial efforts have been and are being made to cope with it. The quiet title suit just referred to could simplify a great deal (TR 11179). An entity called Westmoreland Corporation has been created for the Atrisco heirs to hold and manage the property for development (TR 10829). Title has actually been cleared on portions of the Atrisco Land Grant, area by area, as development has progressed (TR 10828). Planner Carruthers estimated that title has [141] by now been cleared on 5,000 of the

<sup>123</sup> There are two portions of the Pajarito Grant, one being identified on CX 552 simply as "P" and the other as "P2".

<sup>124</sup> The Atrisco Grant is identified on CX 552 as "AT". The portion east of the "escarpment" is labeled "CP" (for College Park, one of several new developments).

<sup>125</sup> Estimated from visual inspection of CX 552. Beyond the Rio Puerco for 40 miles lie more Indian Reservations, with a few pockets of fee land but nothing "significant" for development, according to Godfrey (TR 23740).