Professor Stevenson is a trustee of a successful real estate investment trust, a director of a company which invests long-term pension accounts in the United States realty market, a Director of a company whose activities include building and development, and a trustee of a non-profit charitable organization whose primary purpose is acquisition and development of raw land which is deemed to be of a critical conservation interest (Tr. 6576–77). Professor Stevenson has been involved in a variety of studies for government and others (Tr. 6577). He has had experience of various types in dealing with real estate and other investments, including work with major corporations regarding their involvement in real estate as investors and users (Tr. 6574, 6577–78).

Professor Stevenson has examined large properties in the Southwestern United States, including Texas. He did a study of Woodlands, a 17,000 acre property north of Houston, Texas, and a study of a 7,000 acre recreational land development in East Texas (Tr. 6578–80). He is a member of various professional organizations (Tr. 6581), and has written numerous articles and a book on real estate investments and other aspects of real estate. He has worked on feasibility studies and the economics of high-rise buildings (Tr. 6582). Professor Stevenson is also a limited partner in a 160-acre development project near Castle Ridge, Colorado, which is selling 10-acre tracts of land with utilities (Tr. 6661–66, 6886–6896).

Professor Stevenson stated that there are three fundamental factors to be considered in a real estate investment; the property itself, the financial return or investment structure, and the people who are involved as investors, managers and active partners. In terms of investment philosophy, one must seek an investment where all three factors work together; an investment lacking in any one dimension should be rejected (Tr. 6585, 6814–15). He observed that there are more investment opportunities than money; therefore, an investor should be very selective in committing capital to any particular investment. An investor must seek a means of evaluating investments whereby he can quickly reject a large number, make intensive study of a few more, and do an extremely intensive study of those investments where he intends **[198]**to place funds (Tr. 6585–86). An investor must know the risks and the potential rewards of an investment (Tr. 6587).

Professor Stevenson stated:

I fundamentally believe that your sound investment value must ultimately be related to use, which is basically a retail end user use. I think this is true in the stock market where you see many of the promotions that had no fundamental end market for their product, got burned. This has been true in real estate. You can ride bubbles, you can ride dreams, but fundamentally it is end use that creates value (Tr. 6587).

According to Professor Stevenson, an absorption analysis is basically an assessment of the rate at which properties will be placed into an end use (Tr. 6589). The sophistication of absorption analysis varies greatly; the further away the use, the more complex the problem becomes and the more end data must be developed (Tr. 6590). Professor Stevenson emphasized that an investment can be rejected without the necessity of a sophisticated study.

There are a variety of reasons for rejecting an investment. One can be simply the relationship between market demand and the available supply. One must also reject it because of physical conditions, either known physical deficiencies or uncertainty with respect to physical conditions. One might reject it for a variety of legal uncertainties relating to title or zoning or various property interests which may be involved, such as water rights, mineral rights, etc. Also uncertainty as to precisely what legal rights you obtained relating to contract for deed versus deeded property—all of these things and they may be risks that overwhelm any of the other factors:

Organizational problems, when you examine an investment and ask yourself, does the organization which has the capability or has the responsibility for carrying out the investment have the capability. And all of these are reasons where any one of them is sufficient to reject, because ultimately for a successful investment you have to have the right market, the right balance between supply and demand, right physical condition, the right organization and proper legal protection.

So if I have determined that any one of the others has sufficient risk in it to eliminate the investment possibilities of the investment, then I don't need to do a sophisticated absorption study (Tr. 6591–92).

Professor Stevenson stated that representations that land is risk free, or "the nearest to a sure thing," are, without qualification, false. Factors such as price, eventual utilization, changes in legal constraints, the volatility of the real estate market, must be used to qualify such a broad representation (Tr. 6778). [D. A. Lomax, an expert witness who testified for Horizon, stated that "all property does not go up uniformly" (Tr. 15128)]. Professor Stevenson also testified that unimproved land probably should be purchased only when change in use is imminent and when **[199]**the conditions surrounding that change can be examined and verified (Tr. 6592, 6883). [Alan Nevin, an expert witness who testified for Horizon, recognized that the increase in raw land price comes when a change in use is imminent and can be predicted, usually a five to seven year basis (Tr. 16066, 15883–84)]. Professor Stevenson noted that there is increasing recognition of the difficulties of putting together an organization capable of carrying out large scale projects and of bringing them to a successful conclusion (Tr. 6594).

Putting aside risk factors, Professor Stevenson testified that the investment quality of Horizon's lots depends upon (1) the absorption rate, (2) the price paid originally, (3) the future costs of any development expenses to be incurred by the owner, and (4) the cost of carrying the property in the meantime (Tr. 6880–81). Another factor to keep in mind is liquidity. Liquidity, with respect to investment in general, is the ability to turn your asset from a noncash form to a cash form. Undeveloped land, except where there is an immediate use for it, is not very liquid (Tr. 6595).

102. Professor Stevenson's assignment with the Commission was to analyze the investment value and risks, not in an appraisal sense, to determine whether the land in Horizon's properties of Paradise Hills, Rio Communities, Arizona Sunsites, Whispering Ranch and Waterwood was a prudent investment given the information available, and to look at the relative value of different lots or parcels within those projects (Tr. 6606–07). He reviewed much of the material in this record. He studied documents from Horizon, property reports, and planning documents. He interviewed brokers and others and personally visited Paradise Hills, Rio Communities and Waterwood. He also visited other properties in the Albuquerque area and in the area near Waterwood (Tr. 6608–29, 6710–13).

In Professor Stevenson's opinion, the lots in Paradise Hills have proved to be at best a marginal/poor investment. He testified that the lots outside of the development area, even within areas close to the development area, have proved to be a bad investment. The areas currently served by water and sewer have a potential for sale. The remaining lots have little, if any, trading activity. The costs of development and difficulties of development offer little hope for long-term investment potential (Tr. 6629–30, 6735–40).

In Professor Stevenson's opinion the vast, vast majority of Rio Communities lots are bad investments. He based this conclusion on an analysis of the market, the uncertainty regarding physical conditions, the capability both financially and organizationally to develop the lots, and what may be prospective legal uncertainties given the time horizon to development (Tr. 6675–76). Professor Stevenson testified:

> The problem of going from a population of 600 or 800 houses, . . . to the size of a population that would be required to fill the Rio Communities, has proved to be

difficult at best. It is an exercise which has been carried out over exceedingly long time periods. That requires major financing. (Tr. 6690). [200]

According to Professor Stevenson, the most critical investment factor is the supply and demand relationship (Tr. 6849). He relied on several studies of the supply and demand for undeveloped property in the Albuquerque area, and on his personal investigation (Tr. 6676–79, 6683–88). He named several undeveloped projects in the Albuquerque area and noted in addition that there were large chunks of land not yet subdivided (Tr. 6676). Professor Stevenson testified:

The total of lots available in those sites exceeds the full needs of the community of Albuquerque under the most optimistic projections through--and I have to think back, given what I just included—well beyond the end of the century and depending on which projections you read, perhaps well into the 22nd century (Tr. 6676).

In Rio Communities Professor Stevenson considered the lack of an infrastructure being in place an investment risk (Tr. 6688–93). While there are indications that adequate water is available, Professor Stevenson stated that he is not satisfied without further investigation. He noted the difficulties which Paradise Hills has had with a water supply (Tr. 6690–93). Water and sewerage problems twenty-five years in the future may pose severe problems not now readily apparent (Tr. 6699–6700, 6846–48, 6869–72). Professor Stevenson also foresees risks in the fractionalization of the land. Land divided into small lots with many owners, most of whom are non-resident, raises a question of whether the land can be used effectively at some future date (Tr. 6688–89, 6853). Professor Stevenson noted that if the 1,000 dwellings which had been built in Rio Communities over the past eighteen years, were duplicated each year in the future, it would take 131 years to fill the 131,578 single family lots in Rio Communities (Tr. 6695).

For all the above reasons, the supply and demand situation in the market, the physical condition of the property, the organizational question as to the ability to deliver, and legal uncertainties would make Rio Communities lots bad investments (Tr. 6719, 6748–49). Multi-family property would represent a "very bad" investment because of the higher initial cost of the land and the longer holding period which would be required (Tr. 6719–20, 6749). For these same reasons commercial lots would be even worse investments (Tr. 6720–23, 6749):

The basic objection to all of these lots is founded upon the absorption data, the supply available as recorded in plats and the potential supply which I believe could be brought into existence during the period before the potential absorption. The other factors . . . are simply additional risks which compound the problem of investment value (Tr. 6750). **[201]**

Professor Stevenson recommended defaulting and taking a tax loss where there were substantial payments remaining to be made on Rio Communities lots (Tr. 6752–54). He is of the opinion that there are so many fatal flaws with respect to investment in Rio Communities lots that elimination of one-half the risks would not change his opinion of the investment value of the lots (Tr. 6878).

Professor Stevenson rejected Whispering Ranch as an investment property (Tr. 6741). The prospect of a change in use of the land is slight, in Dr. Stevenson's opinion. There is substantial land available in Arizona, and the fractionalized parcels of Whispering Ranch would make development difficult (Tr. 6742). He classed Whispering Ranch as a very bad investment (Tr. 6743, 6756–57).

Professor Stevenson recommended against an investment in a lot in Arizona Sunsites:

. . . primarily on the basis again of the tremendous oversupply of lots and the potential additional supply of lots that has been alluded to very frequently with respect to Rio Communities, but is perhaps even more severe in the case of the remote subdivisions in Arizona. Cochise County in particular has a major oversupply condition according to the studies which I have read (Tr. 6757).

Fractionalization of the property interests and the oversupply of lots are the basic reasons Professor Stevenson rated Arizona Sunsites as a bad investment (Tr. 6758).

Professor Stevenson also recommended against the purchase of lots in Waterwood as investments:

I would have recommended against the purchase of this property for several reasons. One is in terms of the information I was able to gather there were properties available, fully developed, at prices which on a present value basis, were not totally incomparable. These properties, in many cases, had more proximate location to Houston, they had their facilities in place and were in subdivisions or land developments where the potential total number of lots was known and limited. The information which I have on Waterwood showed the platting [of] roughly 7,000 [acres]; however, the presence of the 25,000 acres, most of which was unplatted, provided a great amount of potential competition within the site itself and I believe would **[202]** effectively serve to limit any up side potential.

Therefore, to recapitulate, I saw a problem of supply and demand, again the same problem but looking at the study of the absorption in the Houston market, one would have to place the potential absorption and use of that lot many decades in the future, obviously depending on specific location and secondly, the unknown of the supply as created by my major competitor, Horizon, and third, in examining other opportunities within the Houston market there seemed to be lots that offered roughly the same up side potential in terms of their price on eventual sale where I would not have to assume the risk of anybody's ability to perform in the future with respect to construction and development (Tr. 6761–62).

JUDGE BARNES:	How does he evaluate the lots as an investment?
THE WITNESS:	The finished lots within the development core seemed to me to be roughly comparable to the product which I saw in other subdivisions. Those lots which were dependent for future development would be rated by me as bad because of the comparability of their net present value of pricing to the purchase value which one could have in existing subdivisions. Because of the distance of this project from Houston and my judgment as to whether it would really compete well against other major projects such as Woodlands that themselves were projecting 30 and 40 year build outs with less land (Tr. 6763).

Professor Stevenson attributed little value to the Horizon exchange privilege. He observed that an individual desiring to build in Rio Communities could purchase a lot in the open market or at an auction at a price well below Horizon's price, and exchange that lot into the development area (Tr. 6703–04). Professor Stevenson also stated that there was uncertainty as to whether Horizon would honor the exchange privilege for second, third or on down the line purchasers (Tr. 6704). Professor Stevenson testified that it was his understanding that there were no exchange lots available in Paradise Hills (Tr. 6704–05). This understanding was confirmed by William Kelly, a former Horizon employee and presently a realtor in Paradise Hills, who testified that the exchange privilege had not been honored in Paradise Hills for the past few years. Horizon redesignated lots in the Knolls area, where the exchange privilege could be exercised, to Country Club Estates. Thus, no exchange lots were available and Horizon would not have to honor the exchange privilege. **[203]**

(2) *Testimony of Joseph Lusteck*

103. Joseph Lusteck, a real estate planning consultant, testified for complaint counsel as an expert witness. At the time of his testimony, Mr. Lusteck was President of the Real Estate Division of Wortman and Mann, Inc., a real estate and financial services company located in Jackson, Miss. (Tr. 6928). He has been an employee of Wortman and Mann for the past five years. Prior to that time he had been employed, since 1965, first with the Pima County [Tucson, Arizona] Planning Department and later the Jackson [Mississippi] Planning Board (Tr. 6931–32).

As a real estate planning consultant, Mr. Lusteck provides services relative to land development and project planning. He is concerned with property project evaluation, impact analyses, environmental, traffic and transportation studies (Tr. 6928). Mr. Lusteck focuses his activities on real estate, whether from a land use or a development point of view (Tr. 6929). He renders these services to a variety of clients in the business community and in the public sector, including cities, towns, counties, and agencies of the federal government (Tr. 6928–29). He has been responsible for working on three of the New Towns for the Department of Housing and Urban Development.

Mr. Lusteck graduated from the University of Arizona with a Bachelor's Degree in Business Administration, majoring in area development. He has a Masters of Science Degree in Urban Planning from the same school and has done some additional graduate work in Public Administration (Tr. 6929). He is a member of the American Institute of Planners (Tr. 6944).

Mr. Lusteck has made studies or evaluations of several large tracts of land. He did two studies for the Federal Trade Commission, one the 91,000 acre Rio Rancho project near Albuquerque, and the 26,000 acre Rotunda project in Florida. In 1973 he did a study of an 8,000 acre project in New Mexico across the state line from El Paso. He did a study of a 1,575 acre project outside Jackson, Mississippi. He has responsibility for planning about 5,000 acres of shoreline development for the Pearl River Valley Water Supply District near Jackson (Tr. 6941–42). He has worked on over 100 feasibility studies since he has been employed by Wortman and Mann (Tr. 6943).

104. Mr. Lusteck's assignment for the Federal Trade Commission was to prepare an evaluation of the Horizon City project, to include an economic and market analysis, a physical evaluation, a review of the master plan, a look at the investment potential of individual lots, and a survey of the resale market (Tr. 6968). A report of this evaluation was rendered in May 1977 (CX 874; Tr. 6969). Mr. Lusteck wrote the majority of the report and reviewed it in its entirety. He designed the study, visited Horizon City three times, talked with people, and visited other development areas in and around El Paso (Tr. 6969). Mr. Lusteck used a thirty-year period for his study—1975–2005. He concluded that the economic and market conditions and outlook for El Paso would not support the absorption of the large number of lots in the Horizon City project within a thirty-year period (Tr. 6982).

Mr. Lusteck made a specific absorption study of the Horizon City project for the thirty-year period to the year 2005. He studied **[204]** indicators of population, households, employment, income, retail trade and service, industrial development and recreation and tourism. He also studied the supply and demand for property and the price of property in the El Paso area (Tr. 6983–85). He concluded that El Paso will require approximately 195,000 housing units by 2005 [1.5 times the increase in the number of households] (Tr. 7020). This growth will call for a total of about 125,000 acres of land for urban use (Tr. 7020–23, 7042). The City of El Paso and its extra-territorial jurisdiction of five miles beyond the city limits contains approximately 125,000 acres of vacant land (Tr. 7026–27). The Northeast sector surrounding El Paso contains 28 percent of that total, the Northwest sector contains 23 percent and the Southeast sector contains 36 percent of the vacant land (Tr. 7027). The Southeast sector is expected to capture 30 percent of the growth over the next 30 years (Tr. 7032–33, 7154–57, 7167–68).

There is within the City of El Paso and its extraterritorial jurisdiction enough vacant land to accommodate all the projected growth of the area through the year 2005 (Tr. 7043). Mr. Lusteck determined that 2,859 acres of Horizon City will be absorbed by 2005, which he believes will be the maximum possible absorption. This would amount to 3.3 percent of Horizon City's total acreage (Tr. 7039). This acreage is projected to be within El Paso's extraterritorial jurisdiction and would include the present core area and adjoining lands primarily owned by Horizon itself (Tr. 7039–40).

Mr. Lusteck projected a total population capacity for Horizon City of 315,640. He testified that if Horizon City captured all of El Paso's growth until 2005, 98.6 percent of Horizon City would be absorbed. "Obviously no one project is going to do that" (Tr. 7041).

Mr. Lusteck concluded that Horizon City was "grossly excessive," given the market in which it is situated (Tr. 7041):

> Well, I told you that there are certain opportunities for land absorption in this particular geographic area. The problems, the reason that there is a differential there, is that the Horizon project is located outside of the area, or largely located at least outside of the area in which growth could reasonably be expected to occur during this period of time (1975k–2005). The problem is one of scale. The Horizon project is just so large, relative to the size and potential for growth of El Paso, that there is really very little chance within the given time constraint of that land being put into urban use (Tr. 7043).

Mr. Lusteck forsees problems for some lots in Horizon City because of arroyos and a flood plain. Some of the lots might not be buildable (Tr. 7176); there could be construction problems which would detract from the desirability of other lots (Tr. 7047). The lack of an infrastructure and the ultimate expense of acquiring water and utilities could create a substantial financial problem (Tr. 7048–51). Fractionalization of ownership is also viewed as a problem in the future development of the area (Tr. 7051–52, 7213–14). **[205]**

Mr. Lusteck testified that Horizon owns 1,745 acres of land surrounding the present core area of Horizon City, and this land would be the most likely to be developed (Tr. 7057–59).

In a study of the resale market, Mr. Lusteck found 36 possible arms-length sales transactions of deeded Horizon City lots (Tr. 7062). He determined that of about 2,000 listings taken by a real estate broker, Dewitt & Rearick, approximately 45 sales had taken place (Tr. 7062–63). The only lots Dewitt & Rearick would list, at the time of Mr. Lusteck's investigation, were lots near or on a hard surface road, adjacent to the core area, along Horizon Boulevard, or by the lake (Tr. 7063). The records of the El Paso multiple listing service showed 269 listings of Horizon City lots and 16 sales (Tr. 7064). Mr. Lusteck also noted that the Rocky Mountain Land Auction Company offered 450 lots for sale at auction but received no bids (Tr. 7065). The conclusion reached by Mr. Lusteck was that there was a very weak resale market for Horizon City lots (Tr. 7066, 7219).

Mr. Lusteck was very critical of the master plans for the Horizon City project. He observed that the overall development concept appeared to be optimization of the number of lots that could be platted on the available acreage (Tr. 7094, 7135). He stated that there was a physical problem with the generally small size of individual lots, which was inconsistent with the total acreage available. Single family lots are platted three to the acre (Tr. 7169). This small size is particularly a problem in the multi-family and commercial lots, which usually develop in larger tracts (Tr. 7095). A further problem which Mr. Lusteck noted was the unplatted acreage scattered throughout the project. The ultimate use of the unplatted acreage could alter the entire development concept since there is no commitment as to the use of whole sections of land (Tr. 7095).

Mr. Lusteck was of the opinion that Horizon City lots were very poor investments:

> The opportunity for producing a return on an investment in a lot of the outlying portions of Horizon City would be very slim because there is a very small chance of that lot ever being placed in use (Tr. 7078).
>
> * * * * * * *
>
> . . . Making just an investment in one of those lots, it would be a poor choice, because it is not a liquid investment and the chances of taking any appreciation within a reasonable period of time would be very slim. [206]
>
> PRESIDING OFFICIAL BARNES: What is a reasonable period of time?
>
> THE WITNESS: I have used 30 years for this analysis. I think you could make a distinction of core area lots. Now, there could be a possibility to do well on a core area lot.

> . . . The vast majority, the 97 percent that I don't think are going to have a chance at being absorbed, I would advise them otherwise. Consequently, if I was asked to advise someone, should I invest a hundred dollars in this, I would say no because your chances of selling it are very slim. (Tr. 7079).

(3) *Testimony of Jack Mann*

105. Jack Mann, Vice President of the Board, Wortman and Mann, Inc., Jackson, Mississippi, testified for complaint counsel. He has been with the company since 1949. He was elected Vice President of the company in 1955 and President in 1967. Until 1976, he was Chief Operating Officer of the firm (Tr. 7553–54). He has been engaged in the real estate business for 28 years. More specifically, he has been responsible for appraising real property for clients and counseling with clients regarding their real estate problems. In the general real estate field he has been involved in buying, selling, leasing, financing developing and promoting real estate. For the past 10–15 years the company has been the managing broker of a 10,000 acre tract of land, with the responsibility to plan and supervise the developing and marketing of the land (Tr. 7554–55).

Mr. Mann has a Bachelor of Science Degree in Business Administration from the University of Missouri. He has also taken special courses from the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers. He has been an appraiser since 1947. In the last 27 years he has appraised property of virtually all types in areas including Southeastern and Southwestern United States, New York, Illinois, New Jersey, Nevada and Missouri. He appraised the United States Naval Auxiliary Air Station site in Lauderdale County, Mississippi containing some 10,000 acres. He has also appraised five tracts of land in the Barnett Reservoir site in Mississippi containing between 10,000 and 60,000 acres, a portion of the Okefenokee Swamp in Georgia containing 42,000 acres. He has appraised two of the New Towns developments, and numerous other large developments (Tr. 7557).

Mr. Mann's assignment for the Federal Trade Commission was to determine the prices the Horizon City lots would sell for in the open market at the time of the appraisal (Tr. 7578). His instructions were to ignore the Horizon selling price of the lots (Tr. 7576, 7570–71, 7601). Mr. Mann stated that the conditions implicit in market value are: **[207]**

(1) the buyer and seller must be typically motivated;
(2) both parties must be fully informed or well advised;
(3) a reasonable time must be allowed for the transaction to take place;
(4) payment is made in cash or its equivalent;

(5) financing, if utilized, would be the typical terms being utilized in that particular area; and

(6) the price paid is unaffected by the financing or any other external force (Tr. 7578).

Mr. Mann testified that the beginning point of any appraisal is an estimate of the highest and best use of the land (Tr. 7584):

Highest and best use is one of the basic principles. It is defined as that legal reasonable approximate utilization that results in the greatest net return to the land, legal in the sense that it must not be illegal, reasonable in the sense it must be susceptible of achievement and approximate is simply another word for "near," which simply means it is a use which must occur within the reasonably near future (Tr. 7583).

Mr. Mann identified some of the carrying costs involved in the purchase of vacant land, including the taxes and the loss of interest on the dollar amount used in the purchase of the land (Tr. 7584). A major risk in the purchase of vacant land is that the value will not enhance to a point that there would be a profit made in the event of resale. He testified that a purchaser of undeveloped land:

. . . must, first of all, consider what the utilization of it would be, regardless of whether he plans to utilize it or not, for land to have value it must have some utility or some logical use within a reasonable period of time. Secondly, he must keep in mind that it is typically a nonliquid asset. It normally produces no income. The risks of whether or not it will go up in value which will produce him a profit - whether the present worth of this future dollar that he might receive is sufficient in light of other possible investments that he might make—say in stock, bonds, savings accounts, etc. (Tr. 7590). **[208]**

The federal property report would not provide an individual with sufficient information to make a prudent decision about investing in vacant land. Mr. Mann testified:

The HUD report does a very good job in describing the physical portion of development. It talks about the land itself, and it very candidly described the limitations and it talks about the presence or absence of utilities and the obligation on the part of the developer to provide or not to provide. But the one thing it does not provide is any economic data. It does not, of course, go into absorption, probable absorption, these types of things, and the latter in my opinion is necessary for a good decision for investment purposes (Tr. 7589).

Mr. Mann's individual assignment was to appraise 10 "typical" lots in Horizon City (Tr. 7592). For this assignment he used the direct market comparison approach, in which sale of properties similar to the ones being appraised are identified, accumulated, analyzed, adjustments made for any possible dissimilarities between the properties that sold and the property being appraised, and by comparing these actual transactions with the property being appraised an opinion as to the value of the property is determined (Tr. 7595).

Mr. Mann prepared an appraisal of 10 lots in Horizon City (CX 892). He found no evidence the exchange privilege had an effect on the resale value of the lots (Tr. 7599, 7708–09). He found five classifications of lots in Horizon City: (1) developed lots in the central core area; (2) lots adjoining the core area where utilities are to be installed in a short time; (3) lots fronting on a paved road which might or might not have water and electricity (Tr. 7600); (4) lots on a rough graded road with no utilities; and (5) lots not located on any road with no utilities. He estimated 90 percent of the lots would be in category 4 or 5 (Tr. 7600–01). Mr. Mann would recommend against investment in category 4 and 5 lots on the basis of the lack of utilization within any foreseeable future and the large number available with a limited demand (Tr. 7625–26, 7629–30).

Mr. Mann located 20 separate sales transactions which he used as comparables for appraisal purposes (Tr. 7603; CX 892D–E). His appraisals are as follows (CX 892):

Typical No. 1 - zoned Multi-family Lot 19, Block 389, Unit 54 - Mountain Shadow Estates - $250.

Typical No. 2 - Zoned Multi-family [209]Lot 27, Block 15, Unit 19 - Horizon City Estates - $250.

Typical No. 3 Lot 10, Block 38, Unit 44 - Horizon City - $750. (One quarter mile north off Horizon Boulevard)

Typical No. 4 - Zoned single family Lot 152, Block 232, Unit 30, Mountain Shadow Estates - $250

Typical No. 5 - No Zoning Lot 16, Block 69, Unit 19, Sunland Estates - $350. (6/10 mile south of Horizon Boulevard)

Typical No. 6 - Zoned single family Lot 10, Block 687, Unit 82, Horizon City - $500

Typical No. 7 - Zoned single family Lot 47, Block 17, Unit 53, Horizon City Estates - $250

Typical No. 8 - Zoned commercial, Lot 9, Block 1, Unit 32, El Paso East - $1500 (Backs up to lot which fronts on Horizon Boulevard)

Typical No. 9 - Zoned commercial Lot 13, Block 2, Unit 15, Horizon City Estates - $250

Typical No. 10 Lot 19, Block 51, Unit 10, Horizon Heights - $4,500 (Located in development area, has fronting on street with curb and gutter but not paved).

Lots located in close proximity to Horizon Boulevard, which has electric lines and a water main, could be utilized within a reasonable time, according to Mr. Mann (Tr. 7658–59, 7663–64). In Mr.Mann's opinion, once outside the core area and away from Horizon Boulevard, there was no correlation of increased price with decreased distance (Tr. 7677). Mr. Mann stated that his valuations, placed on these lots were estimates (Tr. 7699), and that the margin of error could be as high as 30 percent (Tr. 7700, 7738). In Mr. Mann's opinion, the "highest and best use" for Typicals 1, 2, 4, 5, 6, 7 and 9 would be to discontinue payment of taxes, thereby defaulting and claim the appropriate investment loss as an income tax deduction (CX 892). Typical No. 8 is zoned commercial. Mr. Mann's opinion is that the highest and best use of this lot would be residential (CX 892). The market value which Mr. Mann assigned to the typical lots took into consideration the exchange privilege which Horizon's contracts provide (Tr. 7713, 7738).

(4) *Testimony of Frank Mangin*

106. Frank Mangin, Program Director for Economic Development for the Arizona Governor's Office, Planning Department, since December 1975, testified for complaint counsel (Tr. 3372). His **[210]** duties consist of directing the program of attracting employment-based industries to Arizona (Tr. 3372). Prior to his employment with the Governor's office, Mr. Mangin was Executive Director of the Douglas (Cochise County), Arizona Chamber of Commerce and consultant to the City of Douglas Industrial Development Authority and the Cochise County Industrial Authority, and prior thereto Mr. Mangin was employed by the Valley National Bank as Vice President of Industrial Development. Valley National Bank had 160 offices statewide (Tr. 3433). Mr. Mangin was a real estate broker from 1959 until 1965 (Tr.3374–75).

Mr. Mangin testified that there are almost 73 million acres of land in Arizona, of which approximately 18 percent is privately deeded (Tr. 3379). Twenty years ago only 13 percent of the land was publicly held; the State of Arizona has been selling state-owned land to the public in recent years (Tr. 3380–83). The Indian reservations in Arizona have leased some lands for commercial and industrial purposes (Tr. 3385).

Mr. Mangin testified that housing availability is part of the structure necessary to support any other kind of economic activity, and he is familiar with housing availabilities and potentials in various areas of the state (Tr. 3387–88).

In Mr. Mangin's opinion Whispering Ranch is suitable only for cattle grazing (Tr. 3424). He testified that Whispering Ranch is so far removed from economic activity and utilities that no one to his knowledge has thought about Whispering Ranch as a potential residential area (Tr. 3389). It does not have any value for any commercial or industrial purpose (Tr. 3390). The location has no labor force, transportation access or utilities (Tr. 3390–93). Mr. Mangin cannot conceive of Whispering Ranch having any value within the next 30 years for residential, commercial or industrial purposes (Tr. 3396). He testified that Whispering Ranch was "removed from people, roads, utilities and, consequently, demand for the use of it" (Tr. 3424). He testified that Phoenix was growing in a number of directions and its growth has stopped far short of Whispering Ranch (Tr. 3427–28).

Mr. Mangin has been associated closely with Cochise County (Tr. 3374–75, 3396, 34365–37), and he is familiar with Arizona Sunsites. Most residents of Sunsites are retired (Tr. 3404). There is no industrial employment in Sunsites, no inquiries have been received about locating industry in Sunsites, and there is no demonstrable labor supply available in the Sunsites area (Tr. 3400–04). Sunsites has no public schools (Tr. 3404), limited medical services (Tr. 3397–99), and no potential as a retail trade center (Tr. 3406). Growth of Willcox, Douglas and Tucson, towns and cities nearest Sunsites, will have no impact on Sunsites, in the opinion of Mr.Mangin (Tr. 3408–13).

Mr. Mangin noted that Sunsites had started in 1961, and in 1977 had a population of about 850–875 persons (Tr. 3400, 3414), an annual growth rate of about 60 individuals per year. Mr. Mangin projected the growth rate would continue at about the same pace as in the past (Tr. 3415). He does not foresee substantial growth because (i) the newness of the community has worn off, (ii) medical facilities are inadequate for a geriatric population, (iii) there are no significant shopping facilities, and (iv) there is no industry (Tr. 3415–16, 3485). **[211]**

Mr. Mangin stated that any deeded land in Arizona had an economic value in excess of $150 per acre (Tr. 3418, 3479). The Sunsites land would have some value for cattle grazing and farming, except for the fractionalization of ownership and water problems (Tr. 3417–20). Mr. Mangin stated that there might be some minimum value for the land in 5-acre parcels for ranch houses, if water and electricity were available (Tr. 3419). He projected sales to possibly 10–12 persons each year for such low density usage (Tr. 3421).

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(5) *Testimony of Roy Humble*

107. Roy Humble, supervisor of the land section of the Maricopa County assessor's office, testified as a witness for complaint counsel (Tr. 3596). His duties consist of appraising, classifying and evaluating all deeded land in Maricopa County for tax purposes (Tr. 3597).

Mr. Humble visited the area which he believed to be Whispering Ranch (Tr. 3603). He drove to the top of a hill, stood on top of his truck and surveyed the property with field glasses. He could observe 5 or 6 miles with the field glasses. He did not see any buildings. He saw native, desert growth, hilly land with washes and ravines (Tr. 3604–08). In the courtroom, he indicated on the aerial photographs several washes on the property, including a "big giant wash" (Tr. 3626–28).

After inspecting the land, Mr. Humble researched the most recent property sales that had taken place in the area. He also examined aerial photographs of the area. He then made a judgment of the market value of the land (Tr. 3613–14). In Arizona property is assessed at 18 percent of its market value (Tr. 3614). Mr. Humble considers the use of the land and other comparable properties in the area (Tr. 3615). In making the appraisal of Whispering Ranch property, Mr. Humble did not give any consideration to the transactions in which Horizon was the seller. He testified:

I gave no consideration to the selling price of these two and a half or five-acre lots, primarily because the adjoining property didn't conform with what they were paying there. In other words, the trend in this particular area, the desert area, was not what these people were paying for this property in here.

* * * * * * *

Q. Could you give us the reason why you didn't give any consideration to those prices?

A. Market value is defined as a property that's placed on the market for a reasonable length of time with a knowledgeable buyer and [**212**]knowledgeable seller, when both parties agree to the price and so on. In this case, the information that I had found prior to appraising this property was that these people weren't knowledgeable because of the fact that I found other sales of local people in this area that nowhere near come to the values that appeared on here, so I disregarded the entire market (Tr. 3615–16).

Mr. Humble placed a $50 per acre full cash value on the Whispering Ranch property in 1972 (Tr. 3620, 3631). In 1975 he changed the appraisal to a minimum of $500 per five-acre parcel. He placed this minimum valuation on the property because the economics of mailing out tax bills made the minimum charge appropriate (Tr.

3620–21). Mr. Humble found no sales of Whispering Ranch property by the individual lot owners:

Yes, I found no resales. That would give the appraiser and the assessor an indication that there was something happening in there if there were some resales (Tr. 3623).

In making the appraisal Mr. Humble considered the current use of the land, not its possible highest and best use (Tr. 3650).

(6) *Testimony of David Hamernick*

108. David Hamernick, a planner with the Arizona Office of Economic Planning and Development, testified for complaint counsel. Mr. Hamernick prepares and gathers statistics in relation to natural resources, water resources, minerals and land use, and analyzes various problems on behalf of the Director of the Office of Economic Planning and Development and the Governor (Tr. 3666).

As of December 1, 1973, Mr. Hamernick conducted an inventory of subdivided land in Arizona outside of the incorporated municipalities. This inventory showed 943,000 acres of land subdivided into approximately 742,000 lots (Tr. 3669; CX 843). Examining the number of dwelling units in the state in 1970 in context with the subdivision inventory report, Mr. Hamernick expressed the opinion that there is an over-supply of subdivided lots available in Arizona for residential purposes (Tr. 3668). Approximately 8.2 percent of the private land in Arizona is in such remote subdivisions. Cochise County had 83,652 acres subdivided into 80,064 lots, and Maricopa County had 127,168 acres subdivided into 110,130 lots (CX 843, p. 8).

According to Mr. Hamernick, there are certain subdivisions in Arizona that do not have to be recorded with the state real estate department (Tr. 3668–69). Mr. Hamernick made an inquiry in April 1975 as to the number of acres in subdivisions that were not, in fact, recorded. He found an additional 537,000 acres in such subdivisions (Tr. 3672–73). In Cochise County there were 97,190 acres in such subdivisions, and 28,160 acres in Maricopa County (Tr. 3674). Mr. Hamernick projected that there was an over-supply of [213]vacant lots for the year 2000 based on a population of 4,985,400 for Arizona (Tr. 3793). Since 1974, the population projection for Arizona for the year 2000 has been lowered to 4,057,000 (Tr. 3703–04).

(7) *Testimony of David Altenstadter*

109. David Altenstadter, Cochise County Planning Director since 1970, testified as a witness for complaint counsel (Tr. 4797). Prior to becoming Planning Director for Cochise County, Mr. Altenstadter

was employed by the Delaware Valley Regional Planning Commission in the Philadelphia metropolitan area as a transportation planner. He received a Master's Degree in City Planning from the University of Pennsylvania in 1969 (Tr. 4789).

Mr. Altenstadter prepared a report entitled Cochise County Projective Allocation Model, dated December 1975 (CX 860). This report makes a projection of Cochise County's population at future points in time, 1980, 1990, and 2000, and allocates the population to smaller areas within the county (Tr. 4799, 4800). The report was widely distributed throughout the county (Tr. 4802). Arizona Sunsites is located in Cochise County (Tr. 4805).

The population projection for Cochise County for the year 2000 is 152,778 (Tr. 4806). Arizona Sunsites was shown as having 684 persons in 1970 (Tr. 4812), and was projected to have approximately 5 to 6,000 persons living there in the year 2000 (Tr. 4811–15, 4837). Mr. Altenstadter expects the greatest growth in Cochise County to occur in the Sierra Vista and Fort Huachuca areas (Tr. 4819).

Mr. Altenstadter stated that Cochise County has just over 4 million acres of land within its borders and approximately 40 percent is privately owned (Tr. 4816–17). There is no shortage of private land in Cochise County for development purposes (Tr.4816). There are approximately 120,000 parcels of subdivided land in Cochise County and 60,000 are estimated to be within subdivisions outside incorporated city limits (Tr. 4817). There are some subdivisions that are not recorded and do not have to be recorded under Arizona law (Tr. 4817).

Mr. Altenstadter does not anticipate the growth of Sierra Vista, Fort Huachuca, Tucson or the twin-plant concept at Douglas to have any impact on Arizona Sunsites (Tr. 4820–22, 4848).

B. Respondent's Expert Witnesses

(1) *Testimony of Dr. Benjamin Stevens*

110. Dr. Benjamin Stevens is the President, Director and senior research associate of the Regional Science Institute, a non-profit research corporation doing work in regional analysis, regional economics, industrial location, land development, urban planning, and related field (Tr.14642; RX 1554). The field of regional science includes research into the forces that cause regional economic and urban growth, and encompasses the fields of economics, demographics, and planning (Tr. 14644). [214]

Dr. Stevens received a Master's Degree in city planning from the Massachusetts Institute of Technology; his Ph.D. in regional planning and economics was also awarded by MIT. He has taught as a full professor of regional science at the University of Pennsylvania (Tr. 14642–43), where he was also on the doctoral committee for regional science (Tr. 14644–45). He is currently a part-time visiting professor at the University of Massachusetts, teaching the forecasting of economic development and projecting of population growth (Tr. 14663). He has authored or co-authored 60 articles, reports, and discussion papers on various aspects of regional science (RX 1554). These have included studies for the National Institutes of Health, the National Science Foundation, the Council of Environmental Quality of the Environmental Protection Agency, the Corps of Engineers, and various state and city agencies (Tr. 14649–60).

For the last twenty years, Dr. Stevens has been the co-editor of the *Journal of Regional Science,* which is the most highly regarded professional journal in the field of regional science (Tr. 14657; RX 1554). He is a member of several professional societies (RX 1554; Tr. 14663–64).

111. Dr. Steven's assignment for Horizon was to project the population growth of four developments, Paradise Hills, Rio Communities, Horizon City, and Waterwood (Tr. 14659). He reviewed a number of publications and certain parts of the record of this proceeding (Tr. 14665–70; RX 1556); he also visited the four projects (Tr. 14669). He made population projections from the 1970's to the year 2005 (Tr. 14694). Dr. Stevens did not express an opinion as to the investment quality of lots in Horizon's projects (Tr. 14890–91).

Dr. Stevens stated that overall regional projections are likely to be more accurate than for a smaller area, the plusses and minuses in given locations tend to cancel out. As you get smaller, you are more likely to be wrong because many local factors have to be taken into account (Tr. 14700). He also stated that he had not had a previous assignment similar to the studies he did in this proceeding (Tr. 14708–09).

For Horizon City, Dr. Stevens projected for the year 2005 a population of 90,000 as a high, 75,000 as a medium, and 60,000 as a low (Tr. 14713; RX 1557B). For the medium population, approximately 19,000 acres would be utilized (Tr. 14713, 14779). For the El Paso SMSA for the year 2005, Dr. Stevens projected a population of 863,700 as a high, 809,800 as a medium and 745,000 as a low (Tr. 14717; RX 1557B), figures somewhat higher than the El Paso City Planning Commission's projections of 742,450, which Mr.Lusteck used (CX 876; Tr. 14740–43). Dr. Stevens thus projected 67,350 more population in the El Paso SMSA than Mr. Lusteck and the Planning Commission. Mr. Lusteck placed 111,000 persons in the Southeas sector. Dr. Stevens placed 161,000 persons in this sector (Tr. 14768–70; RX 1557B), a difference of 50,000 persons. Mr. Lusteck concentrated his population in the area of the Southeast within the city limits and the extra-territorial area; Dr. Stevens placed more persons within the Horizon City project (Tr. 14770–72). **[215]**

Dr. Stevens was of the opinion that Horizon's future geographical distributional plan for Horizon City population was reasonable, calling for a concentration of people in the present core area, a smaller core area at the opposite end of Horizon Boulevard near the lake, and a concentration of businesses between the two core areas along Horizon Boulevard (Tr. 14763–65). The distance between the present core area and the core area at the lake would be 10 miles (Tr. 14952).

The Bernalillo County population estimate for 2005 projected by Dr.Stevens was 605,000 for the medium range (RX 1557D; Tr. 14791). For Paradise Hills, a medium population of 29,000 was projected (RX 1557D; Tr. 14806).

Dr. Stevens viewed Rio Communities as a satellite, "semi-independent" of Albuquerque. This refers to the fact that the higher level services—medical, legal, financial, collateral—would be provided by Albuquerque. Also, some portion of the population of Rio Communities would commute to Albuquerque for work (Tr. 14807). The problem of how a satellite community grows was a novel problem for Dr. Stevens (Tr. 114992, 14808–12). In projecting future population for Rio Communities, Dr. Stevens used an equation based on the growth of the nearby metropolitan center - Albuquerque, the distance from the satellite to the metropolitan center, and the distance from the satellite to the interstate highway interchange (Tr. 14985). He projected 10,000 manufacturing jobs for Rio Communities by 2005, roughly 20 percent of the projected industrial growth of Bernalillo County (Tr. 14815). He also projected 2,000 workers commuting to Albuquerque (Tr. 14816).

Dr. Stevens used a questionnaire survey which Horizon conducted of persons who purchased Rio Communities property in 1976 (Tr. 14829). These purchases occurred after issuance of the complaint in this matter [March 11, 1975], and were made on site (Tr.14830). There were 799 responses to the questionnaire. Of these responses Dr. Stevens concluded that 439 intended to eventually retire or elocate to Rio Communities, and another 39 said that they would onsider relocation if there was a business opportunity (Tr. 14817–3). The questionnaire gave the ages of the respondents (Tr. 14818, 1831). Dr. Stevens used the responses to the questionnaire to project tirement migration, which he stated was more difficult than predicting economic growth (Tr. 14825). He did not make an effort to determine the extent of the reliability of the questionnaire (Tr. 14825). Dr. Stevens assumed the questionnaire responses were a random sample since he did not know the total number of questionnaires that were given to purchasers and could not determine the percentage of purchasers who responded (Tr. 14826–30, 14836). The relevant question was: "Are you considering eventual retirement or relocation to one of our communities" (Tr. 15010). Dr. Stevens stated that he would not have designed the questionnaire in that manner (Tr. 15012–13).

Of purchasers under age 25, there were 36 who responded that they intended to retire or relocate in Rio Communities, and 83 responded "maybe" to the question (Tr.14832). The age group 25 to 34 responded 73 "yes" and 135 "maybe"; age group 35 to 44 responded 69 "yes" and 98 "maybe"; age group 44 to 64 responded 60 "yes" and 85 "maybe"; age 65 and over responded 10 "yes" and 7 "maybe" **[216]**(Tr. 14832–33). Dr. Stevens considered one-half of the "maybe" responses as being "yes," indicating an intention to retire or relocate in Rio Communities (Tr. 14834–35). While Dr. Stevens' arithmetic was not entirely accurate, he assumed a total of 441 "yes" responses (Tr. 14835–37).

Dr. Stevens used the percentage of yes responses, 441, over the total returned questionnaires 799, multiplied this percentage times 68,807 individual customers in Rio Communities (Tr. 14837), and arrived at a figure of 38,778 families arriving at Rio Communities. He assumed there would be two persons in the average retiree family which would give you approximately 76,000 persons. Dr. Stevens then projected an actual total of 30,000 retirees arriving at Rio Communities by the year 2005 (Tr. 148235–39). Dr. Stevens was of the opinion that the questionnaire sample, together with other information on the migration rate of retirees into New Mexico, suggested that 500 families of retirees, or 1,000 persons per year, would settle in Rio Communities over the next 30 years (Tr. 14841). Dr. Stevens apparently included other information in his projection of retirees (Tr. 14856–63).

Dr. Stevens' ultimate projection for Rio Communities included 3,300 heads of households in industrial employment, 2,000 heads of households in commutation, and 15,000 heads of households among the retired. Dr. Stevens used an economic multiplier of two trade or service jobs for each of the 20,300 heads of households. These heads of households generate Dr. Stevens' medium population projection for Rio Communities of 60,000 by 2005 (Tr. 14865–67; RX 1557D). Dr. Stevens' high projection is 90,000 population and the low projection is 30,000 a greater range than for the El Paso projection. Dr. Stevens explained this range on the basis that there were clearly more unknowns in Rio Communities than in the case of El Paso (Tr. 14867). Dr. Stevens stated: "I think, honestly, 60,000 is my best guess . . . ." (Tr. 14997). Dr. Stevens, in effect, projected that Rio Communities will receive 28 percent of the growth of Bernalillo County through 2005 (Tr. 15004–06).

Dr. Stevens considered Waterwood a recreational community. In projecting an average utilization of the Waterwood property Dr. Stevens arrived at an estimate of $10 million dollars per year being spent on second homes in Waterwood by residents of Houston, Dallas and East Texas. He assumed $3,000 per year to keep and maintain such a second home. This would provide for roughly 3,300 houses. Records indicate that one-third of the purchasers of Waterwood property are from outside East Texas. Therefore, Dr. Stevens assumed one-third of the purchasers in the Waterwood project in the future would be from outside East Texas. He thus assumed an additional 1,700 houses, or a total of 5,000 dwelling units to be built in Waterwood by the year 2005. These houses would absorb between 2,500 and 3,000 acres (Tr. 14879–83, 15045). He attributed 40 percent of the development contiguous to the Lake Livingston area to the Waterwood project (Tr. 15029–31): "Our best estimate is 40 percent over the long haul" (Tr. 15032). **[217]**

(2) *Testimony of D. A. Lomax*

112. D.A. Lomax is a professional real estate appraiser and consultant, who specializes in land in Texas, New Mexico, and Arizona. He has been an appraiser for 25 years, and is a member of the American Institute of Real Estate Appraisers (M.A.I.), a Senior Real Estate Appraiser (S.R.E.A.), and an Accredited Rural Appraiser member of the American Society of Farming Managers and Rural Appraisers (A.R.A.). Mr. Lomax is currently the National Vice President of the Society of Real Estate Appraisers, and has served for six years on the Society's Board of Governors. He is the author of the *Rural Appraisal Handbook* for the New Mexico State Tax Commission, a book on condominium appraising. He has also written several articles for professional magazines in the field of appraising. Mr. Lomax has taught real estate appraisal courses at several colleges and universities, and he has been an instructor for the American Institute of Real Estate Appraisers (Tr. 15053–63).

Mr. Lomax has conducted studies for federal agencies, the states of New Mexico, Texas, and Indiana, thirty-one of the thirty-two counties in New Mexico, and several municipalities, districts and state agencies. He has given expert testimony in federal, state, and local courts, in hearings before the Federal Home Loan Bank Board, the Indian Claims Commission, the Federal Aviation Administration, and before numerous state, municipal, county and city agencies (Tr. 15067).

Mr. Lomax specialized in appraising investment properties, vacant land, and residential properties (Tr. 15065–66). His appraisals often project future value and investment value (Tr. 15068–69). His largest appraisal concerned a six to ten million acre tract in New Mexico. He has also appraised a tract of 550,000 acres and two tracts of 270,000 acres each. In 1966, he appraised approximately one-third of the state of New Mexico (Tr. 15067–68).

113. Mr. Lomax's assignment for Horizon was to evaluate the land at Rio Communities, Horizon City and Paradise Hills and express opinions, both as to value at the time of purchase and future values, and to relate those values to the question of investment value (Tr. 15069). He was to appraise the properties to estimate market value at the time the lots were purchased from Horizon and project future values to the year 2005 (Tr. 15090–91). Mr. Lomax did not concern himself with the current market value of the properties (Tr. 15124).

Mr. Lomax defined market value as the highest price in terms of money that a property will bring in a competitive market, under all requisites of a fair sale, when both the buyer and the seller act prudently, knowledgeably, and assuming the price is not affected by any undue stimulus. Both parties must be well informed and well advised, and a reasonable time must be allowed for exposure to the open market. Payment must be made in cash or by financing which does not affect the price (Tr. 15092).

Mr. Lomax was initially concerned with whether sales by Horizon were in fact representative of market value. To make this determination, he needed to ascertain whether the buyers of Horizon's lots had acted with knowledge when the lots were purchased from Horizon (Tr. 15095–96). To determine knowledgeability **[218]**Mr. Lomax prepared a survey of the purchasers of Horizon's lots (Tr. 15103–04). He was assisted in this task by Steven Van Dresser, and he also consulted with Drs. William Kinnard and Beryl Boyce, both of the University of Connecticut (Tr. 15105–10).

Steven Van Dresser is employed by Mr. Lomax and is involved with computer programming and selling computer programs (Tr. 15429). He was assigned the task of designing and conducting the survey of Horizon customers to determine their knowledgeability with respect to their purchases of Horizon property (Tr. 15424). Mr. Van Dresser has a degree in Economics from the University of New Mexico and he has had some experience with surveys (Tr. 15423–24).

A random sample of just over 1,000 customers' names was selected (Tr. 15430). Using the questionnaire which appears in the record as RX 1508A–B, telephone interviews were conducted (Tr. 15432). The original sample included only 244 names; and only 14% were contacted. There were such few responses which had sufficient reliability that a larger sample of 1,010 names were used and 480 interviews were ultimately completed (Tr. 15433–34). Mr. Lomax believed this to be a random sample (Tr. 15108, 15810–11). Mr. Lomax concluded that the customers who purchased land from Horizon were knowledgeable, and that the price paid at the time of purchase represented market value (Tr. 15112).

To determine knowledgeability Mr. Lomax set up an eight point system. The broad categories utilized had to do with educational capabilities, whether the customer had seen the property or other similar properties, whether the customer had prior experience in the acquisition of real estate, and whether undue pressure was utilized in making the sale (Tr. 15112–13). Points were awarded as follows:

One point credit for a high school diploma;
One point credit for a college degree;
One point credit if the customers had seen the property prior to purchase;
One point credit if they waited more than one week to make the purchase;
One point credit for looking at other vacant land properties prior to making the purchase;
One point credit if the customer had considered the purchase of other potential investments;
One point credit if the customer owned other real estate prior to making the purchase, and
One point credit if the purchaser believed it would be several years before the property could be utilized (Tr. 15113–14, 15446). **[219]**

Mr. Lomax rated the responses from customers on the basis of a low, medium and high knowledgeability capacity; zero to two was low, three to five was medium, and six to eight was in the high range.Thirteen percent of those contacted scored low, seventy-two percent scored medium, and fifteen percent scored high (Tr. 15116). Sixty-three percent scored four or higher.

Mr. Lomax admitted that his survey was a test of capacity for knowledge, that he did not test for actual knowledge, and that he had no way of determining whether or not the purchasers were "truly knowledgeable" (Tr. 15241). He read some of the customer testimony in this proceeding, but chose not to rely upon the testimony as an indicator of purchaser knowledge (Tr. 15266–67). On cross-examination, Mr. Lomax stated that if a material misrepresentation were made to a buyer it would have to be taken into consideration in a determination of buyer knowledgeability (Tr. 15273), and the nondisclosure of material facts could also prevent a buyer from being well-informed or knowledgeable (Tr. 15284). Mr. Lomax testified that a failure to disclose the presence of Rio Rancho Estates, a development of 91,000 acres just north of Albuquerque, could be a material nondisclosure to a buyer of a Rio Communities lot (Tr. 15285).

To determine if Horizon's lots had more than a little value as investments, Mr. Lomax considered three broad categories; the future supply and demand, historic growth patterns, and specific market reactions in the current market (Tr. 15130–31). He did not consider the current resale market for Horizon lots because "there was no marketplace to go to to take a look at resales" (Tr. 15289).

Mr. Lomax estimated 900,000 acres of land was available for development in the Rio Grande Valley around Albuquerque (Tr. 15142). He also concluded that for every person living within the Albuquerque city limits, an urban influence was exercised over approximately two acres of land outside the city limits (Tr. 15150). Using a population for the year 2005 of 700,000 to 750,000 for the Albuquerque area and an urban influence of two acres per person, Mr. Lomax arrived at a figure of 1,400,000 to 1,500,000 acres of land under the urban influence of Albuquerque, which would influence the price structure of the land (Tr. 15159). Since Mr. Lomax found a supply of only 900,000 acres of land available for development, he found significantly more demand than supply (Tr. 15151–62). The supply area considered by Mr. Lomax included Rio Communities (Tr. 15163).

In his historical growth study, Mr. Lomax studied several subdivisions that were started in the 1950's in the Albuquerque area, some of which have not been built out (Tr. 15171–73). He made a study of the price structure of these subdivisions since their inception to the year 1978 (Tr. 15173–78). Mr. Lomax found that improved in-town lots in Albuquerque appreciated at a rate of 18 percent per year; peripheral undeveloped lots appreciated at a rate of 8 percent per year (Tr. 15180). After adjusting for development costs of the in-town lots, he found that lots inside the city and lots influenced by the city both increased at an 8 percent per year compounded rate (Tr. 15181–827). [220]

Mr. Lomax also studied subdivisions that were distant from Albuquerque, as much as 60 miles within the Albuquerque-Rio Grande Valley area through and including Valencia County (Tr. 15188–197). He arrived at a conclusion that there is a basic underlying value of land in eastern Valencia County of $1600 per acre (Tr. 15197), and it can vary as high as $4500 an acre (Tr. 15197–98). He thus concluded that land in Rio Communities has a value today of from $1600 an acre to $4500 an acre (Tr. 15199). Using an 8 percent annual compound rate Mr. Lomax projected land values in Rio Communities from $13,000 an acre to $36,000 an acre by 2005. This would give a return of 7.2 percent on the low value land and a return of 10.2 percent return on the higher value land to the year 2005 for a lot that Horizon sold for $500 in 1968 (Tr. 15201–02). For a lot which Horizon sold for $8900 in 1973, the low side return would be 1.2 percent and 4.5 percent on the high side compounded (Tr. 15202). He projected investment returns from 5.2 percent to 14.6 percent compounded on other Rio Communities lots. He therefore concluded that Rio Communities lots were of more than little value (Tr. 15203).

Using Mr. Lomax's $1600 value of a Rio Communities lot today and projecting a 20% annual compounded return, the lot would sell for $219,792 in 2005. Conversely, using the low projected selling price of $13,000 for a Rio Communities lot in 2005, the discounted price of the lot in 1978 would be $94 (Tr. 15310–11).

According to Mr. Lomax, Paradise Hills' lots have a basic underlying value of $4,000 per acre (Tr. 15205). This value was based on current sales of lots in Paradise Hills (Tr.15206). Paradise Hills lots will have a basic underlying value of $32,000 per acre in 2005 on the 8 percent per year compounded growth (Tr. 15206). Mr. Lomax concluded that Paradise Hills' lots would be a good investment purchased at any time from 1968 through 1975 (Tr. 15207).

Mr. Lomax repeated the procedures he employed in the Albuquerque area in his study of the El Paso area (Tr. 15210). He found that land in the Southeast sector of El Paso that was ready for absorption into the development process was selling for $7,500 to $8,000 per acre (Tr. 15213). Land one step removed from being ready for development was selling for $5,000 per acre, land two steps removed from development was selling for $2–3,000 per acre, and land three steps removed from development was selling for $200 to $2,000 per acre (Tr. 15215). Mr. Lomax explained his "bands" of land as being due to El Paso's structured, controlled growth pattern (Tr. 15216).

Mr. Lomax used the El Paso Planning Department population projections to the years 2005 (Tr. 15216). Based upon these projections for the Southeast Planning sector and assuming orderly growth section by section, Mr. Lomax projected a population of 75,000 for Horizon City by the year 2005. Using the 6.5 percent per annum compounded appreciation rate which he had calculated for the El Paso area (Tr. 15210, 15217), Mr. Lomax predicted land values in 2005 of $37,500 per acre for the first band of land, $27,000 per acre for the second band, $14,000 per acre for the third and $2,000 per acre **[221]**to $12,000 per acre for land in the fourth band (Tr. 15218). Mr. Lomax concluded that the minimum property value in Horizon City will be $14,000 per acre in 2005 (Tr. 15221), and certain land within Horizon will fall within bands one and two. The population projection would absorb 19,000 acres of and in Horizon City, or about 23 percent of the total project (Tr. 15224).

Horizon City lots in band one at a 20% annual compounded rate would be valued at $298 in 1978 discounted, band two lots would be discounted at $196, and band three lots would be discounted at $102 (Tr. 15318). A Horizon City lot valued at $2000 in 1978 would sell for $275,000 in 2005 at an annual rate of return of 20 percent compounded (Tr. 15321). Based on his study and projections, Mr. Lomax concluded that Horizon City lots definitely have more than a little value (Tr. 15227).

Mr. Lomax attributed value to Horizon's exchange privilege (Tr. 15231), to the HCIA's (Tr. 15234), and to specific locations within the properties (Tr. 15236). He did not consider holding costs on the land over the time period, such as taxes, interest paid and interest on investment lost, HCIA payments, and eventual selling costs (Tr. 15281–82, 15313). Nor did he consider liquidation costs; vacant land sales commission rates start at 10 percent (Tr. 15312).

114. During September 1976, Mr. Lomax was interviewed by two complaint counsel in this proceeding. At the time, such counsel were interested in engaging Mr. Lomax as a possible witness for complaint counsel. The following testimony about that interview was elicited on cross-examination:

Q. Do you recall making a statement that "A speculator or an investor does not buy an individual lot, especially in the sticks. He knows he is competing against 100,000 lots and chances of selling that lot are not very good."

A. It is possible that I might have made that statement, yes, sir.

Q. Do you recall making a statement that "A well-informed purchaser would never have bought most of this land unless a user, immediate or otherwise, in buying in a close-in area."

A. Again, it's possible that I might have made that statement, yes, sir.

Q. Do you recall making a statement that you rejected the prices of national sales area lots in valuing property because you didn't think they were good comparables? **[222]**

A. I probably did make that statement, yes, sir.

Q. Do you also recall answering questions in regard to the local purchasers, in the areas of Rio Communities, and I am referring now specifically to the people who you indicated yesterday, I believe, you had contacted after receiving names from the company.
Do you recall having told Mr. Dowdy and myself that most of those people were poorly informed and that they were not truly well informed?

A. It is possible I—that is not a true representation of what I felt about that survey, but it is possible that I could have made that statement, yes, sir.

Q. Do you recall making a statement that it was impossible to see all lots within the Horizon properties developed in any given period.

A. I think the gist of that statement in such that I probably made the statement. I tend not to ever use such words as "impossible," if I can keep from it.

Q. Do you recall also stating that if the Horizon subdivisions grew just as fast as Albuquerque, it would be the 22nd Century before lots would be developed, all lots would be developed?

A. Yes, I probably made that statement (Tr. 15392–94).

* * * * * * *

Q. Now, do you recall also telling Mr. Dowdy and me that there was no locked-in growth in any direction in the Albuquerque area, and that the main potential for land development is in the west?

A. No, but that is properly a constructive statement insofar as the City of Albuquerque will grow. It will grow to the west. It has problems on the east in that the forest lands have stopped it from effectively growing any further in that direction (Tr. 15396). **[223]**

* * * * * * *

Q. And do you recall saying that the individual should be able to get compensation for the lack of liquidity in a land investment?

A. That is one of the features of additiveness that should be taken into consideration, yes, sir.

Q. And another feature, you need a higher rate of return than the so-called safe investment because of the greater risk of a land investment?

A. Yes. You are going down the sequence now of classical economic theory as to how a rate of return should classically be built up.

And I think it sounds like I pulled a little professorial stunt on you and we talked about it for a while as to what the classical items of return were.

Q. What are the other items of return?

A. There should be, in line with that, there should also be a loading factor for the possibilities of managing the investment.

Q. Do you recall stating, adding all of this up, you need significant return in land over and above the safe rate of return?

A. I probably said that, yes, sir.

Q. Do you recall also stating that you had recommended against the purchase of Horizon land several times?

A. No, I don't recall saying that.

Q. Did you, in fact, recommend against the purchase of land at any of the Horizon properties at any point in time?

A. I just said I don't recollect having said that and I have already stated here this afternoon that I don't recall ever having consulted with anyone on the purchasing of any of Horizon's land. **[224]**

Q. Do you recall stating that you would not recommend that anyone under any circumstances buy Rio Communities lots unless for use, with one possible exception being Tierra Grande land?

A. It's probable that I said that at that time, yes, sir (Tr. 15398–99).

(3) *Testimony of Sanders Solot*

115. Sanders Solot, a real estate appraiser located in Tucson, Arizona, testified as an expert witness for Horizon. Mr. Solot has been an appraiser for about twenty-five years working primarily in Arizona (Tr. 15590). He is a member of the American Institute of Real Estate Appraisers (M.A.I.) and is a Senior Real Estate Appraiser (S.R.E.A.) (Tr. 15595–91). Mr. Solot is a graduate of the University of Arizona and has taught real estate appraisal courses at the University (Tr. 15591–92).

Mr. Solot's assignment was to estimate the market value of Horizon's Arizona Sunsites and Whispering Ranch properties, and to give a thirty-year projection of those values (Tr. 15597). Mr. Solot visited the properties, read property reports and studied the lands surrounding each property. He testified that he was familiar with the Sunsites project from other work he had performed in Cochise County (Tr. 15601).

Mr. Solot testified that the highest and best use of the Whispering Ranch property is long term land investment, a period he defined as

20 to 30 years (Tr. 15607). Mr. Solot gathered data on other properties which he determined were comparable to Whispering Ranch, and he used those "comparables" as a measure of value for Whispering Ranch (Tr. 15608). He testified that there are four major elements of comparison; physical characteristics, date of the transaction, terms of the transaction, and location. Adjustments can be made in location between the comparables and the subject property (Tr. 15627).

Mr. Solot conducted a survey of Whispering Ranch property owners to confirm selling prices and to learn of the motivation of the purchasers (Tr. 15630). He surveyed 300 Horizon customers and received 183 responses (Tr. 15631). The questionnaire used in the survey, RX 1574, had twelve questions, such as, where did you live when you purchased the Whispering Ranch property; were you as well informed about the purchase and the potential of the property as you have been about other real estate you have purchased; have you inspected the property from the air - on the ground; are you satisfied with the property; what is your opinion as to the value of the property; how long did you anticipate holding the property before utilizing it or selling it; and have you ever utilized the property in the preparation of a financial statement? Based on the survey, Mr. Solot determined that the prices paid Horizon for Whispering Ranch property represented market value (Tr. 15642). [225]

Mr. Solot reached an opinion that Whispering Ranch property had a market value of $700 per acre as of May 15, 1978 (Tr. 15642).

Mr. Solot testified that the highest and best use of Arizona Sunsites property is long term land investment, the same as for Whispering Ranch (Tr. 15646). Mr. Solot also used the "comparable" approach in appraising Sunsites (Tr. 15647). No customer survey was undertaken (Tr. 15656–57). He estimated the market value of the Sunsites lots which contain slightly more than one acre at $1,000; other lots containing .85 acres were appraised at $850 per lot; half-acre lots were appraised at $600 per lot; five-acre parcels were appraised at $1,750; and forty-acre parcels were appraised at $16,000 (Tr. 15658).

To estimate future values of the Whispering Ranch and Sunsites properties, Mr. Solot studied historic sales records of comparable developments in Pima County, approximately 20 miles from Tucson (Tr. 15663–65, 15737). Mr. Solot determined future values to the year "2000 I suppose" (Tr. 15666); he later testified that he computed future values to the year 2005 (Tr. 145671). Mr. Solot determined that the subdivision lot prices in the comparable developments from

1958 to 1978 equalled or exceeded the increase in the consumer index for the same period (Tr. 15670–71).

Mr. Solot determined that the Arizona Sunsites lots would increase at an annual compounded rate of 7 percent. Thus, lots presently valued at $1,000 would have a market value of $6,649 in 2005; $850 lots would have a value of $5,651; $600 lots would have a value of $3,989; lots having a $3,000 market value would be $19,946; and 40-acre lots presently valued at $16,000 would have a market value of $106,381 in 2005 (Tr. 15673–74).

The above projections include three basic assumptions; the population of Arizona increases as expected, there are no radical changes in governmental regulations regarding water, population control, zoning, and utilities, and the inflation rate of seven percent continues (Tr. 15674). He made no projection as to the date Sunsites lots reasonably could be expected to be used as home sites (Tr. 15706).

Whispering Ranch property presently valued at $700 per acre and $3500 for a five-acre tract would be valued at $4,654 per acre or $23,271 for the five acres in 2005 (Tr. 15675). Mr. Solot characterized the Whispering Ranch lots as having more than a little value and as being a sound, prudent investment of discretionary funds over a long term (Tr. 15676). He reached the same conclusion about the Arizona Sunsites lots (Tr. 15677).

Mr. Solot acknowledged that there might not be a resale market today for the Sunsites and Whispering Ranch properties due to an inordinate supply of land. He maintained that there is an opportunity to sell the property under long term conditions, and his appraisals represent the present worth of the future value of the lots (Tr. 15687–88).

Mr. Solot was questioned as to why he did not use sales of Whispering Ranch properties as comparables. He stated that he did **[226]**locate some transactions, but they represented tax loss transactions or property exchanges which he did not use (Tr. 156688–89). One "tax loss" transaction represented a purchase from Horizon for $4500 and a sale at $500 (Tr. 15690). He also made no projection as to the date the Whispering Ranch property could be expected to be used as home sites (Tr.15706). He testified a reasonable time for sale of a lot in Whispering Ranch would be 20 years (Tr. 15709), and that this is a fact a purchaser should be aware of prior to purchasing the property (Tr. 15709).

Mr. Solot was unable to specify whether the 20-year period started at the time of the purchase of the lot, or at the time of his appraisal in 1978; he thought perhaps both dates might be appropriate (Tr. 15709). He stated that the comparables he used in appraising

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Whispering Ranch property were sold "reasonably quickly," a year or two. He was unable to explain why a reasonable period for sale of a comparable was two years and for Whispering Ranch was 20 years—"We're dealing in a nonexact science when we talk about real estate evaluation" (Tr. 15710–11). Mr. Solot did not think Whispering Ranch lots were more comparable to each other than land located 50 miles distant from Whispering Ranch (Tr. 15718).

(4) *Testimony of Charles Osenbaugh*

116. Charles Osenbaugh is a real estate appraiser and consultant with Osenbaugh & Associates, a firm he has run since 1958 (Tr. 15752–53). He is an M.A.I., an S.R.E.A. (Tr.15754–55), and a Senior Real Estate Property Sales (S.R.P.S.), which is the next highest designation after S.R.E.A. (Tr. 15755). He is a member of the National, Texas, and Houston Real Estate Associations (Tr. 15755). He has taught for the Society of Real Estate Appraisers, and at the University of Oklahoma, University of Santa Clara, Louisiana State University, and University of Houston (Tr. 15756).

Osenbaugh & Associates have performed appraisals for HUD, General Services Administration, Internal Revenue Service, the State Department, the Department of Justice, Texas, several school districts, oil companies, IBM, Rockwell International, and numerous other companies and individuals (Tr. 15757–58). Mr. Osenbaugh performed the initial appraisal for the Trinity River Authority and the City of Houston of the land now covered by Lake Livingston (Tr. 15758), and of the land acquired for Lake Conroe for the San Jacinto River Authority (Tr. 15758). Mr. Osenbaugh also appraised the original acquisition of 50,000 acres for the Woodlands, (a New Towns development) and he performed a second appraisal of 20,000 acres in Woodlands (Tr. 15759). He has testified as an expert appraiser in the United States Tax Court, federal district courts, bankruptcy courts, and state and county courts in Texas.

Mr. Osenbaugh's assignment for Horizon was to look at the viability of Waterwood and to determine if the prices at which Horizon was selling the lots were synonymous with the market value of the lots (Tr. 15759–60). In carrying out this assignment, Mr. Osenbaugh looked at the selling prices of Waterwood lots from 1973 to the time of his testimony in 1978 (Tr. 15760). He did not utilize the standard definition of market value because it is his opinion that there will not be a resale market for the lots until 1984 **[227]**(Tr. 15761). Utilities will not be placed to the lots until ten years plus one year from the date the Waterwood project sales began, and "whoever bought was locked in until that period of time when the utilities got in" (Tr. 15761). Mr. Osenbaugh took into account this "absence of resale value" (Tr. 15761).

Mr. Osenbaugh testified that to determine market value you had to have a knowledgeable buyer and seller, someone who is apprised of a reasonable number of factors in the market (Tr. 15762). Knowledgeability means the purchasers have the facts about the property (Tr. 15782). To determine knowledgeability, Mr. Osenbaugh looked at addresses of purchasers of Waterwood property and from his own familiarity with the area he determined the income levels of the purchasers. He did not interview the purchasers (Tr. 15780, 15785). He examined the sales brochures and examined the layout at Waterwood as compared to other recreational areas. He considered that 43 percent of the purchasers whose addresses he examined had either purchased on site, or were from Houston. From a sales presentation which he received on Waterwood property and from reading selected transcripts of this proceeding, Mr. Osenbaugh concluded that the purchasers of Waterwood property were knowledgeable (Tr. 15772).

In determining the value of the lots, Mr. Osenbaugh took into consideration the location's proximity to major populations centers, the ease of access, the facilities, the water location, the timber and the terrain (Tr. 15772). He concluded that the prices paid to Horizon by the purchasers were synonymous with market value (Tr. 15773).

Mr. Osenbaugh stated on cross-examination that one factor pertinent to buyer knowledgeability would be knowledge on the buyer's part that Horizon owns a total of 25,000 acres in the Waterwood project (Tr. 15783–84). He also testified that as long as Horizon is in the market and has an inventory of lots, Horizon will "get the first crack at anybody that comes in," and Horizon's prices will set the upper limit of any resale market (Tr. 15794–95).

(5) *Testimony of Alan Nevin*

117. Alan Nevin testified as an expert witness for Horizon. Mr. Nevin is a consulting economist with Sanford Goodkin Research Corporation, Del Mar, California, and serves as Senior Vice-President of that firm (Tr. 15806). Sanford Goodkin provides investment advice in consultation to the real estate and lending community (Tr. 15806). Mr. Nevin's areas of expertise deal with land, new construction, and the technicalities of feasibility (Tr. 15807). Mr. Nevin is also associated with a partnership which gives estate planning advice (Tr.

15809–10). Previous employment included stints with Ernst & Ernst, Gladstone Associates and American Housing Guild (Tr. 15811).

Mr. Nevin received a B.A. from American University in Media Management (advertising), a Master of Arts Degree in statistical research from Stanford University, and a Masters Degree in Business Administration from American University. He has taken some advance courses leading to a Ph.D. degree in real estate economics (Tr. 15807). Mr. Nevin testified that he is "pretty well considered an expert in the field of demographics and community growth" (Tr. 15813). [228]

Mr. Nevin has participated in a number of studies of undeveloped land (Tr. 15812–17). A key element of the studies is "they want to know, when it's all said and done, are they going to make money" (Tr. 15815). The time element usually involved in the studies is 10 to 25 years (Tr. 15815).

Mr. Nevin's assignment was to analyze Rio Communities, Paradise Hills, Horizon City and Waterwood to judge whether investments in land in those communities would be reasonable investments (Tr. 15818–19). Mr. Nevin began this assignment by looking at the Sunbelt, an area extending south from a line across the United States from Washington, D.C. to all of California. Thereafter he looked at the states where the properties are located, then at the nearby metropolitan areas, and ending up at the specific properties (Tr. 15820–21). Mr. Nevin had to determine the growth pattern of the metropolitan areas and the potential for utilizing the land within a reasonable period of time (Tr. 15822).

Mr. Nevin stated that Horizon's communities are very similar to the federal government's New Town projects, which have been "a massive failure, very massive" (Tr. 15900). He stated that 21 of the 23 "New Towns" had declared bankruptcy (Tr. 15901). He further stated that a New Town would have to generate 1,000 housing units per year to stay solvent (Tr. 15901). He stated that even the best studies showed the "New Towns" would not break even for 14 or 15 years—"that's pretty horrendous, going out on a limb for 14–15 years" (Tr. 15901). He testified that Columbia, Maryland, a project of 18,000 acres located between Washington, D.C. and Baltimore, Maryland had managed to develop in excess of 1,000 units per year. That town, acknowledged to be the most successful new town in this country, had financial difficulties and had to be restructured (Tr. 15902). Mr. Nevin attributed the New Town failures to an attempt to change the natural growth directions of an area (Tr. 15905).

Mr. Nevin is of the opinion that Rio Communities is going to be a suburb of Albuquerque (Tr. 15907), and it is in the Albuquerque growth directional stream (Tr. 15908). Paradise Hills is already part of the Albuquerque community (Tr. 15906). He considers Horizon City to be definitely in El Paso's path of development (Tr. 15908). Mr. Nevin foresees a need to "market" both Rio Communities and Horizon City (Tr. 15908).

Mr. Nevin predicted a population for Albuquerque of 1,250,000 by 2005, or a growth of 30,000 per year (Tr. 15909). He is of the opinion that Rio Communities will attract 60,000 persons by 2005. The population could reach 90,000—"God only knows I can't put my crystal ball 30 years ahead" (Tr. 15910). Mr. Nevin stated that it was "exceedingly difficult for any one development to attract more than 10 percent of the growth of any metropolitan area" (Tr. 15909). Rio Communities will utilize 30,000 to 35,000 acres by the year 2005 (Tr. 15911).

Mr. Nevin is of the opinion El Paso will grow at a rate of 15,000 persons per year, and that will give El Paso a population **[229]**of 850,000 by 2005. Horizon City will receive approximately 75,000 persons, or about 9 percent of the population gain. This is about 2,700 persons per year, or about 900 households per year. By 2005 this population growth will absorb about 20 - 22,000 acres of Horizon City land (Tr. 15912–13).

In evaluating the lots for investment, Mr. Nevin considered an investment by an individual to have a completely different set of criteria than a major firm investment (Tr. 15915). The individual utilized discretionary funds, a corporation invests on its philosophy governing corporate funds (Tr. 15916). Mr. Nevin compiled a customer profile from Horizon's corporate record of purchasers of Horizon City and Rio Communities lots during the period 1970–1973 (Tr. 15916). He developed information as to the total amount invested by each customer; customers who were deeded, who were still paying, and who cancelled out; and customers who visited the property. These categories were then analyzed as to age, whether they rented or owned a home, their income and their profession (Tr. 15918). In the customer profile, 40.5 percent of the deeded or active customers had incomes under $10,000; 43 percent had incomes between $10 and $15,000; and 16 percent had incomes of over $15,000 (Tr. 15990–91). Of the contracts that were cancelled or superseded, 43 percent had incomes under $10,000 (Tr. 15992). From this buyer profile, Mr. Nevin determined that buyers had used discretionary income in purchasing Horizon property (Tr. 15920). From the same profile he determined that the customers were knowledgeable (Tr. 15922). Mr. Nevin used existing records for the customer profile; he did not develop an independent questionnaire.

One factor Mr. Nevin did not have, in determining discretionary income, was the number of children or dependents in a purchaser's family (Tr. 15986).

Mr. Nevin testified that the risks of purchasing land are (1) when can you sell the land - liquidity, (2) and the appreciation history (Tr. 15933–34). Mr. Nevin projected an 8 percent compounded annual rate of appreciation on a "substantial" number of Rio Communities lots, depending on location within the development. Others would appreciate at a 3 or 4 percent annual compounded rate, and still others would appreciate at a 12 to 15 percent range, depending upon how fast they are utilized for development (Tr. 15945–47). The lots in Rio Communities were of more than a little value according to Mr. Nevin (Tr. 15950–51): "I have to say some of them are not very good values, but I would say most of them are acceptable, reasonable values" (Tr.15950), good or reasonable investments (Tr. 15955).

Mr. Nevin also used an 8 percent compounded annual appreciation rate for Horizon City lots, with some lots appreciating at a higher rate and some lots appreciating at a lower rate, probably 4 or 5 percent compounded (Tr. 15952). In Mr. Nevin's opinion, these lots have more than little value (Tr. 15953), and are reasonable to good investments (Tr. 15954).

On cross-examination Mr. Nevin stated that he had determined in his own mind that inflation would continue at a 6 percent per year rate and real estate would carry an increased inflation in value of 8 percent per year (Tr. 16023, 16065–66). [230]

Paradise Hills lots were characterized by Mr. Nevin as "very good investments" (Tr. 15953). Mr. Nevin stated that he hesitates to call anything an "excellent investment" (Tr. 15956):

Q. In analyzing a purchase from the point of view of the purchaser, in your opinion, can an investment of Horizon lots, where there is uncertainty as to the time of resale, be considered an excellent investment with little or no financial risk?

A. Absolutely not.

Q. In analyzing a purchase from the point of view from the purchaser, can an investment of Horizon lots, where there is uncertainty with respect to the amount of the resale price, be considered an excellent investment with little or no financial risk?

A. No. (Tr. 15956).

Mr. Nevin analyzed Waterwood lots as an investment opportunity in a second home or recreational community (Tr. 15957). In Mr. Nevin's opinion, the future value of Waterwood lots is going to depend very much on the marketing ability of the developing company (Tr. 15957). Mr. Nevin believes the lots will appreciate at a rate of 8 to 10 percent per year compounded "as long as the momentum of the marketing is continued" (Tr. 15958). He testified that the lots at Waterwood purchased during the period 1973–1975 represent a good value as an investment (Tr. 15962).

Mr. Nevin described the Horizon communities as "bastard" cases because Horizon has shifted the financial burden of its developments to the lot purchasers (Tr.16032–34). He testified:

> The Horizon Communities are a bastard case, as it were, in that it is a form of master plan development, where the future buyers or home owners have bought the land, in essence, for cash, so the parent corporation has limited carrying costs on the land. Since I took on this assignment, I have been wrestling with this direct issue, because it almost seems that Horizon may have the best of all worlds, in that they have the land—the land is already pre-purchased by the land owners, by the lot owners, and, therefore, Horizon doesn't have the heavy carryingcosts on the land that normally cripple new towns. (Tr. 16032). **[231]**

C. Horizon's Core Areas

(1) *Paradise Hills*

118. Horizon retains about 4,500 acres in Paradise Hills adjacent to the present development area, which have not been developed (RX 1535A; Tr. 14025). The developed area consisted of approximately 1,100 dwelling units as of June 1978, with about 100 units under construction. The developed acreage consisted of 1500 acres, which includes a 185 acre golf course (Tr. 14025; CX 67Z–2, 122). Thus, Horizon owns three times as much acreage in Paradise Hills as has been developed in the past several years.

(2) *Rio Communities*

119. There are several core areas retained by Horizon in Rio Communities, only one of which has existing development. Core Area I, where development has occurred and is occurring, consists of 5,400 acres, platted as follows; 3200 acres consisting of 5600 single family lots, 500 acres multi-family, 300 acres commercial, 600 industrial, and 800 acres recreational schools and parks (RX 1539B). There were approximately 800 dwelling units as of June 1978; about 1000 acres have been utilized, including a golf course (Tr. 14013–14; CX 67Z–4).

Horizon has retained Core Area II in Rio del Oro adjacent to where the Monzano Expressway may enter the project, and it will have the nearest location to Albuquerque. This core area consists of 2000 acres platted as follows: 1,000 acres consisting of 2500 single family lots, 350 acres multi-family, 150 acres commercial, 500 acres recreational, schools and parks (RX 1539B; Tr. 13983–86, 14015). There possibly will be a connecting highway between these two core areas (Tr. 13986). There is no development in this core area.

An additional core area of 5,300 acres has been retained by Horizon in Canyon del Rio platted as follows: 4,000 acres consisting of 2,000 single family lots, 1,200 acres multi-family, 100 acres recreational, schools and parks (RX 1539B; Tr. 14015). There is no development in this core area.

Horizon has a core area in Tierra Grande consisting of 3,300 acres platted as follows: 2,000 acres industrial, 1,300 acres commercial (RX 1539B; Tr. 13986, 14015). This property parallels the railroad on both sides for several miles (Tr. 14016, 14014, 14495; RX 1539B, 1540, 1546). There are 8 homes constructed in the 83,000 acre Tierra Grande property. In addition, Horizon retains six "town centers" throughout Rio Communities consisting of approximately 500 acres (RX 1539B).

(3) *Horizon City*

120. The existing core area at Horizon City has 6,400 acres platted as follows: 4,000 acres consisting of 10,000 single family lots; 800 acres multi-family; 500 acres commercial; 600 acres industrial and 600 acres recreational, schools and parks (RX 1536B; Tr. 13979, 14019). As of **[232]**June 1978, about 600 acres of this core area had been developed and there were approximately 800 homes completed (Tr. 14020–22).

Horizon has retained a 4,000 acre core area near what is termed Lake Horizon, which is about 10 miles from the existing core. The two areas are connected by Horizon Boulevard. There is no construction at this second core area. The 4,000 acres are platted as follows: 2,000 acres consisting of 5000 single family lots; 700 acres multi-family; 250 acres commercial; and 1,050 acres recreational, schools and parks (RX 1536B; Tr. 13977, 14022).

Horizon also retained approximately 1,500 acres in core areas located throughout the Horizon City project (RX 1536B).

(4) *Waterwood*

121. The Waterwood project consists of 25,000 acres of land, with only 7 - 8000 acres presently subdivided (Tr. 14520). Whispering Pines Units 1 and 2 and Country Club Estates are fully improved, consisting of about 1,000 acres which includes the golf course and the other facilities (CX Z 67–Z6). Within other Whispering Pines Units

there are 2,823 single family lots, 230 multi-family lots and 12 commercial lots, none of which have been sold (RX 1543A).

Deer Creek Village has 4,976 single family lots and 159 multi-family lots, of which 1411 had been sold and 178 deeded as of May 4, 1978 (RX 1543A).

Green Tree Village has 2,356 single family lots and 133 multi-family lots, of which 895 had been sold and 98 deeded as of May 4, 1978 (RX1543A).

(5) *Arizona Sunsites*

122. The core area at Arizona Sunsites consists of approximately 760 acres, about one-half of which is now developed. There are approximately 400 dwelling units in the core area, along with a golf course and other buildings (RX 1235R; Tr. 13041, 14023). There are approximately 38 homes outside the core area (Tr. 14024). Horizon owns 12,000 acres in Arizona Sunsites in a parcel named Iozona (Tr. 14023). A real estate broker testified that there were between 800 and 1,000 lots in the Sunsites building area that are vacant and owned by Horizon (Tr. 4040–41).

None of the future core areas in Horizon's properties, are, or have been, for sale to builders (Tr. 14028). In 1975 Horizon ceased its own building operations, and it now sells developed lots in existing core areas to builders (Tr. 14026).

D. The Resale Market For Horizon Lots

(1) *Paradise Hills*

123. As of August 2, 1975, Paradise Hills had a total of 6,583 lots of which 1,131 had been deeded and 928 sold but not deeded, leaving 4,524 lots **[233]**owned by Horizon. These lots were platted as follows: 5,381 single family, 142 multi-family, 80 commercial, 5 commercial/multi-family, and 975 bulk lots (CX 873A). Horizon owned all the multi-family lots, 4,162 of the single family lots, but only 106 of the bulk lots. The record does not establish whether the deeded lots had homes or other buildings erected on them as of August 1975. Individual investment in Paradise Hills consisted primarily of bulk acreage where no development has occurred.

Record evidence of resale activity in Paradise Hills is limited (Tr. 6629–30). Professor Stevenson found only limited resale activity in Paradise Hills, and all this activity was concentrated in the development area (Tr. 6737–38, 6832–36). William A. Kelly, a realtor in Paradise Hills who formerly was a Horizon sales representative

(16540–41), testified that owners of the bulk acreage in Paradise Hills contacted him regularly to have their property listed. From 50 to 100 persons sought to list bulk acreage with his firm between 1975 and 1978 (Tr. 16456–47). His firm has not accepted listings for any of these lots (Tr. 16548). He has informed persons seeking to have their property listed that there is no market locally for the lots; that no one is interested in buying them (Tr. 16548–49). Owners of lots in the Knolls area of Paradise Hills have sought to have his firm list their lots. His firm has accepted listings of lots closest to the building area, and rejected those nowhere near the building area (Tr. 16562–63). Mr. Kelly stated that he had sold about sixty developed lots in Paradise Hills in 1977, but "very few,""three or four,"undeveloped lots (Tr. 16608).

When Mr. Kelly worked for Horizon he received information that the lots in the Knolls had a Horizon "book value" of $3300 (Tr. 16563). He testified that Horizon recently had attempted to repurchase those lots for $2200, which was much less than the price at which Horizon had sold the lots (Tr. 16563–66; see RX 1535A for selling prices of Paradise Hills property).

Mel Kupetz, President of Rocky Mountain Land Auction Company, testified that in November 1975, land in Paradise Hills was put up for auction in Albuquerque by his company. There were 63 listings of Paradise Hills property covering one or more lots each (CX 870, 871A–B). Offers were sought on all lots. Only two lots were sold as a result of this auction (Tr. 5128–29).

CX 817A–N represents all Albuquerque Board of Realtors Multiple Listing Service listings of property in Paradise Hills for the period 1970–1974. CX 817A reports a sale of an undeveloped 2 ½ acre lot in April 1974 for $2500. This information is insufficient to establish whether the seller made a profit on the transactions over and above costs. The remainder of the sales were developed lots. It is noted that Horizon Realty, an Horizon subsidiary (Tr. 2805), was the sales agent on most of these transactions. Horizon did not come forward with any reliable information of sales of undeveloped property in Paradise Hills.

The information available in the record establishes that there was no resale market for undeveloped lots in Paradise Hills as of 1978.

(2) *Rio Communities*

124. As of August 2, 1975, Rio Communities had a total of 172,020 lots of which 68,029 had been deeded, and 73,688 sold but not deeded, **[234]**leaving 30,303 owned by Horizon. These lots were

platted as follows: 131,578 single family, 17,327 multi-family, 11,486 commercial and industrial, and 11,629 bulk lots (CX 873B–C).

John Maguire, a former Horizon sales representative, had been a real estate broker in Belen, New Mexico, for four and one-half years at the time he testified in this proceeding in June, 1977, and he had operated his own real estate business for about three of those years (Tr. 2780–81). Mr. Maguire testified that he takes listings for all kinds of real estate in New Mexico. Most of his listings for undeveloped land are in Rio Communities (Tr. 2782). Mr. Maguire has received more than 1,000 requests for Rio Communities lots to be listed for sale during the period from May 1974 to June 20, 1977. The firm accepted about 600 listings, which were about equally divided between Rio del Oro and Rio Grande Estates, ranging from one mile up to 17 or 18 miles from the core area (Tr. 2782–85, 2800). Of these approximately 600 listings for Rio Communities lots, only two ½ acre lots in Rio Grande Estates had been sold. The firm sold one lot in Unit D, for $250 in 1975, and another lot, in Unit S, for $100 in 1976 (Tr. 2782–87).

Some of the owners of Rio Communities' lots who requested listings were advised of the slim possibilities of selling the lot and of the considerable length of time Mr. Maguire would require for a listing. Mr. Maguire testified that "then we wouldn't hear from them any more" (Tr. 2786). He would inform other owners of Rio Communities lots that there was "absolutely no way" the firm could sell their property "regardless of what happens . . . except for a few dollars" (Tr. 2785–86). If someone really wanted to have him accept a listing, however, he would do so. (Tr. 2793).

Mr. Maguire made substantial efforts to sell Rio Communities' lots for which he had taken listings. He has advertised weekly in the local, Belen newspaper. He also ran advertisements in newspapers in 14 northeastern and midwestern cities, such as Chicago, New York, Philadelphia and Boston. Few people responded to these advertisements (Tr. 2787–92). In addition, brokers in the Albuquerque area are aware that Mr. Maguire has listed Rio Communities lots, but these firms have not sold any lots from him (Tr. 2792).

The Albuquerque Board of Realtors has a Multiple Listing Service ("MLS"), which circulates listings of properties for sale among its members. The number of subscribers to the MLS went from 235 to 1160 over the period from 1962 to 1977 (Tr. 2929, 2932, 2846–47). Listings are for all types of real property, including vacant land, and cover a geographic area 35 miles from the Bernalillo County Court House in all directions (Tr. 2846–47). By regulation, the Board requires all members to report all sales to the MLS (Tr. 2856).

The MLS has taken listings of vacant lots in Rio Communities (Tr. 2858). Of listings taken in 1972 and 1973, 27 in Rio Grande Estates and 10 in Rio del Oro, all expired in 1973 and 1974 without a sale recorded (CX 818A–Z2, 819A–J). The MLS has also kept records of 63 other listings during the period from 1973 to 1977 in Rio Communities with a sale recorded in only two instances. (CX 820A–P, 821, 822A–D, 823A–U, 824A–Z7). One of the sales, a Rio Grande Estates lot in Unit 5, sold for $850; it was listed for $1,500 (CX 821). Horizon's selling price for similar lots in 1973 was $1,200 (RX 1541B). The second sale, **[235]**a 10-acre parcel in Tierra Grande, was sold for $4,500 in 1976 (CX 824Z5); Horizon's selling price for similar lots in 1976 was $7,300 (RX 1541G). Some listings which expired without a sale being recorded indicated that: the offering price was below the price for which Horizon was selling comparable lots (CX 819 B,D,E,H; RX 1541H), the buyer could exercise the exchange privilege for other land in more developed sections of Rio Communities (CX 818M, Y), financing would be provided (CX 818W, 819G), the price was less than the seller's original cost (CX 819D; RX 1541H) the lots were "multi-family" (CX 819G), and the owner would accept any reasonable offer (CX 818J, W).

Ronald Williams, administrative assistant to the executive vice president of the Albuquerque Board of Realtors from 1967–1976 (Tr. 2929–30), testified that from 1967 to early 1974 the MLS circulated information to its subscribers about inquiries from lot owners desiring to sell their Rio Communities lots (Tr. 2930–34). At that point the MLS stopped circulating this information because of complaints from MSL subscribers that no action was being taken upon the inquiries and the information "cluttered up" the circulations (Tr. 2934–36). From about the spring of 1974 until June or July 1976, the Board sent a form letter to those who inquired about the sale of lots in Rio Communities (Tr. 2936) that the Board felt there was little local market for such Rio lots (Tr. 2942–43).

Efforts to sell Rio Communities lots through two auctions produced minimal results. The Rocky Mountain Land Auction Company held two auctions, one on August 2–3, and another on November 20–22, 1975 at the Albuquerque Convention Center (CX 865a, 868a). Owners of deeded lots in Rio Communities were contacted to determine if they wanted to offer their lots for sale at the auctions (Tr. 5083). Mel Kupetz, the owner of the Auction Company, testified that he spent about 9 months of working time on efforts connected with these auctions (Tr. 5081, 5114, 5129–30). Expenses of $10,726 were incurred in connection with the first auction, and of $11,421 with the second auction (CX 869, 872). These expenses included "saturation" advertising campaigns which used the newspapers with the greatest circulation and radio stations with the largest audience in Albuquerque (CX 866, 869, 872, 867; Tr. 5100–02, 5225–19). Additional publicity for these auctions included newspaper articles, a television feature and invitations to 30 builders in the Albuquerque area (Tr. 5102–03, 5119).

Prior to the auctions, Mr. Kupetz contacted brokers in the Albuquerque area to assist him. Of the 10 he contacted, 9 expressed no interest in participating. They told him that they had not had any luck selling Rio Communities property and they did not want to have further involvement with it (Tr. 5103–04). Mr. Kupetz, however, was able to locate a broker to assist at the auctions. Peter Olguin, an Albuquerque real estate broker assisted with the first auction (Tr. 5104–05, 2662–64), and Gertrude Kaveny assisted at the second auction (Tr. 2804–06; CX 813). The auctioneers at the auctions had previously conducted auctions of land (Tr. 5156–57). Large blowups of subdivision maps were used to explain the locations of lots. Members of the audience received smaller maps of the property (Tr. 5109, 5122–23). Listings of lots were also available before the auction (Tr. 5094, 5107–08, 5121). The audience was informed before the auction began that offers seeking financing from the seller would be submitted to the sellers (Tr. 5109). **[236]**Once the auctions began, the auctioneer sought bids at any amount if he failed to receive a bid for a given lot at or above the minimum price listed (Tr. 5109–5111, 5123). Bids as low as $5 or $10 for a lot would be accepted, "start it anywhere you want" (Tr. 5110).

The Auction Company accepted about 1,000 listings for the first auction of Rio Communities lots, and rejected an additional 200 to 300 because they were received too late to be included in the printing (Tr. 5099–5100; CX 865a–f). At the auction in August 1975, all of the lots accepted were offered for sale (Tr. 5111–12). All offers made at the auction were submitted to the owners whose lots were the subject of bid offers (Tr. 5131). The result of this auction was that offers were submitted to sellers on only 10 lots. Eight of the lots, all in Rio Grande Estates, were sold, at prices ranging from $200 to $500 (Tr. 2674–79; CX 802a–g).

For its November 1975 auction of Rio Communities lots, the Auction Company accepted listings for about 1,200 lots and rejected listings for about 200–300 lots which were received too late to list (Tr. 5114–15). Listings covered between one and six lots, and lots were located in Rio Grande Estates, Rio del Oro, and Rancho Rio Grande (CX 868A–O). All lots were offered; bids were made on only about 25 or 30 lots (Tr. 5123–24, 5125). All of these bids were submitted to lot owners, and about 20 were sold at prices approximating $200 per lot (Tr. 5125–26).

Professor Howard Stevenson concluded that the resale market for Rio Communities lots was negligible (Tr. 6713). He based his conclusion on contact with brokers and a review of the testimony of persons from the Albuquerque Board of Realtors (Tr. 6710–13). John Maguire told him that the most of the outlying lots were unsaleable (Tr. 6711). Gladys DeLettera of Cullins Realty in Belen told Professor Stevenson that her firm actively discouraged listings of lots in the various subdivisions in Rio Communities with a few minor exceptions. These exceptions were lots in Units 1 and 2 of Rio Grande Estates; a narrow band along State Highway 6; and lots near the 4 or 5 houses in Rancho Rio Grande or near the few houses in Tierra Grande (Tr. 6710–13). Professor Stevenson testified:

Again, my purpose in interviewing these people was not to ascertain the truth, fiction, or whatever, but it was to establish for the benefit of somebody who had not yet purchased what the outlook, attitudes, and potential resale—which creates the investment value—of their property could be.

Q. What was your conclusion as to resale after talking to these people and reviewing the testimony you have mentioned?

A. Negligible. In fact, Mrs. DeLettera was a lot owner, was continuing to make her payments, but when asked why, she said 'Well, I have paid so much down now and maybe some day I can trade it in for closer.'

But even her own lot she felt there was no possibility [237]of sale, which was the ultimate party of interest. (Tr. 6713).

A number of customers who testified in this proceeding attempted to sell their Rio Communities property without success (Tr. 837–39, 1565, 1581, 6092–95, 6114, 16164–65, 16265, 16678–79).

(3) *Horizon City*

125. The Horizon City project had 139,507 lots as of August 21, 1975, of which 49,483 had been deeded and 64,711 sold but not deeded, leaving Horizon as the owner of 25,313 lots. These lots were platted as follows: single family 113,328, multi-family 12,816, multi-family/commercial 5,113, commercial 4,284, industrial 37, bulk (2 ½ acres) 3,929 (CX 873C; Tr. 6981).

Lois Zans, an administrative assistant with the El Paso Board of Realtors, testified that the Board's membership had increased from 166 members in 1970 to 354 as of 1977 (Tr. 2378). The Board operates a Realtors Listing Service ("RLS"), and members who participate in the RLS receive copies of summaries of all listings on all types of properties, including vacant land, which are sent to the RLS (Tr.

2376–81). In 1970 the RLS distributed about 400 copies of these listings to realtors who participated in the RLS. By April 1977, the RLS was distributing about 875 to 900 copies of its weekly book containing listings and the same number of its quarterly digest, which compiles all sales and expirations of listings during the preceding quarter (Tr. 2382). RLS listings also reflect the changes which have occurred in vacant land listings, such as the legal status of the property and the terms a buyer will accept (Tr. 2383–85). Where a sale occurred in a listed property, the realtor who had obtained that listing was required to report that sale to the RLS. Information reported included the sales price, terms and date of the sale (Tr. 2387–88). The listing is then pulled from the active listings, with information on the sale included in the weekly listing book and quarterly digest sent to RLS participants (Tr. 2382). Property listed by one RLS member can be and sometimes is sold by another RLS subscriber, or even a non-member of the RLS (Tr. 2382–83, 2443–44).

From at least 1968 to April 1977, the El Paso Board of Realtors has received inquiries from purchasers of lots in Horizon City who were interested in having their lots listed for resale (Tr. 2376, 2388–89). Mrs. Zans testified that the Board had an average of about four inquiries per week (Tr. 2388–89). The RLS notified all of its subscribers on a weekly basis of the inquiries which they received for the resale of lots in Horizon City. Where no realtor indicated an interest in a given lot, the Board of Realtors during the period from at least 1967 to 1977 sent a letter containing the following to the person who inquired about a listing:

> During recent weeks we have polled our REALTORS in hopes of finding someone who will accept listings on property in [Horizon City, or subdivision of that property.] From each we have received basically the same answer. There is no local market for this property and they will not accept any listings on it. (CX 785, 786; Tr. 2388–95). [238]

The following summary reflects the approximate number of RLS listings and the listings and sales of land within Horizon City (Tr. 2396–2412):

Year	Horizon City Listings	Number of Listings Sold
1970	8	0 (CX 787A-C)
1971	31	1 (CX 788A-I)
1972	35	3 (CX 789A-I)
1973	35	3 (CX 790A-H)
1974	80	2 (CX 791A-R)
1975	51	3 (CX 792A-X)
1976	26	2 (CX 793A-Z-2)[6]

Thus, from about 1400 inquiries to the RLS there were approximately 266 listings and 14 sales of Horizon City property during the period from 1970 to 1976 (Tr. 2376, 2388–89).

Listings sometimes indicated that they were below Horizon's selling prices for comparable property. For example, the third listing on CX 792W contains the following information: The offering price of $2500 is marked through, $1250 written over it. This listing indicated that the owner will finance the purchase, "carry paper". It also stated that it is a "commercial" lot offered at the price that the "owner paid for property in 1966" and that comparable property was "being sold by Horizon for $3400" at the time of the notation. This listing existed for more than 2 years, from January 1973 to February 1975. Other listings also indicated they were below Horizon's price at the time; *e.g* ., CX 791F, item 2 ("Seller hopes for a fast sale at this reduced price"; 791J, item 2; 791O, item 4 Horizon "reverified" its prices for similar lots at the time). Most resale listings handled by Horizon Realty had asking prices below Horizon's then current sales prices for similar property (Tr. 9637). Listings on lots with the following locations expired without being sold: near lake [Horizon] (CX 792U, item 2, 791G, item 2, 791I, item 3,4); near the golf course (CX 791B, item 1, 791F, item 3); one block from utilities and one-half mile from present subdivision (CX 791E, item 2, "submit all offers"); across the street from where homes are being built (CX 791F, item 3); and one-half mile north of Horizon Boulevard and three-quarter mile from water tank (CX 791J, item 3). Listings expired without being sold where the exchange privilege was mentioned (*e.g.,* CX 792P); financing was offered by the seller (*e.g.,* CX 792P, item 2; 791D, item 4; 791W, item 2 ("submit all offers", 791F, item 1, item 3 [15% down, balance over 10 years]); or through assumption of the balance due Horizon (CX 791K, item 4 "submit all offers").

Oswald Glaze had been a real estate salesman with the El Paso realty firm of DeWitt & Rearick for 5 years as of the time of his testimony in April 1977. He worked out of the office in Horizon City all but the first 18 months of that period (Tr. 2224, 2226). He

[6] Some of the listings shown on CX 787–793 were apparently not Horizon City property (*see* CX 787, 793V).

accepted about 2,000 listings on vacant lots in Horizon City during that period (Tr. 2237–38). [239]Mr. Glaze testified that he accepted about 200 listings in 1973, about 600 in 1974, about 800 in 1975, about 200 listings in 1976, and about 100 during the first three months of 1977 (Tr. 2239–40). Listings were usually for a 6-month period until 1976, and for one year after that (Tr. 2250). When Mr. Glaze first began listing lots in Horizon City he listed all lots where someone requested a listing. In 1975 to 1976, he began restricting listings in general to those within a mile of Horizon Boulevard or Rodman Street, adjacent to the developed area in Horizon Manor, or within one to two miles from Lake Horizon (Tr. 2232–36). He testified that his experience had shown that certain lots were not as marketable as others. Also, company policy was to sell only property that you could take people out to see, "put them on the ground and explained to them the general area" (Tr. 2232), how far the property was from utilities, roads, etc. (Tr. 2232). Of the approximately 2,000 listings which Mr. Glaze accepted during the period from 1973 to 1977, only 45 resulted in sales (Tr. 2237, 2244, 2246), 34 of which were outside the developed area (Tr. 2249).

Mr. Glaze was recalled as a defense witness. His testimony at this time was very general and vague as it previously was. He testified that he had refused about 100 requests for listings (Tr. 9877) and had taken about 80 listings on land in Horizon City since his previous testimony one year earlier (Tr. 9836, 9839). About 60 of these parcels did not have utilities (Tr. 9846); he sold 5 of these parcels (Tr. 9840), which were all acreage parcels (Tr. 9841) located adjacent to Horizon Heights.

Mr. Glaze has lived in Horizon City for several years and has had a real estate office there for several years (Tr. 2225–31, 9834–35; RX 1170). The real estate firm with which he is employed, DeWitt & Rearick, is a very large firm, employing approximately 72 sales representatives in 1977 (Tr. 2231). His testimony was from memory; no actual listings showing lot locations, descriptions of property, or selling prices were offered in evidence. However, from Mr. Glaze's testimony, it is apparent that he received many requests for listing Horizon City property, that he refused requests to list undeveloped lots that were not adjacent to the core area or along Horizon Boulevard, and that a resale market for undeveloped lots in the vast Horizon City project was non-existent.

On October 15 and 16, 1975, in El Paso, Texas, the Rocky Mountain Land Auction Company held an auction of lots located in Horizon City (Tr. 5082). Before the auction began, an El Paso real estate broker described the property, using maps to show the locations of different areas within Horizon City and their proximity to areas already improved. Individuals attending the auction were given brochures on the property to be offered at the auction (Tr. 5090, 5094–95). It was stated that all offers, including those contingent upon financing from the seller and those at prices below the minimum, would be submitted to the seller (Tr. 5092–93, 5095). Between 800 and 900 deeded lots were offered at the auction. No lots were sold, and no bids of any amount were made for these lots (Tr. 5092–97, 5099). Rocky Mountain's expenses for this auction were $10,700 (CX 863). Of this amount, $786 was spent for an advertising campaign two days before the auction, which included advertisements in El Paso's morning and evening newspapers and on the two El Paso radio stations with the largest audiences (CX 862; Tr. 5087–89, 5117–18). **[240]**

Joseph Lusteck, an expert witness who testified for complaint counsel, reviewed the results described above of the listings and sales of the RLS and of Mr. Glaze, as well as the experience at the auction. He also had a search made of 49,483 lots which Horizon had deeded to purchasers, and found only 36 of those subsequently transferred to involve arms' length transactions (Tr. 7060–65). On the basis of his analysis, Mr. Lusteck concluded that there was only a "very shallow" and very weak resale market for unimproved lots in Horizon City (Tr. 7064–67).

Jack Mann, who also testified for complaint counsel as an expert appraiser, studied the resale market for Horizon City property, and was able to locate 20 sales which he used as "comparables" for appraisal purposes (CX 8920,E; Tr. 7602–03). These "comparables" which were undeveloped lots, sold at prices less than the original Horizon sales price (CX 892D, E).

Several customers who testified in this proceeding, related their experiences in attempting, unsuccessfully, to sell their Horizon City property (Tr. 944, 954, 1127–28, 1185, 1654–55, 1838, 1843, 6261–63, 6299–6300, 6496–98).

(4) *Waterwood*

126. As of August 2, 1975, Waterwood had a total of 11,160 lots of which 2,560 had been sold but not deeded, and 79 which had been deeded, leaving Horizon owning 8,521 lots (CX 873H). Only 7,000 of Waterwood's 25,000 acres had been platted as of that date (Finding 121).

The Waterwood property was not placed on the market until 1973. There is little evidence concerning the resale market for Waterwood lots. The evidence which does exist indicates that there is no resale market for these lots. Horizon set up a resale organization for Waterwood property in 1976, Waterwood Realty (Tr. 8133, 8153–54). Janis Hearn of Waterwood Realty testified that in the two years the realty company had been in business, no vacant (or deferred use) lots were sold even where the owners were willing to sell below Horizon's current price (Tr. 8157). She claimed that there has been resale of developed properties, but none of the undeveloped lots (Tr. 8153). Waterwood Realty has taken listings on approximately 100 vacant lots for individual owners without making a sale (Tr. 8153). Individual buyers are able to get a better deal from Horizon, especially in terms of financing (Tr. 8153).

A more individualized experience was related by Raymond Dickeson, who stated during his testimony in February, 1978, that he had been trying since April 1977 to sell his developed lot (Tr. 8933). Significantly, his lot is located on the golf course and overlooks the lake in Waterwood (Tr. 8937, 8923). The lot was listed with Waterwood Realty [Horizon] which charges a 12% commission, but the listing had expired (Tr. 8936). If he received his asking price, he would lose money compared to what he could have earned in a savings account (Tr. 8937). He testified he would be willing to sell at a loss so he could save the Waterwood improvement fees and tax costs (Tr. 8939).

James Madget, who owned an Horizon City lot which he could not sell, traded for a $6,000 Waterwood lot in August 1974. He was told he would be able to sell that lot right away, and that the sales representative would **[241]**give him names of real estate brokers who would list the lot. Mr. Madget was also told that if he was unable to sell the lot, he could get his money back. He was later able to get the names of real estate brokers from the sales representative - "he did finally after about a month give me the names of several real estate brokers who he said could list the property" (Tr. 1409). Mr. Madget telephoned two brokers who just "laughed" (Tr. 1409–10); he was unable to locate two other brokers (Tr. 1410). Upon recontacting the sales representative, Mr. Madget was sent a "sales package" containing sample newspaper advertisements. He advertised in the Houston *Chronicle,* but he received no response (Tr., 1410). He asked Horizon to trade his Waterwood property for a cheaper parcel, and was told this was against company policy (Tr. 1411). Mr. Madget forfeited $1,352 (Tr. 1413).

Charles Osenbaugh, an expert witness who testified for Horizon and was given an assignment to determine if Horizon's prices for the Waterwood lots were synonymous with the market value of the lots

(Tr. 15759–60), testified that there would be no resale market for the undeveloped lots in Waterwood until 1984 (Tr. 15761).

(5) *Whispering Ranch*

127. As of August 2, 1975, Whispering Ranch had a total of 3,827 lots of which 1,849 had been deeded and 1,672 sold but not deeded, leaving Horizon owning 306 lots (CX 873F).

Frank Mangin, Program Director for Economic Development for the Arizona Governor's Office, Planning Department, testified that he was not aware of any developmental inquiries about the Whispering Ranch property. He stated that it is so far removed from any economic activity, because it has no existing utilities, no one has seriously thought about it for residential purposes or for any other purpose (Tr. 3388–89). Whispering Ranch is not prime real estate; "it is removed from people, roads, utilities and consequently, demand for the use of it." The land is "typical of high desert, rolling country, not unattractive but with no particular reason for any higher use" than the grazing which originally went on when the land was part of a ranch (Tr. 3424).

Claude Wolverton, owner of Red Carpet Realtor in Youngtown, Arizona, testified that he has had numerous inquiries from Whispering Ranch property owners desiring to list their property for sale, but that he advised them that he could not resell the property (Tr. 3225), much less sell it at the prices the owners wanted—$700 to $1500 per acre (Tr. 3226). He has refused to list Whispering Ranch property (Tr. 3225, 3241).

Mr. Wolverton also testified that he has properties listed that are near Whispering Ranch (Tr. 3234), some with electricity (Tr. 3235). These properties have better locations than Whispering Ranch and are being offered for sale below the prices which customers purchasing from Horizon had paid (Tr. 3233–35). To his knowledge, no parcels of land have been resold in Whispering Ranch (Tr. 3240).

Ruth McCaughey of Wickenburg, Arizona, has been in the real estate business near Whispering Ranch since 1971 (Tr. 3253). She testified that during her employment with American Realty, the company would not take [242]listings on Whispering Ranch property (Tr. 3257). Since she started her own firm, five people have asked her about listing Whispering Ranch property and she has informed them that there was no market for the property (Tr. 3258).

She, however, has taken three listings on Whispering Ranch property at 20 acres for $11,000, 40 acres for $450 an acre, and 40 acres for $450 an acre. She has not received any offers for these properties, although they have been listed for one and one-half years (Tr. 3259). She has sold one parcel of land adjoining Whispering Ranch, a parcel of 133 acres at $75 per acre (Tr. 3260). The land around Whispering Ranch is being used for cattle grazing by the Federal Bureau of Land Management, four cattle per section. A section of land is 640 acres (Tr. 3261).

Another Wickenburg realtor, Bruce Summer, testified that he believes he has been on Whispering Ranch, both on horseback and four-wheel drive vehicle,but he cannot be certain because there are no stakes to identify the property (Tr. 3304). Mr. Summer's company, American Realty, has received numerous requests to list Whispering Ranch property and has taken two listings, only because he could not dissuade the people otherwise. The reasons for trying to dissuade the people from listing the property was, first of all,"no one could show it where it was. And I can't sell land I can't show" (Tr. 3306). Secondly, American Reality has no way of establishing a market value for the property (Tr. 3306). Mr. Summer has been in the real estate business since 1971, and no one has asked to buy Whispering Ranch property through him (Tr. 3303–07).

Sanders Solot, a real estate appraiser who testified for Horizon and appraised Whispering Ranch property and projected the future value of the property (Finding 115), was unable to locate any sales of Whispering Ranch properties which he could use in making his appraisal of that land. The few sales of Whispering Ranch properties he did locate involved "tax loss" transactions or exchanges of property, which did not represent market value transactions (Tr. 15688–89).

The land appraiser for Maricopa County found no resales of Whispering Ranch land in 1972 and 1975 at the time he appraised that property (Tr. 3623).

(6) *Arizona Sunsites*

128. As of August 2, 1975, Arizona Sunsites had a total of 22,116 lots of which 14,897 had been deeded, and 4,536 sold but not deeded, leaving Horizon owning 2,683 lots. These lots were platted as follows: 19,203 single family, 717 multi-family, 732 multi-family/commercial, 220 commercial and 1,244 bulk lots (CX 873G).

Frank Mangin, from the Economic Development Office of the Governor, testified that he had received no inquiry concerning industrial development in Arizona Sunsites. In his judgment the area lacks the first element for attracting industry, "a demonstrable labor supply" (Tr. 3401). He further testified that Arizona Sunsites does not have sufficient population to support a significant retail sales infrastructure (Tr. 3406), and it lacks the medical facilities to support a substantial population of retired persons (Tr. 3472, 3397–99). **[243]**

Peter Fusco, a former Horizon employee, has been in the real estate business in Willcox, Arizona for ten years (Tr. 4023). His firm takes listings of all types of property in Cochise County, which includes Arizona Sunsites (Tr. 4023–24). He has received 6–700 inquiries about listing lots for sale in Arizona Sunsites. He has referred all such inquiries to brokers located in Sunsites, because the 10 percent commission he would receive would not make the effort worthwhile to him (Tr. 4026, 4032). He owns two lots in Sunsites, which he has been unable to sell (Tr. 4027–4039).

Albert Karnok, formerly employed by Horizon, has been a real estate broker since 1971 (Tr. 3958). He has lived in Sunsites 14 years (Tr. 3979). Mr. Karnok has accepted some listing in Sunsites; he has refused to list other property depending upon the locations (Tr. 3956). He does not list lots that are too distant from the "core" area (Tr. 3956–58). From 1971 to July 14, 1977, Mr. Karnok had listed approximately 195 lots (Tr. 3958).

From 1971 he has records of refusing to list 110 lots, not including telephone and walk-in inquiries that he refused to list (Tr. 3959). From 1971 to the date of his testimony, July 18, 1977, Mr. Karnok had made 56 sales embracing a total of 96 lots (Tr. 3959).

From at least 1972 to 1976, Mr. Karnok sent letters to persons who inquired about the resale of their lots in Sunsites. These letters indicated that there was little demand or resale market for lots in this property (CX 845A–F; Tr. 3960). In one 1976 letter, he indicated that even if a lot listed for $700 sold for that amount, the net amount to the seller would be no more than $510 after deducting the costs of sale; i.e., a 10 percent sales commission and title costs.

E. Customer Forfeitures

129. Horizon's contracts with its land customers provide that failure of the buyer to make payments according to the payment plan selected shall entitle Horizon to "retain all sums paid under this Agreement as liquidated damages" (CX 142, 143, *for example;* Ans., Par. 74). Horizon's policy generally is to cancel a land sales contract as follows:

Purchaser's Equity In Contract	Contract Cancelled When Delinquient
0% to 10%	3 payments
1% to 30%	4 payments
Over 30%	6 payments
	(CX 61R, 62U).

Horizon has never taken any action against delinquent customers other than forfeiture of the property (CX 66B; Tr. 13455–57). However, Horizon did send delinquent customers "dunning" letters threatening legal action: "Should you fail to bring your contract current, we shall be compelled to place this matter in the hands of our attorney . . . Please save us—and yourself—from this embarassment" (CX 921D). **[244]**

130. Commissions were payable to the sales representatives who made a given sale. Commissions ranged from 7% to 11%, depending upon the percentage down payment, the length of the payout period, and whether the sales representative was a junior or senior sales representative (CX 159f). With the high average downpayment of 12% on sales (CX 67d), the weighted commission would be 8.2%. Tony Zimmer, a Horizon sales representative for over a year, testified that his commission was generally 8% of the gross amount of the sale (Tr. 6139). Commission overrides were also payable. Mr. Zimmer testified that his sales manager, Jerry Steer, received an override of 2% on sales which Mr.Zimmer made (Tr. 6152). Theodore Stone and Bernard Gelfand received ½% of the net sales in their respective zones (CX 775; Tr. 10376). Daniel Nickeson received overrides as a regional manager (Tr. 4500). Thus, total commissions and overrides from sales could range between 9.5 and 13.5%. Based on the average downpayment and the commission figures above, the total commissions and overrides were generally in the range of 10.5 to 11%.

Horizon's direct selling expenses included costs in addition to sales commission and override costs (*see, e.g.,* CX 921). Selling expense as a percent of sales was between 27.8% and 29.6% in fiscal 1968, with the percentage varying by property (CX 87A–B). The selling expense also varied in later years by property (CX 87A–B). In all cases, the selling expense was a greater percentage of the original sales price of the contract than the commission and override totals discussed above (CX 87A–B). Multiplying the direct sales expense percentage by the sales amounts for lots purchased in a property produces a total for direct selling expenses (Tr. 4293–96).

131. Accounts which were forfeited during the period January 1, 1968 through June 30, 1975 where the principal and interest collected exceeded the direct selling expense are shown below (Tr. 4297–98). The information set forth in this table shows separately

the principal and interest paid by customers, the total of such payments by customers, Horizon's direct selling expenses, and the net retention by Horizon—i.e., the difference between the total payments by the customer and Horizon's direct selling expenses. These figures were taken from CX 852A–Z124, and establish that Horizon retained $2,251,721 over its direct selling expense.

Fiscal Year Cancelled	Principal Paid	Interest Paid	Total	Direct Selling Expense	Net Retention
1968	74,330	30,850	$105,180	70,314	34,866
1969	201,708	77,708	279,076	168,380	110,696
1970	219,335	82,998	302,333	191,781	110,552
1971	353,980	128,662	482,642	314,063	168,579
1972	390,296	154,910	545,206	365,613	179,593
1973	717,577	311,573	1,029,150	668,011	363,139
1974	1,088,420	498,417	1,586,837	1,095,089	491,748
1975	1,503,212	665,341	2,168,553	1,374,005	794,548
Total:	$4,548,858	$1,950,119	$6,498,977	$4,247,256	$2,251,721

The above figures for fiscal 1968 do not include information for June 1, 1967 through December 31, 1967. This table has been taken from CPF 3.143 and 6.33. The information has not been audited by the administrative law judge, but is assumed to be approximately correct. **[245]**

Horizon's out-of-pocket costs for commissions and overrides for the cancellations reflected above were considerably lower than the direct selling expenses. For example, direct selling expenses for account 369–04045 shown on its printout of cancellations were $700.92. This amount representd 26.4% of the sales price of $2,655 for project 3 in fiscal 1969 when the sale was made (CX 852Z2, 87B). Deducting that amount from the principal and interest payments leaves a net retention of $113 (CX 852Z2). If, instead, a commission and override total of 11% is applied to the sales price, the amount is $292. Deducting this amount from the $814 paid by the customer leaves a balance of $522 retained by Horizon.

5,541 customer contracts were cancelled during fiscal 1974 (June 1, 1973 - May 31, 1974) with no refunds being made. This tabulation establishes that these customers paid in a total of $2,466,802. The defaults, or cancellations, by property are:

Property (CX 109Z24–25)	Payments on Principal	
Combined land in more than one property	$ 272,440	CX 854A–D

Paradise Hills	45,811	CX 854D-3
Horizon City	896,720	CX 854E-Z28
Rio	1,116,328	CX 854Z28-81
Whispering Ranch	40,776	CX 854Z81-82
Arizona Sunsites	60,995	CX 854Z82-85
Waterwood	33,732	CX 854Z85-86
Total	$2,466,802	

Many of the customers who defaulted also paid interest to Horizon which is not included above. For example, interest of $461 was paid on account number 205–0435 (CX 854D, 852Z50); $868 on account 394–72365 (CX 854X, 852Z52); and $1,723 on account 476–15931 (CX 854Z74, 852Z58).

Customers who defaulted were also responsible for the payment of taxes and HCIA fees, if any, on their lots prior to the time of their default (*e.g.*, CX 35j–k). Payment of these amounts and the loss of any income on the funds paid out increased the losses of the customers.

Horizon claims that it lost $7 million in each of 1973 and 1974 from cancelled sales (RPF 581, p. 356–57). Horizon cites CX 92E in support of this claim of a loss on cancelled contracts. This "loss" is merely an accounting entry made at the time of a contract cancellation to adjust entries which were made to sales and deferred profit at the time the original sale was made. An accurate statement of this accounting entry is found in Horizon's annual report:

> Upon cancellation of a contract receivable, the excess of the unpaid balance over recovered costs (land and improvement costs and recovered commissions) and deferred profit is charged to 'Loss on cancellations'. (CX 62U) **[246]**

Several customers who testified in this proceeding forfeited on their contracts. Burnice Carter forfeited on his lots after paying Horizon approximately $5100 (Tr. 944). J. D. Oliver forfeited on a Waterwood lot after making a downpayment and three monthly payments (Tr. 1044). Other customers who forfeited were Billy Miley (Tr. 1507–08), James Madget (Tr. 1412–13), David Krausse (Tr. 1777–78), John Mossman (Tr. 4868–69), Jose Medina (Tr. 5001–03), John Gothard (Tr. 6096–97), Grace Swanson (Tr. 16169), Elsie Colon (Tr. 16224–25), and James Devlin (Tr. 16627).

F. Tax Sales

132. In New Mexico, property on which a deliquency in taxes has occurred and remains delinquent for three years, will be deeded by the County to the State. The State holds the tax deed for one year to give the assessed owner an opportunity to redeem or repurchase the

property. After the one year period passes, the State may set the property for auction (Tr. 2697). The State seeks to recover delinquent taxes, interest and costs out of the proceeds if land is sold at auction. The excess, if any, over these amounts, may be obtained by the former owner (Tr. 2699–2700).

Tony Armjo, Manager of the Enforcement and Collections Division for the Property Tax Department, State of New Mexico, testified that the state had a backlog of some 26,000 tax deeds at one time. Mr. Armjo made a special effort to get rid of these tax deeds (Tr. 2712–13). CX 804A–Z68 is a listing of property in Valencia County which was placed at auction on April 16, 1974. This listing included over 300 lots located in Rio Grande Estates, a subdivision of Rio Communities (CX 804Z23–Z45, Z51–Z63). Horizon bought many of these lots at the auction (CX 804Z28–Z33, Z35–Z45, Z51–Z63; Tr. 2712).

CX 807 A–C is a buyer registration for a tax auction which was held in Valencia County on October 2, 1975. This exhibit (CX 807A) indicates that Horizon was assigned buyer's number 3. CX 808A–Z9 is a listing of the property placed at auction in Valencia County on October 2, 1975. The listing consists of 414 parcels of land and all but three are lots in Horizon's Rio Grande Estates in Rio Communities. Further, Horizon purchased many of these lots, apparently paying the minimum bid price set by the State. Mr. Armjo testified that he was informed by Horizon representatives on several occasions that Horizon would give a standing offer to bid the minimum bid on all Horizon properties if no one else bid on the property (Tr. 2756–57). These minimum prices at the auctions were substantially less than the price which the lot owners paid to Horizon. Single family lots in Rio Grande Estates were sold by Horizon for $200 in 1962, and in 1974 the lots were selling for $1400 (RX 1541B). Horizon was buying substantial numbers of these lots in 1975 at tax auctions for $100 or less (CX 804, 808).

G. Feasibility and Absorption Studies

133. It is a usual and desired procedure for developers or investors in real property to have economic feasibility studies and [247]population absorption studies made on property before they make investments, or before they commence development of the property. An economic feasibility study focuses on the economic return that can be expected if certain action that can be taken with property is taken. A population absorption study seeks to determine the number of persons that will settle in a property in each year and

the length of time it will take for property to be totally absorbed, totally placed in an end use (Tr. 4003–04, 6589). Professor Stevenson testified that banks and lenders require absorption analysis on property before they make loans (Tr. 6728–29). Feasibility studies and absorption studies were required on all New Town projects sponsored by the Department of Housing and Urban Development (Tr. 6908). Joseph Lusteck testified that feasibility studies and absorption studies are an essential tool for banks, investors and land developers (Tr. 7081–83), and that such studies are necessary to render an opinion on the investment quality of property (Tr. 7136). Jack Mann testified that an absorption study is necessary for an informed decision to be made respecting an investment (Tr. 7589).

Available evidence indicates that Horizon had no economic feasibility or absorption studies made prior to selling land to the public. Ben Southland of Gruen Associates, which planned various subdivisions of Horizon's properties, testified that he presumed Horizon had such studies, but that he never was shown any such study and his firm did no such study for Horizon (Tr. 4003–04, 4012). John Hegstrom, formerly a Vice-President and Chairman of Horizon's Pricing Committee (Tr. 4123–25), could not recall any study or analysis being used in connection with pricing recommendations covering any of Horizon's six properties (Tr. 4141–42). George Larsen, formerly a member of the Pricing Committee, confirmed that Horizon did not consider the timing of the end use of its land even though Horizon's president, Sidney Nelson, recognized the utility of this information in valuing land (Tr. 4255–59).

Marshall McIntyre, Horizon's Development Services Manager, testified that there were no Horizon studies; no study of sewage costs in any property (Tr. 4327–28), no study of availability of water for any property (Tr. 4330), no study of demand for housing in any property (Tr. 4331), no study of supply of housing in any property (Tr. 4332), no study of demand for industrial land in any property (Tr. 4333), no study of any kind specifically for Horizon property (Tr. 4334), no feasibility study (Tr. 4337), no investment potential study (Tr. 4338), no scientific tests (Tr. 4340), and no reassembly programs or studies (Tr. 4334).

H. Horizon's Officials Did Not Invest in Horizon Land

134. Horizon's officials, who were responsible for purveying to the public what was represented to be an excellent, risk-free investment, better than savings accounts, stocks or bonds, or life insurance, purchased no Horizon undeveloped land (Tr. 14057,

13769–70, 14629, 13452). Bill Cook, who started as a sales representative with Horizon in 1967 (Tr. 13512) and became Vice President of Sales [248]in 1970 (Tr. 13523), who earned $40,000 per year plus $100,000 per year in commissions as a Zone Manager and $150,000 per year as Vice President of Sales (Tr. 13664), owns one lot in Horizon City for which he paid "around $300, $400" (Tr. 13663). This lot was purchased during the time Mr. Cook was a sales representative (RX 1538D), as it was Horizon's policy to encourage sales representatives to purchase Horizon property (CX 103K; Tr. 8401, 4420).

I. Other Development Problems

(1) *Water Rights*

135. There was expert testimony in this proceeding that there is ample water available to develop Horizon's properties and that water resources can be obtained at reasonable costs (see RPF 268, pp. 179–80). However, there is other record evidence that water rights are difficult to obtain and are expensive (Tr. 16578). Professor Stevenson alluded to water problems at Horizon's Paradise Hills project. Paradise Hills Unit 1 was sold with a development commitment (Tr. 16724–25). Water lines are in, streets and roads are in, but there has been an extended and continuing controversy over water rights. The private utility serving Paradise Hills is unwilling to assume additional expense to open up the lots because of a lack of a "ready to service" charge being available (Tr. 6690–93, 6705). William Kelly, a former Horizon employee and presently a realtor in Paradise Hills, confirmed Professor Stevenson's testimony about Unit 1 (Tr. 16618).

William Kelly also testified that he owns six acres of undeveloped land in Paradise Hills. He has been informed by the utility that supplies water to Paradise Hills, that he will have to furnish water rights to the utility in order to get water service to this property (Tr. 16572–74). According to Mr. Kelly, Horizon was contractually obligated to furnish the water rights sufficient to supply water to the original 8500 acres in Paradise Hills, but Horizon has failed to honor its agreement (Tr. 16574–76, 16597–600). A water line goes by the front of Mr. Kelly's property, but he cannot be placed on water service until the utility receives the necessary water rights (Tr. 16576–77). Mr. Kelly has been informed that water rights for his property will cost $60–70,000 (Tr. 16578). According to Mr. Kelly, several other persons in Paradise Hills have been denied water service for the same reasons (Tr. 16600).

Additional evidence received during surrebuttal hearings confirmed Mr. Kelly's testimony. On August 23, 1978, Mr. Kelly received a letter from H. Frank Metzler, Vice President, Paradise Community Services, Inc., the private utility authorized to provide water services to Paradise Hills (CX 1000A). The letter stated that the utility, with the permission of the New Mexico State Engineer, is actually diverting more water than its consumptive rights permit. This is a temporary situation, and in the near future the utility will be called upon to curtail pumping or acquire additional water rights. The utility is therefore requiring each developer to provide **[249]** water rights equal to the estimated usage of the proposed development. The letter stated that Horizon has refused to supply additional water rights to the utility and presumably has rescinded the agreement between Horizon and the utility. Since Horizon will not supply additional water rights, the utility looks to each developer to provide water rights necessary to service the proposed development. The letter noted that although there may be an agreement or obligation between the original seller [Horizon] and a buyer, someone will have to provide water rights before the utility will provide water service to Mr. Kelly's Paradise Hills property.

In New Mexico, water rights are severable from the land and can be sold or purchased. It is a property right. The place of use of and point of diversion of the water can be transferred. Water rights are usually referred to in terms of acre feet of water. Water rights can be acquired in perpetuity (Tr. 15540–41). The cost of water rights is in dispute and cannot be resolved on this record (see Tr. 16578, 15540; RPF 268, p. 180). Mr. Kelly contends water rights are expensive; Horizon contends such costs are "reasonable".

The Water System Agreement between Horizon and Paradise Services, dated January 14, 1961, is in the record (RX 1593). The agreement provided that Horizon will provide water rights to Paradise Services at the time they are needed, provided, however, that if such request is made after 3,000 houses have been connected to the water system, or 6,000 acre feet of water has been purchased by Horizon and transferred to Paradise Services, or twenty years shall have elapsed from the date of the agreement, Horizon shall have no duty to purchase and transfer additional water rights to Paradise Services (RX 1593H, I).

The area of land covered by the agreement between Horizon and Paradise Services covers 8500 acres of the Paradise Hills project (RX 1593T; Tr. 16712). Mr. Kelly's property is part of the 8500 acre tract (Tr. 16729, 16574); 3,000 homes have not been built in Paradise Hills

(Tr. 16729); and 6,000 acre feet of water is not being used (Tr. 16599, 16711).

At surrebuttal hearings Horizon offered testimony and letters concerning water rights at Paradise Hills. RX 1594 is a letter dated September 8, 1978, from the President of Paradise Services stating that Horizon has fulfilled its obligation as to water rights under the 1961 agreement. RX 1595 is a letter from Sidney Nelson, President of Horizon, to Mr. Kelly dated September 8, 1978, stating that Horizon has fulfilled all its obligations to furnish water rights to Paradise Services. Horizon offered testimony by Leonard Steele, Horizon's Vice President for Development, that Horizon has provided the utility with "sufficient" water rights to service Paradise Hills, and Horizon owes the utility no additional water rights (Tr. 16713–17). Mr. Steele admitted, however, that the determination as to the amount of water rights necessary to supply Paradise Hills is made by the State Engineer, and if the State Engineer determined additional rights are necessary, Horizon would have to supply them (Tr. 16730–32). **[250]**

Thus, Horizon contends "sufficient" water rights have been furnished Paradise Services, and Paradise Services contends additional water rights must be furnished to it. The position of the State Engineer is not known by direct, reliable evidence. A determination as to the ultimate responsibility for furnishing water service to Mr. Kelly's property need not be made in this proceeding. The relevance of Mr. Kelly's water rights problem is a dramatic demonstration of risks involved in the development of lots in Horizon's properties now and 30 years or more in the future.

(2) *Utility Costs*

136. Horizon's lots were all sold on the representation they would be contained within a fully developed community, with paved streets and city utilities. They were not sold or purchased with the understanding that individual lots would be developed separately, with rural or semi-rural facilities (Tr. 8751–54). The record establishes that it is not economically feasible or practical to develop a single lot in the Horizon projects. Bernard Gelfand, a regional sales manager for Horizon for Paradise Hills and Rio Communities (Tr. 10235–36, 10290), at present sells developed lots to builders (Tr. 10291). He testified that a builder needs a "cluster" of lots before development can be feasible—"You cannot develop one lot at a time" (Tr. 10298, 10303). Leonard Steele, Horizon's Vice President for

Development, testified that it does not make economic sense to attempt to develop one lot in a large subdivision:

Q. Is there a reason for just why it does not happen that way?

A. Well, two reasons. The cost would break the developer and the utility company would fight it tooth and nail, because they don't want that kind of a capital asset out there taxed to provide the revenue from one meter. Just won't happen (Tr. 13976).

Horizon City lot owners are not permitted to use individual wells for a water supply (CX 35P–Q, 36 O–P). Leonard Steele testified that water underneath Horizon City lots is deeper than in other Horizon properties and in some areas of Horizon City the water is brackish and unsuitable for drinking purposes (Tr. 14021). This will require the physical transportation of water to the Horizon City premises from a distant location and this will be expensive (Tr. 14021, 15536–39).

Rio del Oro lot owners are not permitted to use individual wells for a water supply (CX 10M). Horizon has acquired water rights to service only the existing development area and five years anticipated growth, a population estimated to be 10,000 people (CX 10M). This water supply would not be adequate to serve the core areas retained by Horizon if fully developed (see Finding 85–86). Septic tank use [**251**]in Rio del Oro is subject to the granting of a variance because most lots are below the minimum size required. An increase in that minimum by local authorities, apparently after the lots were planned by Gruen Associates and subdivided by Horizon made the lots too small (*e.g.*, CX 10N–O, 11N–O).

Charles Campbell, a well driller located in Wickenberg, Arizona, near Whispering Ranch, testified that he had not drilled a well on Whispering Ranch. In his opinion, however, water wells on that property would range from 200 feet to 1000 feet and would cost an average of $4000, plus cost of a pump which would range from $500 to $1200 [1977 prices] (Tr. 3293–96, 32810).

Peter Fusco, a realtor in Willcox, Arizona near Arizona Sunsites, testified that the cost of drilling is $10 per foot for a domestic well, and he had determined that the average well in Arizona Sunsites was 350 to 500 feet, depending upon the water table and where you are drilling. When he sells property as a realtor he must tell prospective buyers about the electricity 2 miles away (Tr. 4030), and the need for a well and septic tank. These items add $15,000 to the cost of the land. "It is up to the individual. He may say yes, I'll go along and he may not. The majority of them will not because it is just an exorbitant amount of money in comparison to the cost of the land. The land is the cheapest of the deal" (Tr. 4030–31, 4032).

Charges for electricity, sewer and telephone would likewise make development of an individual lot economically unfeasible. As of May, 1975, costs for utilities to the most remote lots within the various subdivisions of Rio Communities then being offered for sale could be as great as the following amounts:

Electricity		$142,500 (CX 11n)
Water	– extension of line	$340,000 (CX 11n)
	– drilling well	$ 12,500 (CX 10m, 11m)
Gas	– lines not available, use bottled gas instead; $500 for storage facilities (CX 12n)	
Telephone	– line	$165,000 (CX 12n–o)
	– radio telephone	$ 2,500 (CX 12n–o)
Sewage	– septic tank	$350–600 (CX 10–o)

Similar substantial expenses would be applicable to Horizon City lots (CX 35P–S, 36 O–R; Tr. 2449–96). Lawrence Mattison, engineering supervisor for the Western division of the Arizona Public Service Co., testified that to get electricity out of Wickenberg toward Whispering Ranch, an over-head, single-phase electric line would cost about $10,000 a mile; also, since the area involves difficult terrain, they would probably have to add 25–30 percent to that figure (Tr. 3567). Electric lines are now within three miles of the Whispering Ranch boundary (Tr. 3565). **[252]**

Horizon's federal property reports make it clear that there is no utility service of any kind outside the development areas of Horizon's projects and no provisions have been made to provide such services. CX 35P, a federal property report for Horizon City, states that there is no assurance the El Paso County Water Authority will be able to finance extensions of the water system and therefore water may never be available to the lots. Likewise, there is no assurance that line extensions will occur at any particular time (CX 35P). The owner of a lot must make arrangements for sewage, electricity, gas, and telephone (CX 35R–S). Drainage ditches will be constructed as part of the bladed road system but will not be maintained (CX 35 O). Horizon has agreed to construct bladed and graded twenty-four foot roads with drainage ditches, but no money has been escrowed to assure completion of the roads and there is no commitment to maintain the roads (CX 35 O).

The Rio del Oro federal property reports state that Horizon has made no arrangements for the extension of water, sewage disposal, electric, telephone or gas service (CX 10L). The road commitment in Rio del Oro is similar to the Horizon City commitment (CX 10K).

J. Initial Cost Of Land To Horizon

137. Horizon purchased land for its Rio Communities project at the following cost per acre (CX 131C):

Date	Acreage	Per Acre Price
1-9-60	106,000	$ 9.91
11-1-68	47,092	99.81
7-23-69	11,810	64.08
7-20-72	84,000	81.08

Average price per acre $53.78

By contrast, all of Rio del Oro except for the core areas, was subdivided into quarter acre lots (10,000 square feet), some 82,918 lots (RX 1539a, 1540). These lots were sold at per lot prices commencing in 1970 of $800 to $8800. In 1972 lots in Rio del Oro were sold at the following prices (RX 1541H, I):

Number Of Lots	*Price Per Lot*	*Total Sales Price*
4359	$ 800	$ 3,487,200
402	2500	1,005,000
83	4300	356,900
3611	900	3,249,900
397	2800	1,111,600
100	5200	520,000
1574	1100	1,731,400
255	3400	867,000 [253]
96	5800	556,800
1454	1300	1,890,200
91	4300	391,300
70	6100	427,000
12,492		$15,594,300

Average Price Per Lot: $1248.34
Average Price Per Acre: $4993.36

Horizon purchased land for its Horizon City project at the following cost per acre (CX 131C):

Date		*Size (Acres)*	*Per Acre Price*
12–31–59		62,443	$ 80.07
6–16–69		19,428	346.81
5–20–69		5,702	–0– (Exchange with the state)
5–27–68		1,241	125.00
11–10–69		1,230	100.00
	Totals	90,044	$133.45

Horizon City Estates contains 44,200 lots; 10,000 square feet per lot, or approximately one-quarter acre in size (CX 118; RX 1536A). Sales of these lots commenced in 1970 at $1000 per lot (RX 1538F). In 1972 these lots were sold at the following prices (CX 1538F):

Number Of Lots	*Price Per Lot*	*Total Sales Price*
4593	$1300	$ 5,970,900
419	3800	1,592,200
107	8000	856,000
2990	1100	3,289,000
425	3200	1,360,000
85	6600	561,000
8619		$13,629,100

Average Price Per Lot: $1581.29
Average Price Per Acre: $6325.08

Whispering Ranch property was purchased at the following price per acre (CX 131G): **[254]**

Date	*Acreage*	*Per Acre Price*
1–5–62	16,624	$150.00
7–1–67	2,560	135.00

Average price per acre $148.00

Whispering Ranch 5-acre parcels sold for $1900 in 1964 to $5300 in 1975. The most substantial number of lots in Whispering Ranch sold for prices of $3100 to $4000 (RX 1544B). The average selling price per acre would approximate $700.

V. Conclusions

A. Summary

O, What a tangled web we weave, When first we practice to deceive![7] Sir Walter Scott.

Shakespeare said "Brevity is the soul of wit."[8] If this is true, this decision is lacking in wit. The complaint consists of eighty-eight paragraphs which comprise thirty-six separate allegations of unfair or deceptive conduct in the sale of land in six properties; the general denial answer sets forth thirty-two defenses. The record has nearly 17,000 pages of transcript, approximately 2,500 exhibits, most all of which are multi-paged, and the proposed findings and briefs exceed 1,000 pages. To analyze such a massive record has been not only time-consuming, but has required lengthy and detailed findings of fact to chart a clear path through a complex sales scheme accompanied with an aggregation of deception and misrepresentation. Nor was the course marked by the briefings of the parties, which were often too general, too biased, and too immaterial to be helpful. Complaint counsel failed to offer proof as to some allegations of the complaint and presented insubstantial support for other allegations, yet did not specifically abandon any complaint allegations. Some allegations which are not supported as charged in the complaint, constitute evidence material to and supportative of other allegations. In sum, substantial effort has been made to deliver an opinion that, although lengthy, will be useful to the Commission in its consideration of this matter.

Horizon's advertising and sales practices were part of a total scheme to sell land in which the pervasive theme was Horizon land as an excellent, risk-free investment. Although Horizon did reveal certain information about the undeveloped nature of its land, one must unravel a tangled web of deception to find these revelations, which can hardly be termed disclosures. Certainly these statements did not apprise the public of the true nature of the investment. The public was lulled into believing the excellent investment theme by artful and repeated representations that land is the best investment, that Horizon is a successful community builder with thousands of happy customers, and that their lots were in areas soon to be developed. **[255]**Horizon's representations, where not in the form of bold assertions, were fashioned out of exaggeration, innuendo, ambiguity, half-truths, and the omission of material facts. Although many of the statements Horizon made were in and of themselves

[7] Marmion IV, Stanza 17.

[8] Hamlet, Act II, Scene 2, Line 90.

true, the total impression rendered by their combined use was one of misrepresentation and deception.

It is a long-established principle that "[W]ords and sentences may be literally and technically true and yet framed in such a setting as to mislead or deceive." *Bockenstette* v. *F.T.C.* 134 F.2d 369, 371 (10th Cir. 1943). This principle has been followed in numerous cases. Thus, in *P. Lorillard Co.* v. *F.T.C.,* 186 F.2d52, 58 (4th Cir. 1950), the court declared:

To tell less than the whole is a well-known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.

In determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which it might be reasonably be expected to have upon the general public.

See also, *Sebrone Co.* v. *F.T.C.,* 135 F.2d 676, 679 (7th Cir. 1943); *Rothschild* v. *F.T.C.,* 200 F.2d 39, 42 (7th Cir. 1952); *Bennett* v. *F.T.C.,* 200 F.2d 362, 363 (D.C. Cir. 1952); *Koch* v. *F.T.C.,* 206 F.2d 311, 317 (6th Cir. 1953); *Rhodes Pharmacal Co.* v. *F.T.C.,* 208 F.2d 382, 387 (7th Cir. 1953), modified in part on other grounds *per curiam,* 348 U.S. 940 (1955); *Feil* v. *F.T.C.,* 285 F.2d 879, 896 (9th Cir. 1960).

Another formulation of this basic principle, first advanced in *Bakers Franchise Corp.* v. *F.T.C.,* 302 F.2d 258,261 (3d Cir. 1962) (citing *Rhodes Pharmacal* and *Koch*), is "that deception may be accomplished by innuendo rather than by outright false statements." And see *Regina Corp.* v. *F.T.C.,* 322 F.2d 765, 768 (3d Cir. 1963) (citing *Bakers Franchise*). This formulation was also followd in *National Bakers Services, Inc.* v. *F.T.C.,* 329 F.2d 365, 367 (7th Cir. 1964).

The failure to disclose material information has been condemned for many years as an unfair and deceptive practice. *The Raymond Lee Organization, Inc.,* Docket 9045, Opinion of the Commission, p. 48 [92 F.T.C. 489] (November 1, 1978), *citing Portwood* v. *F.T.C.,* 418 F.2d 419, 424 (10th Cir. 1969); *J. B. Williams Co.* v. *F.T.C.,* 381 F.2d 884, 891 (6th Cir. 1967); *Waltham Watch Co.* v. *F.T.C.,* 318 F.2d 28, 32 (7th Cir. 1963), *cert. denied,* 375 U.S. 944 (1963); *Keele Hair and Scalp Specialist, Inc.* v. *F.T.C.,* 275 F.2d 18, 23 (5th Cir. 1960). **[256]**

It is concluded that Horizon's undeveloped lots were not excellent investments with little or no risk involved; Horizon's lots were, in fact, bad investments with little or no potential for profit (Finding 101–136). Therefore, all statements and representations that Horizon's undeveloped lots were excellent investments, and all statements and representations that created implications that the lots were excellent investments were false, deceptive, and misleading. In making this determination, consideration has been given to the total impression created by the pictures, words and oral representations in the context in which they were used, and in light of the sophistication and understanding of the persons to whom they were directed. See *Beneficial Corp.* v. *F.T.C.*, 542 F.2d 611, 617–18 (3rd Cir. 1976), *cert. denied*, 430 U.S. 983 (1977); *Continental Wax Corp.* v. *F.T.C.*, 330 F.2d 475, 477 (2nd Cir. 1964); *National Bakers Services, Inc.* v. *F.T.C.*, 329 F.2d at 367; *Charles of the Ritz Distrib. Corp.* v. *F.T.C.*, 143 F.2d 676, 679 (2nd Cir. 1944).

B. Horizon's Undeveloped Properties Were Represented To Be Excellent Investments With Little Or No Risks

Counts I and II of the complaint allege that Horizon's lots offered for sale were represented to be excellent investments at the prices offered with little or no financial risk involved, whereas in a substantial number of instances the lots were not excellent investments involving little or no risk. It is further alleged that Horizon failed to disclose material characteristics of the lots in that the lots were risky investments because (1) their future value was uncertain, and (2) purchasers probably would be unable to sell the lots at or above the purchase price. These are the key allegations of the complaint and they have been established by overwhelming evidence.

Horizon's sales program was bottomed on representations that money could be made, that financial security could be assured through the purchase of Horizon land. Horizon's basic theme of the substantial profits to be made in risk-free purchases of its land permeated its entire sales effort, its national advertising, its brochures and presentation manuals, its celebrity films, and the oral sales presentations by hundreds of sales representatives at "dinner parties" and in the home. Sales presentations were designed around a concept referred to by one Horizon zone manager as "funnelling"; land was presented as the best investment; the Southwest as the fastest growing area in the United States; Horizon as a New York Stock Exchange company and a community builder with technical skills, millions of dollars in assets, and thousands of happy customers; the location of Horizon's projects near fast-growing metropolitan centers in the Southwest—El Paso, Houston, Dallas, Albuquerque, Phoenix and Tucson; the specific Horizon projects located directly in the locked-in growth pattern of these metropolitan areas; the individual units within the predeveloped projects with predesignated locations for schools, parks, commercial and recreational areas; and finally, the specific preselected lots within the unit, which were the ultimate focus of the sales presentation (Finding 39). **[257]**

This sales technique was highly successful. As of August 1975, Horizon had sold 277,890 lots (CX 873J). For the five year period June 1, 1969 to May 31, 1974, Horizon's sales of undeveloped land totaled $369,740,000 (Finding 23).

The outstanding success of Horizon's sales efforts is even more astonishing when one appreciates that the land was sold sight unseen—to thousands of persons. One Horizon zone manager, who came to Horizon from a real estate background in housing sales, testified that he had doubts as to how land could be successfully marketed sight unseen. When he began his employment with the company, it was explained to him that there was a correct way to present the land to accomplish a successful sales program—it was to activate the "greed" in everyone:

> The emphasis was put on the financial security, the profit, the money that one would make by purchasing this land (Tr. 1922–23).

General representations about land as an excellent investment, and Horizon land in particular, were made in national advertising, which also portrayed Horizon as a financially sound community developer (Findings 42–43). One national advertisement stated:

> Horizon Creating Opportunities
>
> Horizon Corporation, one of the nation's leading land developers, selects large parcels of land strategically located in the path of people and progress. On this choice property, we plan and create exciting new communities such as Paradise Hills and Rio Grande Estates in New Mexico; Arizona Sunsites; and Horizon City, Texas. It is almost inevitable that this land will rise in value as the population there increases, and as the population of big growth cities like Albuquerque and El Paso expand outward toward them.
>
> We believe that we can prove to you that there is no other investment as good as land. Even a little bit can go a long way to patch up your future dollars. (CX 274).

These national advertisements offered free booklets, such as "Make Money in Land, A Guide to Successful Investment" (CX 454). Another advertisement, emphasizing that land is only as good as the company you buy it from, stated that Horizon had $150 million in assets, a net worth of $60 million and an inventory of land value of $240 million (CX 352).

These themes about the opportunity to make money with Horizon land were carried out in sales training manuals (Finding 44), in the presentation manuals which were used for in-home sales presentations (Finding 45), and in the celebrity films used at dinner parties and in the home (Finding 46).

In addition to the written and oral representations about land in general, Horizon land in particular, the general financial [258] trustworthiness of Horizon, and its reputation as an experienced developer of new communities, visual scenes of the beauty of the Southwest and of Horizon's communities were very much a standard part of every sales presentation. The presentation manuals used in the home, and the celebrity films shown at all dinner parties and at some in-home sales presentations, have many beautiful scenes of the Southwest and of Horizon's communities (CX 194–97, 526–27). On property visits and fly-in tours, customers were shown through the developed core areas where there were homes, golf courses and other attractive amenities (Finding 67). Purchasers were led to believe that the property they were purchasing would soon be part of such a beautiful community in the Southwest. These general representations attracted the attention of the prospects and gave assurances of the reliability of the company; specific representations about profitability provided the final enticement resulting in sales of the property.

Sales representatives were trained to represent to the prospects that land was the best of all investments; specifically, land was represented to be the best hedge against inflation, superior to savings accounts, stocks and bonds and life insurance (Finding 49). Since land was represented to be the investment superior to all others (CX 778Z10), it is not surprising that sales presentations stated affirmatively that the purchase of land was risk-free, or the sales presentations were devoid of any mention of risks (Finding 52).

There was wide use of Federal Housing Administration statistics by sales representatives, pursuant to their training, to demonstrate to prospects that land had appreciated at a 20 percent per annum compounded rate between 1946 and 1968 (Finding 51). Sales representatives used these statistics to represent generally that Horizon's land would increase in value at this 20 percent rate in the future. Horizon also trained its sales representatives to cite specific examples of extraordinary profits that had been made in the past on land in the United States, especially examples of tremendous profits that had been made on land in the locality where the sales presentation was being made. Some of the examples cited by sales representatives were about substantial profits that had been made on land purchased from Horizon (Findings 50, 54–55).

A most effective sales technique, widely used by sales representatives, was the price increases which Horizon periodically initiated on its undeveloped lots. Sales representatives used these price increases constantly and systematically to demonstrate to prospects that the lots had appreciated in value over the past years and could be expected to continue to increase in value in the future (Findings 71, 68). Sales representatives exerted immediate purchase pressure by leading prospects to believe that a price increase on Horizon land was imminent, or that the lots might not be available at a later date, or might not be available at the price being offered, to spur the prospect to make an immediate purchase (Finding 72).

The most significant representations made by sales representatives concerned the amount of appreciation a prospective purchaser could expect on the property, the time frame within which this appreciation could be **[259]**realized, and the ease with which the property could be resold.[9] Individual sales representatives used different time frames and different rates of appreciation over the years. Detailed findings about these extremely significant representations have been made (Findings 53–60), and the evidence manifestly establishes that there was a continuing sales practice to represent, directly or by implication, that substantial appreciation would be realized on purchases of Horizon land within a relatively short time span, and that resale of the property would be accomplished without difficulty.

The time in which an appreciation in the price of Horizon's land could be realized was generally stated by sales representatives to be three to five years during the period 1968 to 1970. The time period later was changed to seven to 10 years, and there is some indication that more than 10 years was used by sales representatives. As the time period approached 20 years, customer resistance was evident, as was sales representatives' reluctance to use such a lengthy time frame.

In 1973, Sidney Nelson, President of Horizon, distributed the "Principles of Land Ownership," which indicated that undeveloped land lacks liquidity, that there is some uncertainty as to appreciation rates and time frames for profitability of undeveloped land, and that Horizon sales representatives should be guided accordingly (Finding 57). These principles, purported to govern sales of Horizon's property, were not used by sales representatives, and had virtually no effect on sales presentations to purchasers.

Realizing that representations concerning rates of appreciation and time frames were material to purchasers, Horizon trained sales

[9] In 1973 and 1974, Horizon changed its Agreement for Deed, Receipt of Deposit, and Property Visit Credit Certificate to have the buyer acknowledge that no guarantee of appreciation, resale or repurchase had been given and that Horizon provided no resale services (Finding 64), an indication of Horizon's recognition of the materiality of these questions to a decision to purchase its land.

representatives in various sales techniques which were utilized to avoid having to make an outright representation in this area. Sales presentations were designed to use the FHA statistics, examples of increases in other land in the past, and price increases on Horizon land to show appreciation on land. From these examples, the prospect was led to draw his own conclusion that the property would increase in value in the future (see Tr. 11498–500, 1862–63, 1866–67, 1873–74, 2184–85, 3510, 3553, 4792).

Another approach to the question of how much appreciation could be expected and in what time frame, was for the sales representatives to answer any questions by stating that they did not have a "crystal ball," and then refer the prospect to examples of property value increases in the past. This answer was widely used by sales representatives and was suggested in the training manuals (CX 180S).

The record demonstrates that Horizon knew that specific representations about substantial price appreciation within a short-term were being made by sales representatives, and that implications of **[260]**substantial short-term profitability were being intentionally created by sales representatives. This is conclusively demonstrated by Horizon's internal surveys of its sales offices (Findings 89–100). For example, the conclusion of the March 1974 survey of the Dallas office found an "alarmingly high percentage of misrepresentations to customers" (CX 950B).[10]

A survey of the Denver office in 1974 revealed serious misrepresentations concerning the number of years property must be held to be sold at a profit. The survey found misrepresentations as follows: 1968–1970 - four years maximum; 1971 - three to five years and five to seven years; 1972 - eight years maximum with shorter projections close to development area; 1973 - ten years maximum with shorter projections close to development area (CX 927L, M).[11]

The 1974 survey of the Seattle office found misrepresentations which required cancellations or adjustments to contracts of 80 customers resulting in reductions of approximately $500,000 (CX 944C).

Misrepresentation was not limited to a special group of a few salesmen nor to a particular time span. It appears as though new hired sales representatives were

[10] Joe Mills (February 1972 - September 1973 employment in the Dallas office) sold $613,000 in sales contracts using representations that he would personally negotiate resale of the property for the purchasers and that high profits could be realized within two years from the date of purchase. Another sales representative accompanied Joe Mills on these sales transactions and shared in the commissions from the sales (CX 950E, G).

[11] Sales representative Bill Van Sickle (1971 employment in the Northglen, Colorado office) was found by Horizon's internal surveys to have sold 65 contracts (approximately $140,000) of Rio del Oro property using 3–5 years profitability projections. Further, this was "standard training" for sales representatives in that office (CX 927M).

intentionally trained from the start of their careers to misrepresent Horizon properties. The standard dinner party presentation itself was extremely over-optimistic in its projections if not directly in violation of Horizon policy (CX 944Y).

The 1974 survey of the Chicago office found that:

> *The Chicago office is not selling a long term asset*. What is being sold is a short term investment opportunity ranging from 4 to 12 years to maturity depending on property type and location (CX 951E).

Horizon's internal surveys revealed that where no "gross misrepresentations" were made, definite implications were very much a part of the sales presentation. The May 1975 survey of the Washington, D.C. office reported:

> In conversation with the individual customers, I discovered no instances of direct "gross [261]misrepresentation." The customers were given no written or oral, personal or corporate, promises or guarantees, per se, on any topic of presentation. Indeed, in my experience nationally, I find sales presentations seldom involve such direct statements. However, when one's consideration moves beyond direct statements to the realm of "implications," the analysis and evaluation of the sales presentation becomes far more complicated. Washington, D.C. sales presentations do involve questionable implications or assurances on such topics as risk, appreciation, marketability or liquidity, time to development or term of investment and quality of investment (CX 938C).

Information about the manner or method by which the Horizon property could be resold by the customer to liquidate his asset was not part of the affirmative sales presentation. Training manuals prior to 1971 were silent as to representations that were to be made regarding methods of resale. Commencing in 1971 or thereabouts, sales representatives were instructed that Horizon's policy was that it would not resell or buy back a customer's property, and sales representatives should not make representations contrary to this policy (Finding 61, pp. 70–71). However, sales representatives were also trained that Horizon would "assist" a customer in the resale of the Horizon property (Tr. 6163–64),[12] and that Horizon was going to establish a resale office in the future, which would be in operation by the time the customer wished to resell his property.

In disregard of what was purported to be Horizon's official policy, sales representatives made specific representations that Horizon would resell the customers' property or buy it back, or would assist the customer in the resale of the property. In some instances the assistance to be offered to customers was intentionally left vague by

[12] The "assistance" furnished customers consisted of supplying the customer with sample newspaper advertisements which the customer could use, or giving the customer names of real estate brokers. This "limited" assistance was not explained to customers at the time of the sale,leaving customers to assume the assistance would involve Horizon's direct participation in resale of the property.

the sales representatives. Some sale representatives promised to personally assist in the resale of the property.[13] Where specific representations regarding the assistance that would be given by Horizon were not stated, customers were assured that there would be no difficulty whatsoever in the resale of the property; it could be resold by real estate brokers the same as any other property. Testimony by former sales representatives and by customers attests to the fact that these resale representations were made by sales representatives in their sales presentations and that they were material to the customers' decision to purchase Horizon land (Finding 61, pp. 70–77). **[262]**

Horizon's internal surveys confirm that misrepresentations were made concerning Horizon's role in the resale of Horizon property.[14] The conclusion reached after the completion of a survey of the Denver office was that:

> Our resale policy was vague among the majority of the customers. Most customers believe that they will be contacted directly by a purchaser at time of demand. They do not foresee taking positive steps themselves. Horizon's obligation in this function plays a variety of roles but we seldom heard that Horizon Corporation accepted full responsibility for resale of owners' property (CX 927N).

Other representations were made, directly or by implication, which depicted Horizon's lots as excellent investments. The federal property reports were used as a sales aid to imply federal approval of Horizon and its property (Finding 77). The property was presented as preplanned or predeveloped, where opportunity for appreciation in land values is greatest (CX 172Z38). The unit maps, used in all sales presentations, showed the lots to be in self-contained developments with streets, recreational areas and school sites planned and ready for development (Finding 78).The community improvement associations - HCIA's - were represented to insure or contribute to the attractive development of the property. The availability of utilities was never mentioned as constituting any problem. The implication created was that utilities would be available, whether furnished by Horizon, or the HCIA, or the "developer" was never made clear (Findings 81–83). The locked-in growth of Albuquerque and El Paso was stressed in every presentation of Rio Communities and Horizon City properties as assuring short-term development of those properties (Findings 73–76). The growth direction of Phoenix to the Northwest towards Whispering Ranch, and the scarcity of private land in Arizona available for development, was part of the sales

[13] See fn. 10 *supra*.

[14] See, for example, footnote 10 *supra*.

presentations of Whispering Ranch property and assured its future development (Finding 88).

Horizon's sales representatives used property locations and designations to represent that lots would be profitably developed in the future. Locations near proposed highways and highway loops, schools or university site, shopping centers, recreational areas and cul-de-sacs were stressed (Findings 69–70). Multi-family, commercial, and bulk acreage properties were represented as offering greater profitability for purchasers, and these more expensive properties were used in reloading sales where the purchaser's property investment was "upgraded" by the sales representatives (Finding 68). Locations close-in to the development areas, or to satellite areas, were used to assure customers that the property would develop quickly and profitably, and also as "trades" in reloading sales and for customers expressing dissatisfaction with their initial property location.

The property visit credit, the exchange privilege, and the Horizon guarantee were further benefits which assured the purchaser that the property was an excellent investment. The customer could get a 5 percent credit toward the purchase price of the lot at the time of the [263]property visit, and if dissatisfied with the lot, it could be exchanged for other property. The Horizon guarantee assured the purchaser that the property had not been misrepresented, and if found to be misrepresented at the time of the property visit, all monies would be refunded. This guarantee was sometimes misrepresented and sometimes left intentionally vague, implying the return of all monies paid in if the purchaser were in any way dissatisfied with the property (Findings 63–67). For that rare customer who wished to build a home in the Horizon properties, there was the opportunity to exchange the undeveloped lot for a building lot in the core area. Thus, the customer was assured the property was an excellent investment with no risks involved.

Finally, the celebrity films narrated by Merv Griffin and Leif Erickson had both celebrities endorsing Horizon land as being an excellent investment. To forcefully demonstrate their endorsement of the Horizon property, each celebrity stressed his personal ownership of Horizon land (Finding 87).

Horizon contends, however, that it did not represent its land to be an "excellent" investment, that no sales representative who testified for complaint counsel testified that he was trained or did represent the land as an "excellent" investment. Horizon further argues that complaint counsel offered no expert opinion as to the definition of an "excellent" investment, but that Horizon did offer such an opinion through its expert, Alan Nevin, who testified that an excellent investment must have "a high guaranteed tax shelter, cash flow, substantial equity built up, tremendous tax shelter, guaranteed high level of appreciation probably 15 to 20 percent or more and be risk free" (Tr. 15955). Horizon contends that where there is uncertainty as to time of resale or as to a minimum level of appreciation, the purchase cannot be considered an excellent investment with little or no risk (RPF 134–36, pp. 78–80; RRB, pp. 62–63). Horizon contends its land was represented as being a desirable investment with discretionary assets over a long-term, or a desirable expenditure of discretionary funds for future use or for long-term potential appreciation (RPF 137, pp. 80–81).

It is the message conveyed or the implication created in the mind of the ordinary purchaser that is of concern in this proceeding, not whether the representations fit precisely into the mold of an excellent investment created by a sophisticated realty investment expert. The word "excellent" has a dictionary meaning of "superior, very good of its kind; imminently [sic] good; first-class." *Webster's Seventh New Collegiate Dictionary,* 1969. Horizon, in almost every conceivable way short of an absolute guarantee, represented its land to be an excellent investment, better than savings accounts, stocks and bonds, and insurance, and risk free. Representations were also made that the property would appreciate at a 20 percent compounded rate and be easily resold in a short term. Thus, it is concluded that Horizon represented its land to be a superior investment, imminently [sic] good, first class, indeed, an excellent investment. As the Commission recently stated in *The Raymond Lee Organization, Inc.,* Docket 9045, the law is not made for the protection of experts but for the public who may be governed by appearances and general impressions. (Opinion of the Commission, p. 25) [92 F.T.C. 489]. Beyond any doubt, Horizon created the impression that its properties were excellent investments.

C. Misrepresentations, Deceptions, And Failure To Disclose Material Information About Horizon's Land **[264]**

Many of the representations which Horizon made about its land were outright falsehoods; other representations consisted of partial truths, or literal or technical truths, framed in a setting to mislead or deceive. Horizon also failed to disclose material information about its land to purchasers. In several respects, Horizon's sales techniques left material issues vague. The record herein reveals widespread confusion and a lack of understanding about critical elements of

Horizon's property and Horizon's obligations, all conducive to Horizon's objectives.

All the representations about time frames to profitability and percentages or amount of appreciation or profit which could be expected to be realized on Horizon lands were false and deceptive. Horizon had no basis for making any projections concerning time frames or profitability since no feasibility or absorption studies had been prepared on any of its property (Finding 133). Other representations which sales representatives were trained to give, and which were given to many purchasers, to the effect that sales representatives were unable to make a projection into the future, or that the sales representatives did not have a "crystal ball," were false and deceptive for they were made in the context that all land appreciates in value, that land appreciates at a 20 percent annual compounded rate, that Horizon's land has appreciated in value in the past, that Horizon's land is located in the locked-in growth pattern of growing cities, thus creating the implication that Horizon's land will rapidly increase in value. While not in possession of a "crystal ball" as to precise future projections, Horizon was in possession of much unfavorable material information concerning the possibility of appreciation of its properties which could have been conveyed to purchasers.

Horizon's President, Sidney Nelson, stated in his "Principles of Land Ownership," that the value of land in the future can only be estimated, based upon many complex factors, examples of which include general, regional and local economies, the area rate of growth, interest rates and the availability of capital (RX 1551; see also Finding 57). Horizon's representations and implications were all grossly over-optimistic, without disclosing the many complex factors which affect the future value of its land and which make it highly unlikely that any of its undeveloped land will be an excellent or even a desirable investment. A Horizon official, who conducted numerous surveys of Horizon's sales offices, wrote in respect to the Denver office:

> The future development of Horizon's properties is not presented to the customer in speculative terms stressing its dependence upon many complex and variable factors. But rather, it is dealt with as a predictable assured trend whose pattern and design is known by the representative (CX 929E–F).

Purchasers of Horizon's property were told that Horizon would resell the property for the purchaser, or buy it back, or the sales representative personally promised to resell the land for the purchaser, or that Horizon would assist the purchaser in the resale of the land,or that there would be no difficulty in reselling the land, or the matter of resale of the property and Horizon's role in resale were intentionally left vague (Finding 61–62). **[265]**

These representations were all false, deceptive and misleading. During the entire period covered by this record - 1968 until 1978, there was no resale market for Horizon lots. The record is clear on this issue beyond any dispute (Findings 123–128). Horizon's officials were aware that the resale market for its lots was nonexistent and likely to remain in this posture for many years; yet, there is no evidence whatsoever of this information being made available to prospective customers or to existing customers, or communicated to them in any manner. In fact, just the opposite representations and implications were made and created.

Horizon's officials, aware that the critical elements of any investment purchase of its undeveloped land concerned the risks involved, the term the property would have to be held before it could be liquidated, the appreciation rate which could be expected during the holding period, and the ease of resale of the property, made no absorption or feasibility studies of any of Horizon's properties, left sales presentations intentionally silent or vague on these critical elements, and knowingly permitted sales representatives to make gross misrepresentations and create implications and innuendos that Horizon's properties would appreciate at a substantial rate and be easily marketable in a short period of time. No efforts were made to disclose to purchasers the highly speculative nature of the properties, the substantial risks involved, and the uncertainty of when, if ever, a demand market for the property would exist. All of these acts and practices were false, misleading, deceptive and unfair.

Horizon's price increases on its property were used to represent directly or by implication that Horizon's land was increasing in value. The record is clear that Horizon's selling prices for its land bear no relationship whatsoever to the market value of the land (Findings 123–132).

Horizon's sales representatives were trained to use the FHA statistics to represent that Horizon land would appreciate at a 20 percent compounded annual rate, and they used these government figures in almost all sales presentations. The use of such a broad representation, without qualification, in respect to a specific property is false and misleading. All property does not go up in value uniformly (Tr. 6778, 15128). Sidney Nelson, Horizon's President, in his "Principles of Land Ownership," recognized the falsity of such a broad, general representation:

The notion that all land increases in value at some particular rate or another is fallacious (RX 1551; see also Finding 57).

Horizon also trained its sales representatives to cite examples of other land, locally and nationally, that had experienced tremendous price appreciation in the past (Finding 50). These representations were deceptive and misleading since they create false expectations and the appreciation cited bears no relationship whatsoever to Horizon's land, or to the price appreciation which could be expected for Horizon's land.

The use of atypical claims of profit made on land, even if true, can be misleading and deceptive. Common sense dictates that many of the claims of profit made on land sales used by Horizon sales representatives **[266]**in their presentations were untrue, or made without knowledge of the truth or falsity of the claim. In any event, no disclosure was made that the profits were atypical, in which event they would be deceptive. *National Dynamics Corp.,* 82 F.T.C. 488, 564–65 (1973), *remanded in part,* 492 F.2d 1333, 1335 (2d Cir. 1974), *modified,* 85 F.T.C. 391, 393–94 (1975), *reconsideration,* 85 F.T.C. 1052, 1053–54 (1975), *cert. denied,* 419 U.S. 993 (1974).

A gross misrepresentation used extensively in the sale of Horizon City and Rio Communities properties concerned the locked-in growth of El Paso and Albuquerque. These representations were intended to convey the implication that these cities could grow only in the direction of Horizon's properties, or that "almost all," or that "most" of the growth of these cities was toward Horizon's properties, and thus these properties were certain to develop quickly and profitably for the lot owners. These representations were false and deceptive. El Paso and Albuquerque had been, and were expected to continue to grow in several directions (Findings 73–76).

Representations that Phoenix was growing to the Northwest toward Whispering Ranch and that only 15 percent of the land in Arizona was available for private development, were intended to create the implication that there was a scarcity of land and that Whispering Ranch property was therefore valuable and would be developed in the near future. These representations were false and deceptive. The growth of Phoenix has had, and is expected to have little impact on Whispering Ranch property, and there has been and is an oversupply of private land in Arizona suitable for development purposes (Findings 88, 108).

Horizon sales representatives represented that the higher-priced multi-family and commercial lots were better investments than other lots when there was no basis for such representations. There is no assurance the lots will ever be developed as multi-family or commercial property, or that they will be developed in any fashion. Representations were made about corner lots, about cul-de-sacs, about military highways and highway loops, shopping centers, university sites, and satellite core areas, when there was no assurance of when, if ever, such representations would materialize. Thus, these representations were deceptive and misleading.

Horizon's representations that it was a community developer, made in the context of other representations that Horizon was building beautiful communities, golf courses, recreational facilities, shopping centers, and installing utilities in the "building areas" (see Findings 79–80), had the tendency and capacity to mislead purchasers into believing that Horizon was developing or would develop the property being sold and that the property would develop rapidly. These representations were supported by sales presentations utilizing unit maps which showed a plat of what was purported to be a development plan for the property. Representations were made that the HCIA would install utilities, or had the authority to install utilities, or that Horizon or the "developer" would install utilities, etc. (Findings 81–83). The representations about utilities, and the HCIA's and Horizon's future responsibility for development of the land, were vague, and in the context in which made, had the tendency and the capacity to mislead purchasers into believing that the land they purchased would be developed in the near future, and that the price of the lot was all-inclusive. **[267]**

The tax-free status of the HCIA's strictly limit the activities in which the HCIA's may engage (Findings 81–83). Thus, the HCIA's cannot engage in all the activities set forth in the federal property report, such as installation of utilities. Expert testimony confirms the conclusion that the HCIA's accumulation of funds can never meet the financial requirements of an infrastructure sufficient to provide utilities for the Horizon properties (Findings 81–83). These limitations on the HCIA's ability to engage in authorized activities were never communicated to Horizon's customers. Failure to disclose truthful information about the HCIA's was deceptive and misleading.

The property visit credit, the exchange privilege, and the Horizon guarantee were used in a deceptive and misleading manner. The five percent property visit credit was given only if the purchaser acknowledged that the property had not been misrepresented in any way at the time of the initial sale, a requirement not explained previously to customers. The purchaser was unable to evaluate the investment quality of the property at the time of a property visit and thus unable to determine if the property had been misrepresented.

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On-site sales representatives continued to misrepresent the land, and they took advantage of the occasion to sell additional property, or to "trade" the customer into more expensive property, or to "trade" the customer closer to the development area if dissatisfaction with the initial purchase was registered. The Horizon guarantee was presented in a vague manner creating the false implication that it was a money-back guarantee if the purchaser was dissatisfied with the property. The granting of a five percent credit only if the customer will acknowledge that the property has not been misrepresented is unfair.

Horizon's sales representatives were trained to use immediate purchase pressure on prospects by representing that there was going to be a price increase in the near future, or that the property would not be available at a later date. Variations on this theme included representations that the customer had been specially selected, that the property would only be available for a 24-hour period, or that the property could only be offered during a fly-in visit. These representations were false, deceptive and unfair for several reasons. First, they placed unwarranted sales pressure on the prospects. They deprived the prospects of an opportunity prior to making the purchase to review the property reports, to cogitate about the purchase, and to seek legal or other advice about the wisdom of purchasing the property. These representations were additionally false, deceptive, and unfair in that Horizon's lots were basically fungible, and there were and would be an abundant supply of lots available for sale at all times.

There were other misrepresentations and failures to disclose material information. Horizon did not disclose to its customers the size and extent of its properties, or the number of lots in its developments. Horizon did not disclose the size of the core areas in its properties and the fact that these areas would be the areas most likely to be developed in the future. Horizon did not make clear and understandable to customers that Horizon had no obligation, and indeed no plans, to assist customers in the resale or development of their properties, that there were no arrangements or plans for an infrastructure in the undeveloped property, and that development of an infrastructure might prove extremely difficult in the future. Horizon did not make customers aware of the oversupply of lots in or near its projects, such as [268]Amrep's Rio Rancho property near Albuquerque consisting of 91,000 acres (Tr. 6941). Horizon did not make customers aware of the slow pace of development in its projects; *e.g.*, only 800 dwelling units in Rio Communities in about fifteen years, and only about 800 homes in Horizon City in fifteen years.

Horizon did not disclose to its customers the fact that malapi, earth mounds, arroyos, washes and flood plains exist on its properties which could affect development of some lots (Findings 85–86). Nor did Horizon disclose that water might constitute a problem, or be a future risk to the development of the properties (Finding 135). In sum, all representations about Horizon's properties were overly optimistic; no risks or potential risks were disclosed to purchasers (Finding 52).[15]

D. Horizon Did Not Make Disclosure of Material Facts to Customers

Horizon maintains that the weight of the evidence has shown that disclosures were made to customers that there is no certainty as to the future value of the lots purchased from Horizon, that the lots are low in liquidity, that resale should not be expected until the land is held for a long term, that there is no guarantee of appreciation or of resale, that the timing of resale is uncertain, and that there are uncertainties or risks involved in the purchase of land as an investment (RPF, p. 153).

Interspersed throughout Horizon's findings on the disclosures it claims to have made to customers are phrases such as "sales representatives were prohibited from predicting any *specific* future value" (RPF, p. 146); sales representatives pledged never to give any "*guarantee* of increase in value" or "*guarantee* of profit" (RPF, p. 147); that Horizon's contract documents had a statement that there was "no *guarantee* of appreciation" (RPF, p. 148); that customers testified that they were given "no *assurance* of appreciation" (RPF, p. 150); customers were informed orally and through written materials that there is "no *certainty* as to the future value of their lots" (RPF, p. 150); sales representatives orally informed customers that they "would have to hold their property for a *long time* before a resale could be anticipated" and that "long term *generally* meant twenty years or more" (RPF, p. 151–52); and that explicit disclosures were made in contract documents that there was "no *guarantee* or *certainty* of resale at any time" (RPF, p. 152).[16] Even assuming that customers were not given an explicit "guarantee" or "assurance" of

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[15] Theodore Stone, a former Horizon zone manager, testified:

. . . I can never recall any instance anyone within the company above my position ever attacking our land, being critical of it, or suggesting that it was not a good investment, or that there were risk factors involved, or that it might go down in value, or that it was speculative, in fact, quite the opposite (Tr. 2072).

[16] Emphasis has been added in each instance.

profit within a "specific" time frame, this does not contradict the findings and **[269]**conclusions reached herein that representations were made to customers and implications were created that land purchased from Horizon would be highly profitable within a short range of years, and resale would be easily accomplished. False, deceptive, misleading and unfair representations and implications of profitability without risk can be made although not framed in terms of an absolute guarantee. The Commission has stated on many occasions that it is not confined to analyzing isolated words and phrases in determining what representations have been made, but instead may look to the total impressions created by words in the context in which they are used. *The Raymond Lee Organization,* Docket 9045, Opinion of The Commission, p. 11 [92 F.T.C. 489] (November 1, 1978).

The evidence relied upon by Horizon to establish that no guarantee of profitability was extended to customers is not as clear as Horizon would have it appear. There is no evidence that customers read the disclosures in the Horizon documents; nor is there any evidence in training manuals or otherwise that sales representatives were trained to or did call these statements in the documents to the attention of customers. As for customer testimony that no guarantee was given to them, this testimony was elicited in the context that there was no *affirmative* guarantee stated by the sales representatives (*see* Tr. 1182–83, 1339, 1371, 1551, 4912, 4956–58, 5007, 5009, 5010, 6116, 6131, 6281, 16191).[17] **[270]**

Horizon relies in substantial measure upon written documents as the means by which material facts were disclosed to customers. According to Horizon "One of the prime vehicles for such disclosure was the 'Principles of Land Ownership'" (RPF, p. 147).[18] Significantly, Horizon did not give customers a copy of the "Principles" until several days after the sales transaction when customers received a copy in their Important Document Package (CX 945A, 951E–F). Horizon's own internal surveys of its sales offices reveal that customers did not read the document when received, nor attach any

[17] Colonel John Yuill testified on cross-examination:

Q. It is true, is it not, that neither Mr. Bussinger or any other Horizon salesman gave you a guarantee of appreciation on the lot. No one gave you a guarantee, did they?

A. No, they did not.

Q. To the contrary, they told you there was no guarantee. Isn't that true?

A. I do not recall him making that statement either. (Tr. 879)

Michael Collum testified on cross-examination about a sales representative's reference to doubling of the investment in five to eight years:

Q. Now, there was no guarantee of that, was there?

A. No. He didn't in so many words say, "I guarantee that would happen." (Tr. 1543)

[18] The "Principles of Land Ownership" are set out verbatim in Finding 57.

importance to it (CX 945A). In a survey of the Chicago office during August 1974, the Horizon survey officials reported:

In not one case did we see evidence of the *Principles of Land Ownership* being used in the sales presentation. Though customers receive the statement in the customer package, . . . few customers have read it upon receipt. Indeed, the policy statement may be avoided purposefully as it contradicts present sales presentations (CX 951E–F).

Horizon points out that the Agreements for Deed have "for many years" included a statement that there is "no guarantee of appreciation" for the property and that the same information has been included in the Receipts of Deposit and the PVCC's. PVCC's were received several days after signing the agreement in the Important Document Package. A close examination of the record reveals that no such statement appeared in any of these documents until after 1972 [sales began in 1959—CX 1538A, 1541]. (See, for example, CX 140 and CXs 147–51.) Horizon also emphasizes in its findings that "more recent contracts" have placed an even greater emphasis on this disclosure,[19] and that the contracts also contain the statement just above the buyers' signatures that there is "no guarantee of appreciation, resale or repurchase," and that "Horizon provides no resale services." In support of this finding, Horizon cites RX 981. What Horizon did *not* disclose in its findings, however, is that this form contract is dated June 1977, over two years *after* the complaint herein issued.

As previously indicated, the use of the disclosure that there is no "guarantee of appreciation" sometime after 1972 in contract documents, is of little significance. There is no record evidence that this disclosure was pointed out to customers in sales presentations, or that customers read and appreciated the disclosure. **[271]**

Horizon relies on the federal property reports as a disclosure vehicle (RPF, pp. 159–60), and notes that as of December 1973 each property report was required by OILSR to have a section entitled Special Risk Factors (RPF, p. 149). Detailed findings on the use of the federal property report have been made (Finding 77). These findings support a conclusion that the federal property report did not make adequate disclosures to Horizon's customers of the speculative nature of the property and the many risks associated with an

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[19] The disclosure reads as follows:

The purchase of all land entails risk. The future value of this land and your ability to resell it are uncertain being subject to many market factors. The future population growth of this subdivision and the surrounding areas cannot be predicted.

investment in Horizon land; in fact, the federal property reports were used by sales representatives more as a sales aid than as a disclosure statement.

It is clear that sales representatives did not emphasize the importance of the property report or its function as an informational device for customers (Finding 77). Sales representatives were trained to refer to the property report in a superficial manner, and to avoid having the customer pick up the property report and read it during the sales presentation, by instructing sales representatives to refer briefly to the property report at the beginning of the sales presentation and then to *replace* it in their briefcase. Sales representatives were instructed that the property report was to be *delivered* to the customer *after* a commitment to purchase had been made and at the same time the customer was busily engaged in signing the contract and other papers connected with the sale, and writing a check for the down payment (Finding 77).

The procedures for delivery of the property report, emphasized in the training manuals, instructed the sales representatives to deliver the property report in an inconspicuous manner along with other papers without giving the customer an opportunity to read the report prior to completion of the sale.[20] Further, customers were unable to read and comprehend property reports in the carnival-like atmosphere of the dinner parties (Finding 77).

The record establishes that the significance of the federal property reports was not communicated to customers, that actual delivery of the reports was designed to gloss over its importance as a disclosure instrument, and that customers did not read the reports. Thus, the federal property reports did not make material disciosures to customers about Horizon's property.

TBA maps were used in sales presentations, and Horizon contends that significant disclosures about the property were made on the reverse side of these maps (RPF, pp. 163–65). The TBA maps were used in sales presentations primarily to depict the locked-in growth patterns of the metropolitan areas (*see* CX 205 and 221, for example), and there is no record evidence to support a conclusion that sales representatives were instructed to read the reverse side of the TBA maps to customers, or that customers read the reverse side of the maps (see Tr. 1142). **[272]**

Finally, Horizon argues that disclosures were made orally by sales representatives. This argument is rejected. The record evidence

[20] Sales representatives testified that if the customer was reading the property report he would not be listening to the sales presentation (Tr. 4627–28). One sales representative testified:

> But you don't go and say, here is a two-hour property report because then people fall asleep and you have no chance to sell anymore. We were out to make money. (Tr. 16108)

supports a conclusion that sales representatives were not trained to make affirmative disclosures to customers. On the contrary, sales presentations were designed to present an overly optomistic image of Horizon land without disclosing any information that might be detrimental to a sale. Many of the disclosures that had to be made, *i.e.,* federal property reports, were made in an inconspicuous fashion; other material facts were disclosed in a vague, self-serving manner; and finally, sales presentations were planned so the prospect could make his own optimistic projections or answer his own questions based on the sales presentation without involving the sales representative, who might have to make an outright misrepresentation or lose a sale.

Although not stressed by Horizon as a disclosure method, property visits did not provide customers with material disclosures about Horizon's property. Property visits always occurred sometime after the initial sale to a customer. Property visits were utilized by Horizon as an opportunity to sell more property to customers. The record also establishes that there were further misrepresentations and deceptions at the time of the property visits. It is also clear that customers cannot make an evaluation of their purchases by a visual inspection of the property (Finding 67).

Thus, a conclusion that Horizon had a policy or practice of disclosure of material information or that Horizon did make disclosure of all material information to customers, is not warranted on this record.

E. Credibility of Horizon's Witnesses

Horizon in its findings relies extensively on the testimony of "satisfied" customers and its officials as support for its policy of disclosure to customers (see RPF, pp. 165–66, for example). Horizon elicited testimony from customer witnesses who testified they were satisfied with their Horizon property, and that the property had not been misrepresented to them at the time of purchase (*see, for example,* Tr. 8065–85, 8086–8134, 8724–54, 8912–40, 8941–72; but see Tr. 8964–65, 8971–72). Assuming that these customers were satisfied and that the property was not misrepresented to them,[21] does not

[21] E.E. Golden, a customer witness called by Horizon, testified that he was told, *inter alia,* that Rio Communities property was a long-term investment—ten years or longer (Tr. 8944, 8965); he was traded out of single family property into an acreage parcel in Tierra Grande because the sales representative was "all excited" about Tierra Grande and it was represented that Mr. Golden would "benefit more" from the Tierra Grande acreage property (Tr. 8951, 8964); the Tierra Grande lot was later exchanged into Waterwood [trades always increased the customer's total indebtedness] (Tr. 8956–57); that Albuquerque has only one way to grow (Tr. 8965, 8971–72); that you can trade for a closer lot which would appreciate faster (Tr. 8966); and that Waterwood property was appreciating in value (Tr. 8970–71). Although Mr. Golden may have been a "satisfied" customer, this should not be construed as implying that the property was not misrepresented to him.

refute the testimony of other [273]customers and the substantial evidence of record which establishes that misrepresentations were made and that material information was withheld from customers as a matter of routine operation:

That a person or corporation, through its agents, may have made correct statements in one instance has no bearing on the fact that they made representations in other instances. The fact that petitioners had satisfied customers was entirely irrelevant. They cannot be excused for the deceptive practices here shown and found, and be insulated from action by the Commission in respect to them, by showing that others, even in large numbers, were satisfied with the treatment petitioners accorded them. *Basic Books* v. *F.T.C.*, 276 F.2d 718, 720–21 (7th Cir. 1960). See also *Independent Directory Corp.* v. *F.T.C.*, 188 F.2d 468, 471 (2d Cir. 1951).

Horizon also called as witnesses sales managers and sales representatives who testified that customers were well-informed about Horizon's property and policies, and that the property was not misrepresented. Where this testimony conflicts with the substantial record evidence which demonstrates a continuing practice of misrepresentation, of creating deliberate false implications, and the withholding of material information, it is entitled to and is being given little credence. The testimony of Tony Frederico, zone manager in Horizon's Chicago office, and the testimony of Lee Rempas, office manager in the Chicago office, demonstrate why the testimony of Horizon's sales employees warrants little credence.

Both Mr. Frederico and Mr. Rempas were in the Chicago office during the entire relevant time period of this proceeding (Tr. 11741, 11954). One hundred percent of the zone activity took place in the Chicago office (Tr. 11743); the Chicago office ran a large dinner party operation, as well as in-home sales (Tr. 11744, 11795, 11982). Mr. Frederico testified that if the "Principles of Land Ownership" were not used in the sales presentation, the sales contract was not processed (Tr. 11750, 11813). Mr. Rempas testified that sales representatives always used the "Principles" (Tr. 11957, 11963, 12002, 12005–06). In stark contrast to this testimony, a survey of the Chicago office during August 1974 by Bruce Lehmann and Webb Parker of Horizon's Customer Service Department reported that "in not one case did we see evidence of the Principles being used in sales presentations . . . Indeed, the policy statement may be avoided purposefully as it contradicts present sales presentations" (CX 951E–F).

Mr. Frederico testified that the Chicago office always used long-term investment potential in sales presentations of Horizon's property. His office conducted sales meetings every Monday and Thursday to keep sales representatives informed of the policy of the company, and to make certain sales representatives "sell right" and tell people the truth (Tr. 11772). The Thursday meeting was an open meeting where sales representatives discussed the right way to sell. Mr. Frederico attended these meetings to make certain everything was in accordance with company policy (Tr. 11777). Mr. Frederico testified that at the meetings he **[274]**would tell the sales representatives that the Horizon land would be good only for customers' children or grandchildren. Throughout his testimony Mr. Frederico continually emphasized that the Chicago office was selling a long-term product (Tr. 11760, 11763, 11765); that the land should only be purchased for "their kids or grandchildren" (Tr. 11770); "A long time always. We always told them it takes a long, long, long time" (Tr. 11770); sales representatives were trained to use a long, long term (Tr. 11771). Other statements in his testimony included "there would be a long, long time for [lots] to reach the development stage, and I mean a long, long time" (Tr. 11775–76), "30 to 40 years" (Tr. 11776), "a long, long term" (Tr. 11781), "I told them they had to wait a long, long, long time" (Tr. 11798), "I mean between 15, 20 or 30 years" (Tr. 11798), "long-term potential appreciation" (Tr. 11806):

Q. What, again, is long-term, sir?

A. Long-term, again, is 15 or 20 to 30 years. (Tr. 11807)

Mr. Rempas, who served as office manager, trained sales representatives, accompanied them on many sales presentations, and attended hundreds of dinner parties (Tr. 11955–56, 11968, 11980–82; *see also* Tr. 11747, 11751), testified that sales representatives were told that development was a long-term matter and not to guarantee anything (Tr. 11962, 11965). He also testified that sales representatives were instructed not to state a time period within which customers could resell for a profit (Tr. 11963). "It could be 20, it could be 30, it could be 100. I do not have a crystal ball to tell you exactly" (Tr. 11966, 12011–15). Mr. Rempas testified that a time frame to profitability was never used at dinner party presentations (Tr. 11969). He reiterated several times the long-term nature of the product which was utilized by sales representatives in sales presentations, 20 to 30 years (Tr. 12013–14), long-term of 20 years or more (Tr. 12013, 12015). He referred to Whispering Ranch as a "long-term, I mean a long, long, long-term" (Tr. 11994). He testified that time periods of less than 10 years never came up at sales meetings (Tr. 11976). He further testified that he had heard only once a specific time period mentioned in a sales presentation, and he reprimanded that sales representative (Tr. 11971). He also testified that he never heard a sales presentation that used a specific rate of appreciation (Tr. 12010–11).

This testimony by Mr. Frederico and Mr. Rempas, the Chicago zone manager and the Chicago office manager respectively, was flatly contradicted by Horizon's internal survey of the Chicago office, which was conducted during July and August 1974 (CX 951A–J). This report has the following summary statements:

The Chicago office is not selling a long-term asset. What is being sold is a short term investment opportunity ranging from 4 to 12 years to maturity depending on property type and location (CX 951E).

* * * * * * *

[275]The Chicago office suffers from one problem. The sales representatives (especially those with longevity) are reluctant to accept the long-term nature of our product (CX 951J).

Sales representatives from the Chicago office testified in this proceeding, and confirmed the widespread and routine use of rates of appreciation to be expected by purchasers of Horizon land, and the time period necessary to realize the appreciation. Anthony Zimmer, employed in the Chicago office from December 1970 to April 1972 (Tr. 6137–38), testified that he received no formal training, but he observed Jerry Steers, a leading sales representative in the Chicago office, make sales presentations as part of his training (Tr. 6139). Mr. Steers used a four to seven year time frame for appreciation, and the value of a \$900 to \$1400 lot would be \$4500 to \$7000 in four to seven years (Tr. 6144). All the sales representatives used the \$4500 to \$7000 figure (Tr. 6151), and Mr. Zimmer used the four to seven year holding period and appreciation to \$4000 to \$7000 in four to seven years (Tr. 6153).

Alvin Schuman, employed in the Chicago office from 1968 until 1975 (Tr. 5960), testified that he represented to purchasers that real estate was appreciating at a 25 percent per annum rate (Tr. 5965, 5997). Mr. Schuman also represented that a \$2700 purchase would be worth between \$9–12,000 in five to seven years (Tr. 5970, 6003–04, 6010–11, 6023, 6026–27). The five to seven year period was used all the time at dinner parties (Tr. 6008–09). Mr. Zimmer testified that he represented that the rate of development was "one square mile per year . . . anytime I needed it" (Tr. 5972). He further testified that the only representation he was ever stopped from using during the entire time he was employed by Horizon was the word "investment". The word appreciation was substituted for investment (Tr. 5983, 6007).

Both Mr. Frederico and Mr. Rempas stressed the practice in the

Chicago office of team selling, that is, the sales representatives generally operated in pairs (Tr. 11751, 11778, 11809, 11965), which practice was confirmed by the internal survey of the Chicago office (CX 951E). Since sales representatives were aware of what each other were doing and discussed sales activities on a twice-weekly basis, and dinner parties were attended by Mr. Rempas on a regular basis (Tr. 11968), it taxes credulity to believe that these two supervisors, who stressed the training and close supervision given to sales representatives in the Chicago office, and whose livelihood depended upon sales made by these sales representatives, were unaware of the misrepresentations being made. It is also significant that the misrepresentations were not made by new or short-term sales representatives, but by sales representatives with longevity (CX 951J; Tr. 6137–38, 5960).

The widespread use of misrepresentations by sales representatives, substantiated by the record and in particular by Horizon's own internal surveys of its sales offices, is a sufficient basis to give little or no credence to self-serving denials and explanations offered by Horizon's officials in their testimony. **[276]**

F. Horizon's Land Is Not An Excellent Investment And It Has Little Or No Value As An Investment

There are three fundamental factors to be considered in a real estate investment; the property itself, the financial return or investment structure, and the people who are involved as investors, managers and active partners. All three factors must work together; an investment lacking in any one dimension should be rejected. An investment can be rejected based on any one of a number of factors, such as the available supply and demand, the known physical condition of the property or uncertainty as to the physical condition, uncertainty as to title, zoning, water or mineral rights, and uncertainty as to whether an organization exists which has the capability to carry out the investment (Finding 101).

Undeveloped land lacks liquidity and produces no income. Its investment value is related to the end use to which the land can be placed. To have value land must have some utility or some logical use within a reasonable period of time (Tr. 6587, 7581, 7589–90; CX 778H; RX 1551). Undeveloped land's future value can only be estimated by judging when in the future a user market will exist, and what the value of the property will be at that time. Undeveloped land's estimated future value should then be discounted dependent upon the time differential involved to determine its present estimated value (Tr. 7590, 15310–11; RX 1551). Professor Howard Stevenson, complaint counsel's expert, stated that undeveloped land should be purchased only when a change in use is imminent and when the conditions surrounding that change can be examined and verified (Tr. 6592, 6883). Alan Nevin, Horizon's expert, concurred in that view, and he further stated that the time period involved in investments in vacant land was usually five to seven years (Tr. 16066, 15883–85).

The investment quality of Horizon's land depends upon (1) the rate at which the lots are absorbed—placed into an end use, (2) the price originally paid, (3) the future costs of any development expenses to be incurred, (4) the carrying costs of the property until absorbed or liquidated, and (5) any risk factors involved (Tr. 6880–81). Some of the carrying costs on Horizon land include real estate taxes, HCIA charges, interest paid on the purchase price, interest lost on the money invested in the property, and the commission paid on resale, which on undeveloped land is usually 10 percent of the sale price.

Alan Nevin stated that an investment to be characterized as excellent, and he knew of very few such investments, should have a high guaranteed tax shelter, cash flow, substantial equity built up, guaranteed high level of appreciation - probably 15 to 20 percent or more, and be risk free (Tr. 15955). He further testified that where there is [277]uncertainty as to the time of resale of undeveloped lots, or uncertainty as to the resale price, the property cannot be considered an excellent investment.[22]

There is literally a glut of lots in and surrounding each of Horizon's properties. Some of Horizon's properties are so large that it is difficult to comprehend the enormity of the area. Rio Communities, for example, has a total of approximately 249,000 acres divided into 172,020 lots. By contrast, the District of Columbia has 39,680 acres.[23] Rio Communities is over six times as large as the District of Columbia. Horizon City has approximately 87,000 acres divided into 139,507 lots. It is over twice the size of the District of Columbia. Arizona Sunsites is also larger than the District of Columbia, and Waterwood is two-thirds as large as the District of Columbia.

[22] Mr. Nevin's testimony, specifically about Horizon's lots, was as follows:

Q. In analyzing a purchase from the point of view of the purchaser, in your opinion, can an investment of Horizon lots, where there is uncertainty as to the time of resale, be considered an excellent investment with little or no financial risk?

A. Absolutely not.

Q. In analyzing a purchase from the point of view of the purchaser, can an investment of Horizon lots, where there is uncertainty with respect to the amount of the resale price, be considered an excellent investment with little or no financial risk?

A. No. (Tr. 15956)

[23] The District of Columbia has 62 square miles within its borders; a square mile has 640 acres (640 $\times$ 62 = 39,680). Webster's New International Dictionary, 2nd Ed., pp. 1523, 3052.

The overriding defect in all of Horizon's properties is their tremendous size in relation to the markets in which they are situated. The absorption of these properties is projected so far into the future that it is impossible to foresee the ultimate risks that may exist. Further, there is no organization in existence capable of carrying out the development of such large scale projects. These properties can be rejected as investments for these reasons alone, and an elaborate investment analysis is not necessary to reach this conclusion. A well-informed investor should not buy an undeveloped lot in the sticks where he is competing with thousands of other lots and where there is uncertainty as to the time of resale of the property and uncertainty with respect to the resale price.

In the Albuquerque area, there is an abundance of land available for development purposes. The 1985 land use plan, prepared by the Albuquerque Planning Department in 1964, concluded that there was sufficient developable vacant land within the Albuquerque area to accommodate 2 **[278]**million people. The population of Albuquerque as of 1985 was projected to be 685,000.[24] In addition, the report noted that Indian reservations to the north and south of Albuquerque and the Mesa to the west are potentially available for urban-type development (CX 828Z–3). There are numerous subdivisions surrounding Albuquerque that are developing and can be developed, an unlimited supply of land. For instance, just north of Horizon's Paradise Hills project is Amrep's Rio Rancho project of approximately 100,000 lots with only about 2,000 homes at present (Tr. 3153). Professor Stevenson testified that the availability of land in the Albuquerque area exceeds the full needs of the community under even the most optimistic population projections through the end of this century and perhaps well into the 22nd century (Tr. 6676).

Horizon owned at one time in excess of 4,500 lots in Paradise Hills. As of June 1978, there were approximately 1,100 dwelling units in Paradise Hills, with about 100 units under construction, an average of less than 100 units constructed each year since the beginning of Paradise Hills in the early 1960's (Findings 8–10, 118). Horizon now has approximately 3,500 lots in Paradise Hills which are available for development. Individual lot owners must compete with Horizon in any attempt to sell their lots. Further, the bulk property owners will likely have to await absorption of the platted lots before their

[24] The Middle Rio Grande Council of Governments published a report in 1972 which projected a population of 580,000 for Albuquerque in 1985, and a population of 762,000 by 1995 (CX 836, pp. 9, 11–12). Dr. Benjamin Stevens, Horizon's expert, has projected an Albuquerque population of 605,000 as of the year 2005 (RX 1557D), and Mr. Nevin, another Horizon expert, has projected a population of 1,250,000 by 2005 (Tr. 15909). Population projections for Albuquerque have been declining since the early 1960's, demonstrating the unreliability of area population projections far into the future.

bulk lots will be marketable. Most of the Paradise Hills property was sold prior to 1970. Thus individual lots owners will have to wait many decades to liquidate their property.

In Rio Communities, Horizon owns 5,400 acres in the core area where approximately 800 houses have been built over the past several years. The 5,400 acres are subdivided into 5,600 single family lots, 50 acres multi-family, 300 acres commercial and 600 acres industrial. Additionally, Horizon owns 11,100 acres in three other core areas and six town centers throughout Rio Communities where no development has taken place (Findings 11–13, 119). At the present rate of building, it will take decades to absorb Horizon's core areas. Individual lot owners will have little opportunity to liquidate their investments until Horizon's existing inventory of lots has been exhausted. This could be well into the next century, if then.

Rio Communities is 35 miles south of Albuquerque and is viewed as a "satellite" of Albuquerque by Horizon's expert, Dr. Stevens (Tr. 14807). Dr. Stevens, in projecting the population growth of Rio Communities, relied to a substantial extent on an influx of retirees to accelerate growth. Dr. Stevens admitted that projecting retirement migration was much more difficult than predicting economic growth (Tr. 14825).

Rio Communities growth has been at a rate of less than 100 houses per year in the past. Its future growth rate is uncertain. If the past **[279]**growth rate over several years is duplicated each year in the future, it will take 130 years to fully utilize all the lots in Rio Communities. It is concluded, therefore, that an individual lot owner has little prospect for liquidating his investment in a Rio Communities lot until well into the next century.

El Paso has a history of orderly growth through annexation of surrounding lands, and growth and development is concentrated within the annexed area where city water, sewer, and other services are made available (Tr. 2595–96, 15213–218, 7023–24, 6988–89). The City of El Paso in the past has been growing in a three-directional dimension - to the northwest, the northeast and the southeast. Studies by the El Paso Planning Department project that growth will continue in this same manner in the future. The population of the El Paso SMSA is projected by the Planning Department to be 742,450 by the year 2005 (CX 876), a projection accepted by Joseph Lusteck, complaint counsel's expert in this proceeding, and by D.A. Lomax, Horizon's expert (CX 876; Tr. 6988, 15216).[25]

[25] Dr. Benjamin Stevens, Horizon's expert witness on regional planning, projected a population for the El Paso SMSA for the year 2005 of 863,700 as a high, 809,800 as a medium, and 745,000 as a low (Tr. 14717; RX 1557B). Thus, Dr. Steven's low projection comports with the El Paso Planning Department's projection. Mr. Nevin projected a population of 850,000 by the year 2005 (Tr. 15912–13).

There is sufficient vacant land within the El Paso city limits and the 5-mile extra-territorial jurisdiction of the city to satisfy the urban needs of the City of El Paso through the year 2005 (Tr. 7020–27, 7043). The Horizon City project falls largely outside of this area where urban growth can reasonably be expected to occur (Tr. 7043). Mr. Lusteck projected that only 2,859 acres, or 3.3 percent of the total acreage in Horizon City, will be absorbed by 2005. Mr. Lusteck testified that the Horizon City project is so large that there is a very slim chance for 97 percent of the Horizon City lots to be absorbed by the year 2005 (Tr. 7043, 7078–79).

Horizon's experts, Dr. Stevens and Mr. Lomax, projected the land absorption in Horizon City to be 19,000 acres by the year 2005 (Tr. 14713, 14779, 15224). Mr. Nevin, another Horizon expert, projected land absorption in Horizon City of 20–22,000 acres by 2005 (15912–13). Thus, Horizon's experts project absorption of less than 25 percent of the land in the Horizon City project by the year 2005.

At present, Horizon owns 10,400 acres of land in two core areas of Horizon City (Finding 120). There is 6,400 acres in the core area nearest the El Paso city limits, which has 10,000 single family lots. There are approximately 800 homes in this core area which have been built in a period of over ten years. It is concluded that most of the development in Horizon City that will occur by the year 2005 will be in the 6,400 acre core area nearest to El Paso, with some development in the core area near the lake, if Horizon finds it expedient to develop the second core area. Horizon has the financial ability to develop lots in its core areas over the next three decades; individual lot owners are incapable of developing an infrastructure to provide services to the individual lots. There may be some few lots owned by individuals and located within the extra-territorial jurisdiction of El Paso adjacent to the core area that will **[280]**be developed by the year 2005, and there may be some lots along Horizon Boulevard that will be developed,[26] but the percentage of these lots where development is possible to the total lots in the project will be very insubstantial.

Because of the historical growth pattern of El Paso, the individual lot owners in Horizon City will have to await the arrival of city services for an opportunity to develop their lots, or to sell their lots to a demand market. The fractionalization of ownership of the individual lots in the Horizon City project makes it highly unlikely that a developer will attempt to assemble and develop Horizon City lots absent arrival of the city services, especially when there is

[26] The record does not make clear who owns the lots along and adjacent to Horizon Boulevard. It is entirely possible that Horizon has retained ownership of all or a substantial portion of these lots.

available other developable land with potential city services and under a common ownership where no title clearance problems will exist. Thus, it is concluded that the Horizon City project is "grossly excessive", relative to the size and potential for growth of El Paso (Tr. 7041), and that there is little chance for the individually-owned lots to be placed in urban use by the year 2005 (see testimony of Joseph Lusteck, Tr. 7041, 7043, 7078–79).

Arizona Sunsites and Whispering Ranch are located in areas where there is an oversupply of vacant land in subdivisions available for development purposes through the year 2000 (Finding 108).

Whispering Ranch is located in a remote area far removed from economic activity of any kind. Whispering Ranch is suitable only for the cattle grazing purposes for which it was used prior to Horizon's acquisition of the property. The location has no labor force, no roads, no utilities, and it is extremely unlikely that it will have any utility for residential, commercial or industrial purposes within the next thirty years (Tr. 3396). Fractionalization of the land makes it unlikely it will be used for a purpose such as cattle grazing, or by a large industrial user desiring a large tract of land.

Arizona Sunsites is located in an area where there is an oversupply of subdivided vacant land, and land that readily could be placed in subdivisions if a demand warranted (Tr. 4816–17). Arizona Sunsites is primarily a retirement community. It has no labor supply and consequently no potential for industrial development. It also is unlikely to develop as a retail trade center because of the sparse population. The growth of nearby towns and cities has had, and is likely to have little impact on the growth of Arizona Sunsites. It is dependent upon retirees for future growth, but its limited medical facilities is not conducive to substantial growth as a retirement center (Tr. 3400–14). Frank Mangin, Program Director for Economic Development for the Arizona Governor's Office, noted that Arizona Sunsites started in 1961 and in 1977 had a population of 850 persons, an annual growth rate of approximately 60 persons per year. He projected that this limited growth rate would continue in the future (Tr. 3400–16). **[281]**

Waterwood is a 25,000 acre recreational project (Tr. 15957, 14879–83) located at Lake Livingston, 100 miles north of Houston. As of 1978, there were approximately 120 houses in Waterwood and 40 to 50 houses under construction (Finding 21, p. 16). Approximately 7–8000 acres have been subdivided. About 1,000 acres have been fully improved, which includes the golf course and other facilities. Horizon owns 2,823 single family lots, 230 multi-family lots and 12 commercial lots in Whispering Pines units, none of which have been sold. Deer Creek Village has 4,976 single family lots and 159 multi-family lots, of which 1,589 had been sold as of May 4, 1978. As of that date, Green Tree Village had 2,356 single family lots and 133 multi-family lots, 993 of which had been sold (Finding 121).

Dr. Stevens, based on highly speculative reasoning, projected 5,000 dwelling units to be built in Waterwood by the year 2005 (Tr. 14879–83, 15029–31, 15045). A continuous marketing program is necessary to promote Waterwood as a recreational area (Tr. 15957–58). Horizon, which owns well over 3,000 lots in the Whispering Pines and Country Club Estates Units, none of which have been sold to the public, is in a much stronger position to market these lots to the public than an individual lot owner. Additionally, Horizon owns some 18,000 acres in Waterwood and can subdivide any number of additional lots, as the market may demand. Further, Horizon has sold less than half the lots in Deer Creek Village and Green Tree Village.

Horizon's expert, Charles Osenbaugh, testified that Horizon will "get the first crack" at any interested buyer, and Horizon's prices will set the upper limit of any resale market (Tr. 15794–95; *see* also Tr. 8153). Professor Stevenson placed the potential absorption of the Waterwood lots many decades in the future. Professor Stevenson reasoned that because of the distance of the project from Houston, the availability of a substantial number of competing recreational projects much nearer to Houston, some with the infrastructure in place and the total number of lots in the project known, and because of the potential competition Horizon could bring into the site from the 18,000 acres of unplatted land; there was little opportunity for up side potential on the Waterwood lots (Tr. 6761–63).

At the present time, there is no resale market for any of Horizon's lots outside of the core areas. Extensive findings demonstrating the lack of a resale market have been made (Findings 123–128). Evidence supporting a lack of a resale market and an absence of present market value includes: (1) inability of real estate brokers to resell the land and even a refusal to accept listings on Horizon's lots; (2) unsuccessful attempts by individuals to sell their lots; (3) the substantial number of forfeitures by purchasers; (4) the substantial number of Horizon lots auctioned at tax sales; (5) the failure of the land auction sales to attract bids on the Horizon lots; (6) testimony of the expert witnesses who were unable to find a resale market for Horizon lots; and (7) the assigning of a minimum appraisal value to the lots for tax purposes. In a few isolated instances where lots have been sold by individuals, it appears that the lots were sold for less than the price at which Horizon originally sold the lots.

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The ultimate in a lack of value is a lot nobody wants. The fact that there is no resale market for Horizon's lots, even after some of the property has been held for up to fifteen years, is a strong indictment of Horizon's sales program, which has lured thousands of people to purchase [282]sight unseen as an excellent investment, what is virtually worthless desert land. Horizon, while selling its lots at an inflated price, knew of the lack of a resale market, but did not disclose this material fact to purchasers. Horizon's knowledge can be imputed, *inter alia,* from the substantial number of forfeitures, from the inquiries which it received from customers wanting to sell their lots, from the extensive tax sales and the auction sales, and from the actions of the real estate boards in Albuquerque and El Paso in refusing to list Horizon lots for sale.

Horizon called several expert witnesses to testify that its prices for its lots at the time of the sale to purchasers represented market value. These experts also projected the future value of the lots to establish that the lots were, in fact, reasonable investments.

Horizon's expert witnesses, D.A. Lomax, Sanders Solot, Charles Osenbaugh and Alan Nevin, as part of their evaluation of the Horizon lots as an investment, determined that the purchasers of Horizon's lots were knowledgeable buyers, and that the prices at which the lots were sold by Horizon represented market value at the time of the sale.[27] This determination, which is contrary to the conclusions reached herein, was based on superficial surveys of purchasers of Horizon's lots (Tr. 15112–14, 15630–31, 15916–20; RX 1574, 1568), which appear to have been conducted with a foreordained result as the objective. These expert witnesses concluded that Horizon's selling prices for its lots, *e.g.,* $1,000 per lot, represented market value at the time of the sale, even though these witnesses recognized that there was no present market of any kind for the lots (Tr. 15289, 15687–90, 15761). The superficiality of the surveys, and the conclusions drawn from the surveys as to knowledgeability of the purchasers of Horizon's lots, casts a cloud over the credibility of these witnesses in all respects.

The determination by the witnesses that Horizon's selling prices represented market value is crucial to the testimony of these witnesses as to the future value of Horizon's lots. Horizon's witnesses concluded that Horizon's selling prices represented market value. They then projected these "market prices" into the future based on a compound annual rate of appreciation, approximating what the witnesses anticipated the inflation rate will be in the future.

[27] One of the conditions implicit in a determination of whether the selling price of property reflects "market value", is a knowledgeable buyer—a well-informed or well-advised buyer (Tr. 7578, 15092, 15762, 15782).

Assuming land will generally appreciate in value in the future at a compound rate related to the rate of inflation, to arrive at an estimated future value you must start with a realistic present market value.

Horizon's experts used Horizon's inflated selling prices as the market value. This incorrect base figure skewed the future projections of value. For example, Horizon paid an average of approximately $55 per acre for the Rio Communities property and sold the land at a price of approximately $5,000 per acre (Finding 137). [283]

$55 at an 8% compounded rate for 30 years = $553.45

$5,000 at an 8% compounded rate for 30 years = $50,313.28

Horizon paid approximately $135 per acre for the Horizon City land and sold the land for approximately $6,000 per acre (Finding 137):

$135 at an 8% compounded rate for 30 years = $1,358.46

$6,000 at an 8% compounded rate for 30 years = $60,375.94

Horizon paid approximately $150 per acre for Whispering Ranch property and sold the land for approximately $700 per acre (Finding 137):

$150 at an 8% compounded rate for 30 years = $1,509.40

$700 at an 8% compounded rate for 30 years = $7,043.86

There are other significant reasons for attaching little credibility to the future value projections offered by Horizon's expert witnesses. D.A. Lomax, when interviewed by complaint counsel as a prospective witness at a time prior to his engagement by Horizon as an expert witness, took positions directly contrary to his testimony in this proceeding (Finding 114). His answers to complaint counsel's questions comport more with the evidence in this record than his testimony for Horizon at trial. Mr. Lomax admitted stating to complaint counsel during the interview that a well-informed purchaser would never have bought Horizon's land, that an individual investor does not buy a lot in the sticks where he will be competing with 100,000 other lots. Mr. Lomax also admitted stating to complaint counsel that he would not recommend that anyone under any circumstances buy Rio Communities lots, with the possible exception of lots in Tierra Grande. Mr. Lomax's answers to complaint counsel, when he was an uninterested and unpaid land appraiser, are far more credible than his testimony in this proceeding.

Sanders Solot accepted Horizon's sales prices as establishing market value, based on a highly superficial survey, when he knew there was no present market for Whispering Ranch property. His selection of comparable properties are suspect, as they were located many miles from Whispering Ranch. His appraisal also differs from testimony of real estate brokers located in the Whispering Ranch area (Tr. 3233–35, 3260–61). His appraisals are entitled to little weight. The Whispering Ranch appraisals of Roy Humble, Arizona's tax assessor, is more credible based on this record.

Charles Osenbaugh's purported determination of the knowledgeability of purchasers of Waterwood lots, based in substantial part on the purchasers' addresses, points up the cursory nature of his investigation of the market value of the Waterwood lots.

Alan Nevin, while recognizing the massive failure of the New Towns, which had federal government assistance, found Horizon's [284]developments to be viable. The superficiality of Mr. Nevin's testimony is highlighted by his conclusion from a buyer profile he compiled from existing Horizon records, that purchasers of Horizon's lots had used "discretionary" funds in purchasing Horizon lands. Examples of information which Mr. Nevin did not have in compiling his buyer profile, was the number of dependents a purchaser had or the amount of his debts. Forty percent of the purchasers in Mr. Nevin's profile had incomes of less than $10,000 per year. It is unlikely these purchasers had "discretionary" income to invest in distant land.

Mr. Nevin did recognize, however, that Horizon has the best of both worlds. Horizon has shifted its financial burden to the lot purchasers. It has sold off for cash the undesirable lots in the outlying areas at inflated prices while retaining the most desirable land in its core areas. The money realized from the sale of the outlying lots is available to Horizon to develop its core areas. Therefore, Horizon does not have the heavy carrying costs that usually cripple new towns (Tr. 16032).

There are numerous risks in purchasing one lot in Horizon's enormous projects. One of the risks beyond mere supply and demand is the fractionalization of ownership of the land. As time passes, title problems become more severe. Builders prefer to utilize several lots at a time. It is uneconomical to develop one lot at a time. The lack of an infrastructure to provide utilities is a significant risk. The financial outlay necessary to provide city services to one of Horizon's developments 30 years in the future is so large as to be almost incalculable (Tr. 6690, 7048–51). There are many unknowns when looking 30 years or more into the future such as water and sewage problems. The physical condition of the property, *i.e.*, arroyos, flood plains, malapi, and earth mounds pose problems for some lot investors.

The uncertainties as to ultimate absorption, the lack of an infrastructure, the fractionalization of ownership, and the unknown risks associated with long-term development over the next several decades, make Horizon's lots bad investments. Professor Stevenson recommended defaulting and taking a tax loss on Rio Communities lots (Tr. 6752–54). Jack Mann recommended that owners of Horizon City lots discontinue the payment of taxes, thereby defaulting on the property and claiming an investment loss as an income tax deduction (CX 892). These conclusions are supported by the record. Horizon's lots are not only bad investments, they are worthless as investments.

G. Retention Of Money By Horizon

Count XXXII, Paragraphs 81 and 82, alleged that Horizon has induced members of the public through unfair and deceptive acts and practices to pay substantial sums of money towards the purchase of lots located in Rio Communities, Horizon City, and Whispering Ranch when said lots are of little value to purchasers as investments and little use as homesites, and has failed to offer to refund or refused to refund such money to purchasers. The continued retention of the money is alleged to be an unfair act or practice.

It will be observed that the complaint allegations of Count XXXII specifically designate only three of the six properties with which this **[285]**proceeding has been involved. Complaint counsel contend that Horizon was notified by complaint counsel's trial brief filed November 23, 1976 that complaint counsel intended to offer proof that the continued retention of funds received through the sale of all of Horizon's land is an unfair practice. Complaint counsel therefore contend that respondent was placed on notice that Paragraphs 81 and 82 cover all of Horizon's properties.

Horizon objects to complaint counsel's efforts to enlarge the scope of these paragraphs (RRB, p.267).[28] Horizon's primary basis of objection is the unambiguous language of Paragraph 81 which specifically designates only three properties, and the passage of over three years since issuance of the complaint, during which complaint

[28] See complaint counsel's letter and respondent's letter setting forth their respective positions on Count XXXII, which have been incorporated into this record (see Order Incorporating Letters Into Record, dated September 6, 1979).

counsel never sought to amend the complaint to designate other properties. Horizon further contends that the other paragraphs of complaint counsel's trial brief contradicts the paragraph of the brief relied on by complaint counsel, leaving the general understanding to be derived from the trial brief ambiguous as to complaint counsel's intentions.

The allegations of Count XXXII that the lots in Horizon's Rio Communities, Horizon City and Whispering Ranch "are of little value to purchasers as investments and little use as homesites," introduce no new issues to this proceeding. The entire record consists of evidence establishing the representations which were made as to the investment quality of all of Horizon's lots, and evidence respecting the value of those lots currently and into the future. This evidence concerned all six properties, not just the three properties enumerated in Count XXXII. The additional allegation stated in Count XXXII is Horizon's continued "retention of the sums" paid for lots of little value as investments and little use as homesites. Evidence adduced in this proceeding has shown that Horizon has retained the sums paid in on lots in all six properties. There was no separating out evidence as to just the specifically enumerated properties, nor is there any indication whatsoever that funds from the enumerated properties were handled differently than funds paid for the other properties.

Adding the three additional properties to the allegations of Count XXXII does not introduce any new issues to this proceeding, nor does it alter the underlying theory behind the complaint.[29] Horizon was put on notice by complaint counsel's trial brief that complaint counsel intended to offer proof that the continued retention of funds as to all of Horizon's properties was an unfair trade practice.

Horizon was accorded every opportunity to offer evidence relevant to the allegations of the complaint, and after being put on notice of complaint counsel's trial intentions, offer evidence to rebut complaint counsel's case-in-chief. Thus, Horizon has not been prejudiced by complaint counsel's failure to move to formally amend the complaint. **[286]**

As to the substantive allegation of Count XXXII, the retention of the sums paid for lots having little value as investments and little use as homesites, the Commission recently considered such an allegation in *The Raymond Lee Organization, Inc.,* Docket 9045, Opinion of the Commission, pp. 29–36 [92 F.T.C. 489]. In the *Raymond Lee* matter,the Commission considered the value of

[29] See *Capitol Records Dist. Corp.*, Dkt. 8029, Interlocutory Order Remanding Motion To Amend Complaint For Determination Of The Hearing Examiner, 58 F.T.C. 1170, 1174.

services rendered in light of what was promised by the respondents in advertising, promotional and sales pitches. The Commission concluded:

> In our view, the record convincingly demonstrates that respondents provide worthless services that bear little resemblance to what they tout in their advertising, promotional, and sales pitches. These unfair and deceptive practices are exacerbated by respondents' acceptance and retention of the substantial fees that inventors pay in the reasonable hope and expectation that respondents will provide the expert assistance they represent. We conclude that the complaint allegations have been sustained. (Opinion of the Commission, p. 36).

In the instant matter Horizon touted its property as an excellent investment. There is a gross disparity between what the investor received for his money and what Horizon led the investor to believe. While it may be assumed that land has some intrinsic value, under consideration here is the value of the land as an investment, the product which Horizon was selling. The record clearly has shown that the land is actually a bad to worthless investment.

Horizon contends that the exchange privilege whereby a purchaser could exchange an undeveloped lot for a developed lot in the building area, gives Horizon's lots value as homesites (RPF, pp. 183–84). The record establishes that the exchange privilege has added no value to the undeveloped lots. This privilege has had no impact on the pace of building in Horizon's properties. It is evident that the exchange privilege cannot accommodate all the lot purchasers with a building site. Thus, the exchange privilege does not give value to Horizon's undeveloped lots as homesites. Moreover, Horizon's undeveloped lots were not sold as homesites, but as investments that could be resold to a demand market in a short time at a substantial increase in price.

The complaint allegations have been sustained. Horizon has sold thousands of undeveloped lots having little value as investments and little value as homesites and has retained the sums paid and has refused to refund the sums and failed to offer to refund the sums.

H. Jurisdiction

Congress granted the Federal Trade Commission jurisdiction to prevent unfair methods of competition and unfair or deceptive acts or practices in commerce, and more recently, in or affecting commerce. 15 U.S.C. 45. Horizon's acts and practices as a corporation in the sale of land in interstate commerce bring it within the Commission's jurisdiction to determine whether the acts and practices in question were unfair or deceptive. [287]

Horizon states that primary jurisdiction over the interstate sale of land is vested in the Office of Interstate Land Sales Registration (OILSR) of the Department of Housing and Urban Development (HUD). Horizon maintains that this jurisdiction of OILSR bars action on the part of the Federal Trade Commission (RPF, pp. 399–408). The Interstate Land Sales Full Disclosure Act (ILSFDA), 15 U.S.C. 1701 *et seq.* (1968), and regulations, 24 CFR 1700 *et seq.*, promulgated thereunder, are basically registration acts requiring developers to disclose. In conjunction with its duty to administrate the registration of subdivisions to be sold in interstate commerce, OILSR has the ability to seek both civil and criminal penalties for violations of the Land Sales Act. 15 U.S.C. 1709, 1717. Yet, neither OILSR's regulations prohibiting false or misleading advertising, nor its ability to judicially seek compliance for violations, renders OILSR exclusively in charge of protecting the public interest in the area of sales of subdivided land.

Nowhere in the ILSFDA is there an express grant of exclusive jurisdiction. In the absence of such an express grant of exclusive jurisdiction, where two acts cover the same subject, rules of statutory construction favor giving effect to both acts and concurrent jurisdiction to the agencies empowered to enforce those acts. *United States* v. *Borden Co.,* 308 U.S. 188, 198 (1939); *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 350 (1963).

The ILSFDA itself indicates that there was no congressional intent to impliedly repeal the strictures of the Federal Trade Commission Act. 15 U.S.C. 1713 states:

> The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist in law or in equity.

When coupled with exemptions from the ILSFDA listed in Section 1702, surely this leaves room for the Commission to examine acts and practices in connection with interstate land sales for unfairness and deception, as well as for private citizens to seek remedies for fraud, duress or mistake.

The field covered by the Federal Trade Commission Act (FTCA) is not coterminous with the ILSFDA. Practices and acts which comply with the letter of ILSFDA may still function to deceive. The FTCA is a pervasive regulatory scheme which is not repugnant to nor even in conflict with the purposes of the ILSFDA. Thus, there can be no implied repeal in favor of the ILSFDA, and no exclusive jurisdiction in the OILSR.

Nor is the doctrine of primary jurisdiction applicable. As the Second Circuit Court of Appeals found in a case involving the

Federal Maritime Commission, (FMC) the FMC did not have primary jurisdiction because "no special expertise is necessary to resolve the issue presented; there were no technical words which required expert construction, nor are there complicated facts whose significance can be grasped only by expert analysts. Additionally, there are no circumstances here which addressed themselves to administrative discretion or the need for uniform decisional law." *United States* v. *Pan American Mar/Line Inc.,* 32 Ad. L.2d 946 (S.D.N.Y 1972). [288]

What is in question here is not a complex construction of the Land Sales Act and regulations (although there do appear to be some violations of those clear and explicit regulations), but a combination of acts and practices which were unfair and deceptive to the public. OILSR has been granted jurisdiction over a registration statute and the authority to prosecute for non-disclosure and false and misleading disclosure; it does not have the primary mission of ferreting out unfairness and deception in the market place, which has been vested in the Federal Trade Commission.

This case presents no circumstances which necessitate the administrative expertise of the OILSR. The Commission is fully competent to proceed in this matter, which is concerned with an area of unfair and deceptive trade practices. The Commission thus has jurisdiction over the subject matter of this complaint.

I. Unfair Contractual Provisions

Horizon's contract contains several provisions which are unfair to purchasers; in particular, the forfeiture clause and the integration clause were oppressive and caused substantial injury to Horizon's customers. The unfairness of these provisions is amplified by the fact that these and other significant contract terms appear on the reverse side of the Agreement for Deed in a manner which does not apprise the purchasers of the importance of these terms. The training manuals have no instructions to sales representatives to explain the forfeiture provision to customers, and there is no testimony in the record by sales representative or customers that this provision was a part of sales presentations.

(1) *Horizon's Adhesion Contract*

It is important to bear in mind that Horizon's form contract constitutes a contract of adhesion—a contract in which one party must adhere to the whole contract as presented or forego entering into any contract. Horizon's contracts did not permit parties of equal strength to bargain for contract terms, a practice which is traditionally considered the essence of a contract. Rather, Horizon presented the customer with a highly refined product prepared by experts—a printed contract whose terms benefitted Horizon, and it was presented to the customer on a take it or leave it basis.

The fact that Horizon's contract was an adhesion contract is important because, as Administrative Law Judge Paul R. Teetor concluded *In the Matter of Amrep Corp.*, Docket No. 9018 (July 18, 1979), the standards of fairness to be applied and the legal consequences which ensue depend in a large part on the method of contracting.

(2) *Integration Clause*

An integration clause forecloses any question about the completeness or integration of a written contract; the clause formally prohibits the contradiction of any terms in the written contract by any **[289]**prior agreement or contemporaneous oral agreement. Although the parol evidence rule would generally prohibit tampering with the written terms of any bargained contract, those contracts which contain integration clauses make the finality of their terms explicit.

However, in the case of an adhesion contract, no bargaining has occurred. To treat such a one-sided contract with the same deference the law pays to a fully integrated contract, which is intended as the final expression of the parties' bargained-for agreement, is an absurdity. There is no agreement or "meeting of the minds" in Horizon's adhesion contract. The record herein establishes beyond any doubt that oral representations of the investment quality of Horizon's land was the most persuasive constituent of Horizon's sales scheme. Customer testimony would indicate that they considered statements by sales representatives to be part of the contractual agreement (Tr. 915, 940, 942, 1171, 1392–94, 1426, 1563, 1594, 1659–60, 5010, 5016, 5018, 5021, 5187, 6108, 6116, 6369, 6437, 16651–52).

In light of the high pressure sales tactics used by Horizon's sales representatives and the Draconian terms of its contracts, it is not reasonable to assume its customers knew and understood the nature and consequence of the contracts they signed. Respondent's inclusion of an integration clause, rendering all representations and agreements between Horizon sales representatives and respective customers unenforceable, was oppressive, unscrupulous and unfair, and causes substantial injury to consumers.