

Complaint

97 F.T.C.

IN THE MATTER OF

HORIZON CORPORATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9017. Complaint, March 11, 1975—Final Order, May 15, 1981*

This order requires, among other things, a Tucson, Arizona land sales company, one of the largest sellers of undeveloped land in the Southwest, to establish as specified in order, a \$14.5 million trust fund to be distributed to eligible past purchasers. The order also requires the firm to make prescribed disclosures regarding the risks involved in undeveloped land investment; provide purchasers with a cooling-off period in which to cancel their dealings; and furnish a "NOTICE TO BUYERS" that provides prospective purchasers with pertinent information regarding the property, roads, utilities and recreational facilities. Respondent is further prohibited from discouraging purchasers from consulting with a real estate specialist prior to purchase; using high pressure sales tactics; using state and federal property reports as endorsements and utilizing certain contractual provisions, including one whereby defaulting purchasers forfeit all payments made. Additionally, the firm is required to ensure that \$45 million is spent to improve certain properties over a 20-year period and establish and maintain a surveillance program designed to detect violations of the order.

Appearances

For the Commission: *Alan N. Schlaifer, S. Ricardo Narvaiz, Eugene Kaplan and Lemuel Dowdy.*

For the respondent: *Glenn A. Mitchell and David Fierst, Stein, Mitchell & Mezines, Washington, D.C.*

COMPLAINT

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

1. Respondent Horizon Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4400 East Broadway, Tucson, Arizona.

2. Respondent Horizon Corporation, from its aforementioned principal place of business, operates through, dominates and controls the acts and practices of its subsidiaries, and derives pecuniary and other benefits from the acts and practices of said subsidiaries.

3. Respondent is now, and for some time last past has been engaged, directly or through its subsidiaries, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public.

4. Among the properties in which lots have been and/or are being offered for sale by respondent are the properties known as Paradise Hills and Rio Communities located in the State of New Mexico; Horizon City and Waterwood located in the State of Texas; and Arizona Sunsites, Whispering Ranch, and New Tucson located in the State of Arizona. The acreage of these properties is substantial. Most of these properties are divided into numerous and variously named subdivisions.

5. Respondent usually sells the lots in its properties to purchasers who have not seen their land by means of standard form contracts, titled "Agreement for Deed" and "Receipt of Deposit", hereinafter referred to in this Complaint as a "contract", whereby the purchaser generally pays monthly installments over a term of approximately eight years. According to the provisions of the contract, title to the lot remains in the respondent until final payment is made, at which time title to the lot passes to the purchaser. As to most of its properties, respondent agrees in the contract only to cause a road fronting on the property to be completed within thirty days after the purchaser has completed his payments or approximately eight years from the date of signing the contract, whichever is later. The contract provides that the purchaser pays interest to respondent during the contract term on the unpaid balance owing under the contract.

6. In the course and conduct of the aforesaid business, respondent now causes, and for some time last past has caused, its promotional materials, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its place of business in Arizona to its agents, representatives, employees, customers and prospective customers in various other States and territories of the United States, the District of Columbia, and foreign nations. Respondent now maintains and operates, and for some time last past has maintained and operated, places of business and has made substantial sales to purchasers in the various other States of the United States, the District of Columbia and foreign nations. Respondent maintains, and at all times mentioned herein has

maintained, a substantial course of trade in said land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

8. In the course and conduct of the aforesaid business, respondent disseminates advertisements through television and radio broadcasts and in various publications of general circulation, distributes promotional material through the mail and in person to members of the public, and makes sales presentations by means of oral and written statements, slides and movies. By and through such means, respondent has made and is making various statements and representations, directly or by implication, concerning the size, good reputation, financial security, and integrity of Horizon Corporation.

9. By and through the use of such statements and representations, respondent Horizon Corporation has permitted and participated in the use of its name for the purpose of selling land and deriving pecuniary benefits therefrom.

I

10. In the further course and conduct of the aforesaid business, respondent disseminates advertisements through television and radio broadcasts and in various publications of general circulation, distributes promotional materials through the mail and in person to members of the public, and makes sales presentations by means of oral and written statements, movies and slides. By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; principles of buying land; personal financial security; inflation; the stock market, banks and annuities; population growth and movement; the location of industrial, commercial and recreational facilities; the past, present and future suitability of lots in respondent's properties for investments or homesites; the financial terms for real estate investment; the size of respondent's assets and net worth; the tax advantages of owning real estate; the various options or financial protections afforded purchasers of respondent's land; and the repurchase or resale by respondent of lots acquired by purchasers from respondent.

11. By and through the statements and representations alleged

in Paragraph 10 herein, respondent has represented and is representing, directly or by implication, that the lots which respondent is offering for sale are, at the prices at which respondent is offering them for sale, excellent investments, and that there is little or no financial risk involved in the purchase of said lots at said prices.

12. In truth and in fact, in a significant number of instances the lots which respondent is offering for sale, at the prices at which respondent is offering them for sale, are not excellent investments involving little or no financial risk to purchasers. Therefore, the acts and practices alleged in Paragraph 10 herein are deceptive.

II

13. In the further course and conduct of the aforesaid business, respondent has offered and is offering for sale lots in its properties without disclosing to prospective purchasers that the lots being offered are, at the prices at which respondent is offering them, risky investments in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price. Therefore, respondent has failed to disclose material characteristics of its lots which, if known to certain consumers, would be likely to affect their consideration whether to purchase a lot from respondent. Such failure to disclose is a deceptive or unfair act or practice.

III

14. In the further course and conduct of the aforesaid business, respondent has made and is making various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies and slides, concerning the past, present, and future development of respondent's properties, and inclusiveness of the purchase price of a lot. The aforesaid statements and representations use words and terms such as "communities", "community developer", "master plan", "land use plan", "new cities" and other words or terms of similar import.

15. By and through the statements and representations alleged in Paragraph 14 herein, respondent has represented and is representing, directly or by implication, that substantially all lots are now, or by approximately the end of the purchaser's scheduled

payments will be, located within a self-contained and fully developed community, and that the price of the aforesaid lots is all-inclusive.

16. In truth and in fact:

(a) Lots in respondent's properties are not now and will not be, by approximately the end of the purchaser's scheduled payments, located within a self-contained and fully developed community.

(b) It is not part of respondent's express contractual obligation, nor is it part of respondent's land development program, to develop its properties beyond the placement of an unpaved road fronting the purchaser's property. Respondent has no obligation to maintain these roads.

(c) Respondent's properties consist primarily of vacant acreage with limited industrial, commercial, shopping and recreational facilities; limited amenities; and limited public services. In substantially all instances the only building which has occurred or, in most instances, is likely to occur in each property is in areas reserved by respondent. The amount of such building is insignificant in relation to the total acreage of each property and the length of time respondent has been offering for sale and selling lots located within each property.

(d) The purchase price of substantially all lots in respondent's properties is not all-inclusive.

(i) For substantially all lots in respondent's properties other than Waterwood, paved roads and central sewer systems are not available. Telephone service and electricity are available only at unreasonable prices. Central water systems are either not available or available only at unreasonable prices. In addition, most purchasers are required to join and make payments to an improvement association.

(ii) For most lots in Waterwood, central water and sewer systems, paved roads, electricity and telephone service are available only through substantial payments which all purchasers are required to make to an improvement association and to a municipal utility district. Such payments include both annual charges and a one-time charge at the time the purchaser desires that such services and utilities be made available. In addition, the purchaser must also fulfill other significant conditions in order to obtain such utilities and services for his lot.

Therefore, the acts and practices alleged in Paragraph 14 herein are deceptive.

IV

17. In making the statements and representations alleged in Paragraph 14 herein containing express or implied references to the past, present and future development of respondent's properties, respondent has failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, the following information:

(a) Lots in respondent's properties are not now and will not be, by approximately the end of the purchaser's scheduled payments, located within a self-contained and fully developed community.

(b) It is not part of respondent's express contractual obligation, nor is it part of respondent's land development program, to develop its properties beyond the placement of an unpaved road fronting the purchaser's property. Respondent has no obligation to maintain these roads.

(c) Respondent's properties consist primarily of vacant acreage with limited industrial, commercial, shopping and recreational facilities; limited amenities, and limited public services. In substantially all instances the only building which has occurred or, in most instances, is likely to occur in each property is in areas reserved by respondent. The amount of such building is insignificant in relation to the total acreage of each property and the length of time respondent has been offering for sale and selling lots located within each property.

(d) The purchase price of substantially all lots in respondent's properties is not all-inclusive.

(i) For substantially all lots in respondent's properties other than Waterwood, paved roads and central sewer systems are not available. Telephone service and electricity are available only at unreasonable prices. Central water systems are either not available or available only at unreasonable prices. In addition, most purchasers are required to join and make payments to an improvement association.

(ii) For most lots in Waterwood, central water and sewer systems, paved roads, electricity and telephone service are available only through substantial payments which all purchasers are required to make to an improvement association and to a municipal utility district. Such payments include both annual charges and a one-time charge at a time the purchaser desires that such services and utilities be made available. In addition, the purchaser must also

fulfill other significant conditions in order to obtain such utilities and services for his lot.

Each element of information set forth above is a material fact, knowledge of which would be likely to affect the decision of certain consumers whether to sign a contract for the purchase of respondent's land. Therefore, the failure to disclose the aforesaid information is an unfair or deceptive act or practice.

V

18. In the further course and conduct of the aforesaid business, respondent has offered and is offering for sale property divided into numerous and variously named subdivisions. The names of such subdivisions are often similar to each other; and, in addition, such subdivisions or the properties in which they are located are often referred to collectively.

19. The practices alleged in Paragraph 18 herein have the capacity and tendency to lead significant numbers of consumers to believe that the past, present or planned development for one subdivision is the same as the past, present or planned development for another subdivision.

20. In truth and in fact, respondent offers for sale and does sell lots in subdivisions which have not received and are not intended by respondent to receive the same degree of development. Therefore, the acts or practices alleged in Paragraph 18 are deceptive.

VI

21. In the further course and conduct of the aforesaid business, respondent has made and is making various statements and representations to members of the public and to persons who have purchased respondent's lots, by means of various publications of general circulation, promotional materials, and sales presentations involving oral statements, written statements, movies and slides, concerning the locations; the designation as "single-family residential", "multi-family residential" or "commercial"; and the value of respondent's lots; and, in the case of persons who have already purchased lots, the exchange of their lots for other, more expensive lots.

22. By and through the statements and representations alleged in Paragraph 21 herein, respondent has represented and is representing, directly or by implication, that more expensive lots having certain locations or certain designations have a greater value than

other lots, and, accordingly, in the case of persons who have already purchased lots, that it is generally to their advantage to exchange their lots for more expensive lots in other locations or with other designations.

23. In truth and in fact, in substantially all instances there is no significant difference in the value, if any, of lots offered for sale, regardless of their location or designation; and, accordingly, in the case of persons who have already purchased lots, it is not generally to their advantage to exchange their lots for more expensive lots in other locations or with other designations. Therefore, the acts and practices alleged in Paragraph 21 herein are deceptive.

VII

24. In making the statements and representations alleged in Paragraph 21 herein, respondent has failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, that the designation of lots as "single-family residential", "multi-family residential" or "commercial" is only the designation used by respondent; that in substantially all instances there is no significant difference in the value, if any, of lots offered for sale, regardless of their location or designation; and that, accordingly, in the case of persons who have already purchased lots, it is not generally to their advantage to exchange their lots for more expensive lots in other locations or with other designations. These are material facts, knowledge of which would be likely to affect the decision of certain consumers whether to sign a contract for the purchase of land from respondent or, in the case of persons who have already purchased land from respondent, whether to exchange their lots for more expensive lots in other locations or with other designations. Therefore, the failure to disclose the aforesaid information is a deceptive or unfair act or practice.

VIII

25. In the further course and conduct of the aforesaid business, respondent has made and is making various oral statements and representations to prospective purchasers concerning repurchase or resale by respondent of lots acquired by purchasers from respondent.

26. By and through the statements and representations alleged in Paragraph 25 herein, respondent has represented and is representing, directly or by implication, that it will either buy back from or resell for purchasers lots acquired from respondent.

27. In truth and in fact, respondent does not buy back from or

resell for purchasers lots acquired from respondent. Therefore, the acts and practices alleged in Paragraph 25 herein are unfair or deceptive.

IX

28. In the further course and conduct of the aforesaid business, and in some instances after a purchaser has signed a contract, respondent has made and is making various statements and representations to members of the public and to persons who have purchased respondent's lots, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies and slides, concerning the sizes of respondent's lots and the ability of owners of such lots to fully use their property for homesites now or in the future.

29. By and through the statements and representations alleged in Paragraph 28 herein, respondent has represented and is representing, directly or by implication, that all or substantially all the land within a designated lot is now or will be in the future fully usable by the owner.

30. In truth and in fact, in many instances all or substantially all the land within a designated lot is not now and will not in the future be fully usable by the owner, because various easements and other physical features affect the full use and enjoyment of said lot. Therefore, the acts and practices alleged in Paragraph 28 herein are deceptive.

X

31. In making the statements and representations alleged in Paragraph 28 herein containing express or implied references to the sizes of respondent's lots and the ability of owners of such lots to fully use their property for homesites now or in the future, respondent has failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, the existence, nature, location, size and significance of all easements and other physical features which affect the full use and enjoyment of such lots. These are material facts, knowledge of which would be likely to affect the decision of certain consumers whether to sign contracts for the purchase of respondent's land. Therefore, the failure to disclose the aforesaid information is a deceptive or unfair act or practice.

XI

32. In the further course and conduct of the aforesaid business, respondent has made and is making various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies and slides, wherein certain well-known personalities, specifically Mery Griffin and Leif Erickson, make statements and representations concerning, but not limited to, the values, marketability and liquidity of land; population growth; land as an investment; and their ownership of respondent's property.

33. By and through the statements and representations alleged in Paragraph 32 herein, respondent has represented and is representing, directly or by implication, that the aforesaid personalities have purchased respondent's land and that they did so because they believed that respondent's land was a good investment.

34. In truth and in fact, the aforesaid personalities have not purchased land from respondent but were paid substantial sums by respondent to make the statements and representations alleged in Paragraph 32 herein, and, in addition, were given land by respondent. Therefore the acts and practices alleged in Paragraph 32 herein are deceptive or unfair.

XII

35. In making the statements and representations alleged in Paragraph 32 herein, respondent has failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, that the aforesaid well-known personalities were paid substantial sums of money by respondent to make the statements and representations alleged in Paragraph 32 herein, and that the land they own was given to them by respondent. Therefore, respondent has failed to disclose material facts which, if known to certain consumers, would be likely to affect their decision whether to sign contracts for the purchase of respondent's land. Therefore, the failure to disclose the aforesaid information is a deceptive or unfair act or practice.

XIII

36. In the further course and conduct of the aforesaid business, respondent has made and is making various statements and repre-

sentations to members of the public, by means of promotional materials and oral statements, concerning the improvement associations which purchasers of respondent's land are required to join.

37. By and through the statements and representations alleged in Paragraph 36 herein, respondent has represented and is representing, directly or by implication, that the presence of such an association will increase the value of property which is subject to the association.

38. In truth and in fact, the presence of most of said associations, in and of themselves, does not increase the value of properties which are subject to said associations. Therefore, the aforesaid acts and practices alleged in Paragraph 36 herein are deceptive or unfair.

XIV

39. In the further course and conduct of the aforesaid business, respondent has made and is making various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promotional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies and slides, concerning the size of respondent's assets and net worth.

40. By and through the statements and representations alleged in Paragraph 39 herein, respondent has represented and is representing, directly or by implication, that its assets and net worth are at least as great as the amounts stated.

41. In truth and in fact, in many instances at the times when respondent has made the statements and representations alleged in Paragraph 39 herein, respondent's total assets and net worth have been substantially less than the amounts stated. Therefore, the aforesaid acts and practices alleged in Paragraph 39 herein are deceptive and unfair.

XV

42. In the further course and conduct of the aforesaid business, respondent has made and is making various statements orally and in promotional materials concerning travel allowances, "Property Visit Credit Certificates" or other allowances which respondent will provide to a purchaser to help defray the cost of a visit to the purchaser's lot.

43. By and through the statements alleged in Paragraph 42 herein, respondent has represented and is representing, directly or by implication, that the travel allowances, "Property Visit Credit

Certificates", or other allowances promised by respondent are either actual payments to the purchaser in the form of cash or checks or immediate deductions from the purchaser's currently scheduled payments, and that such payments or deductions are made upon completion of a visit to the purchaser's lot as reimbursement for the purchaser's expenses.

44. In truth and in fact, the "travel allowances", "Property Visit Credit Certificates", or other allowances provided by respondent upon a visit by a purchaser to his lot are not actual payments in the form of cash, checks, or immediate deductions from the currently scheduled payments, but are deductions from the remaining account balance at the time the principal balance is equal to the amount of the allowance, providing that a company-guided tour is made within one year of the date of the acceptance of the contract and that the payments due under the contract have been current throughout the term of the contract. Therefore, the acts and practices alleged in Paragraph 42 herein are deceptive.

XVI

45. In the further course and conduct of the aforesaid business, respondent has made and is making statements and representations in promotional materials which use, set forth or refer to all or part of various endorsements, testimonials and printed articles concerning, but not limited to, the size, good reputation, financial security and integrity of respondent; the past, present and future development of respondent's properties; land prices and values; land as an investment; and population and industrial growth and movement.

46. By and through the statements and representations alleged in Paragraph 45 herein, respondent has represented and is representing, directly or by implication, that the aforesaid articles, endorsements and testimonials were originally published or made in the recent past.

47. In truth and in fact, in all or substantially all instances when so represented, the aforesaid articles, endorsements and testimonials were not originally published or made in the recent past. Therefore, using or referring to the aforesaid articles, endorsements or testimonials which were not originally published or made in the recent past is an unfair or deceptive act or practice.

XVII

48. In making the statements and representations alleged in Paragraph 45 herein, respondent has failed to disclose clearly and

conspicuously, and in reasonable conjunction with such statements and representations, the date when each of the aforesaid articles, endorsements and testimonials was originally published or made. Therefore, respondent has failed to disclose material facts, which, if known to certain consumers, would be likely to affect their decision whether to sign a contract for the purchase of respondent's land. Therefore, the failure to disclose the aforesaid information is a deceptive or unfair act or practice.

XVIII

49. In the further course and conduct of the aforesaid business, respondent has made and is making statements orally in sales presentations concerning the prices and locations of the lots being offered for sale and to be offered for sale.

50. By and through the statements alleged in Paragraph 49 herein, respondent has represented and is representing, directly or by implication, that a prospective purchaser must purchase a lot immediately to insure that the price will not increase or that the desired location will be available.

51. In truth and in fact, most prospective purchasers do not have to purchase immediately to insure that prices will not increase or that desired locations will be available. Therefore, the acts and practices alleged in Paragraph 49 herein are deceptive or unfair.

XIX

52. In the further course and conduct of the aforesaid business, respondent is offering and disseminating promotional materials which purport to provide informed and unbiased advice on the purchase of land, and which often purport to have a specific dollar value.

53. By and through the practices alleged in Paragraph 52 herein, respondent has represented and is representing, directly or by implication, that these materials set forth comprehensive, informed, unbiased, prudent and generally accepted principles of purchasing land; and, that in many instances, these materials are distributed to the general public by widely-known publishers and are sold at the prices stated thereon.

54. In truth and in fact, these materials do not set forth comprehensive, informed, unbiased, prudent and generally accepted principles of purchasing land; have never been distributed to the general public by widely-known publishers; and have never been sold

at the prices stated thereon or at any other prices. Therefore, the acts and practices alleged in Paragraph 52 herein are deceptive.

XX

55. In the further course and conduct of the aforesaid business, and in some cases after a purchaser has signed a contract, respondent has made and is making various statements in promotional materials and orally concerning its purpose in contacting members of the public, holding "dinner parties" or other gatherings, or in offering publications, goods or services free or at low cost.

56. By and through the statements alleged in Paragraph 55 herein, respondent has represented and is representing, directly or by implication, that its purpose in contacting members of the public, inviting them to dinner parties or other gatherings, or in offering publications, goods or services free or at low cost, is, *inter alia*, to conduct a bona fide survey, or to furnish the public unbiased information on the purchase of land as an investment without any obligation or pressure whatsoever, or, in the case of persons who are already holders of respondent's land, to advise them on the status of their property.

57. In truth and in fact, respondent's purpose in contacting or making offers to members of the public or in holding dinner parties or other gatherings, or in offering publications, goods or services free or at low cost is to induce the signing of contracts for the purchase of respondent's land, or, in the case of persons who are already holders of respondent's land, to induce the signing of contracts for the purchase of additional land from respondent or to induce them to exchange their lots for other, more expensive lots. Therefore, the acts and practices alleged in Paragraph 55 herein are deceptive.

XXI

58. In making the statements and representations alleged in Paragraph 55 herein, respondent has failed to disclose clearly and conspicuously, and in reasonable conjunction therewith, that respondent's true purpose in contacting or making offers to members of the public and persons who are already holders of respondent's land, or in holding dinner parties or other gatherings, or in offering publications, goods or services free or at low cost, is to induce the signing of contracts for the purchase of respondent's land, or, in the case of persons who are already holders of respondent's land, to induce the signing of contracts for the purchase of additional land from respondent or to induce them to exchange their lots for other,

more expensive lots. Therefore, respondent has failed to disclose material facts which, if known to certain consumers, would be likely to affect their decision whether to sign contracts for the purchase of respondent's land, or, in the case of persons who are already holders of respondent's land, to purchase additional lots, or exchange lots they own for more expensive lots. Therefore, the failure to disclose the aforesaid information is a deceptive or unfair act or practice.

XXII

59. In the further course and conduct of respondent's business, in obtaining a purchaser's signature on a contract, respondent has presented and is presenting purchasers with a contract, a property report required to be provided to the purchaser by federal law, various other written and illustrated publications, and in some instances additional lengthy or detailed documents. These documents and publications contain information and provisions likely to affect the decision of certain consumers whether to sign a contract for the purchase of respondent's land.

60. Respondent frequently has made and is making available the aforesaid documents and publications at dinner parties or other gatherings sponsored by respondent or under such circumstances that it is likely that many purchasers will not read such documents and publications because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents and publications carefully, completely or with full comprehension of their meaning and import. The soliciting or obtaining under such circumstances of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, is an unfair or deceptive act or practice.

XXIII

61. In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing contracts, the provisions of which are not understandable to many consumers or cannot be evaluated by many consumers to determine if they are fair or unfair. Respondent has made and is making the contracts available to prospective purchasers, and soliciting and obtaining signatures to the contracts from purchasers, in circumstances where the purchaser has not had the opportunity to seek assistance or counsel in understanding the provisions or making the aforesaid determination.

62. The soliciting or obtaining of an agreement to purchase

respondent's land, involving a substantial financial commitment by the purchaser, where the purchaser has not had the opportunity to seek assistance or counsel for the purposes referred to in Paragraph 61 herein, is an unfair act or practice.

XXIV

63. In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing two lengthy, detailed and seemingly unrelated documents entitled "Receipt of Deposit" and "Agreement for Deed" which together make up respondent's contract.

64. The use of the two aforesaid documents has the capacity and tendency to mislead purchasers as to the significance of said documents. Therefore, the use of the aforesaid documents constitutes an unfair or deceptive act or practice.

XXV

65. Respondent, in the further course and conduct of the aforesaid business, has utilized and is utilizing standard form contracts.

66. The aforesaid contracts contain a condition of sale, embodied on the reverse side of the "Agreement for Deed", that there is no understanding or agreement between the parties except as expressly set forth in the "Agreement for Deed" or the "Receipt of Deposit."

67. The use by respondent of the aforesaid condition of sale is an unfair or deceptive act or practice because respondent makes representations, directly or by implication, through advertisements in publications of general circulation, in promotional materials, and in sales presentations, by means of oral and written statements, slides and movies, which differ in material respects from the obligations of respondent or purchasers under said contracts.

XXVI

68. The aforesaid contracts contain various conditions and provisions which are printed on the reverse side of the "Agreement for Deed" in a manner which is not clear and conspicuous.

69. The practices alleged in Paragraph 68 herein are unfair or deceptive because they have a tendency and capacity to cause purchasers of respondent's lots to ignore conditions and provisions printed on the reverse side of the agreement and to mislead such purchasers as to the significance of such conditions and provisions.

XXVII

70. Most of the aforesaid contracts subject a purchaser to an annual assessment and membership in an improvement association, which purportedly is to provide improvements, amenities and public services which respondent has represented, directly or by implication, by and through the statements and representations alleged in Paragraph 14 herein, that it will provide to purchasers. Said associations have the authority to use the funds collected for improvements, amenities and public services for a purchaser's lot. However, most of said associations have no obligation to spend said funds for the benefit of a specific purchaser's lot.

71. In most instances the requirement that a purchaser pay annual assessments to and become a member of such an association is an unfair or deceptive act or practice because (i) the purchaser is obligated to pay monies to an association with no corresponding obligation by the association to spend these funds for the benefit of the purchaser's lot, and (ii) respondent has represented that it would provide, at no additional cost, the improvements which the associations are authorized but not obligated to provide to the purchaser.

XXVIII

72. The aforesaid contracts contain, within the "Receipt of Deposit", a declaration by the purchaser that the purchaser has received and read any property reports or offering statements required to be made available to prospective purchasers by federal or state law.

73. The use by respondent of the aforesaid declaration is an unfair or deceptive act or practice because respondent frequently fails to give the purchaser the property report or offering statement prior to the signing by the purchaser of the contract, or frequently makes available the property report or offering statement in circumstances where it is likely that many purchasers will not read such documents because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents carefully, completely, or with full comprehension of their meaning and import.

XXIX

74. The aforesaid contracts also provide, within the "Agreement for Deed", that upon a failure of the purchaser to pay any

installment due under the contract, the seller shall be entitled to retain all sums previously paid thereunder by the purchaser.

75. The use by respondent of the aforesaid provision is an unfair act or practice because the sums retained by the respondent are not calculated to bear any relation to the actual damages, if any, sustained by respondent by reason of the purchaser's default.

XXX

76. In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing forms entitled "Receipt of Deposit", "Agreement for Deed" and "Property Visit Credit Certificate", which in most instances contain a refund provision, which specifies that a purchaser may obtain a refund if the purchaser completes a company-guided inspection tour of the property in which the purchaser's land is located within one year of the date of purchase, and, upon completion of the aforesaid tour and while still on the property, sets forth on the respondent's refund request form the details of how the property was misrepresented at the time of sale. In addition, the aforesaid form provides that purchasers will be entitled to a deduction of the amount stated on the form from the remaining account balance at the time the principal balance of the contract is equal to the amount stated, if the aforesaid tour is taken within one year of the date of purchase and if a declaration is obtained from the purchaser that he has seen his land, that it is as represented, and that he is satisfied with his property investment.

77. The use by respondent of the provision as alleged in Paragraph 76 herein is an unfair act or practice because it requires the purchaser to incur the expense of traveling to the property and taking the company-guided inspection tour but (i) it is often not possible for the purchaser to see his land, and therefore not possible for him to make a declaration that he has seen his land; and (ii) irrespective of whether the purchaser does see his land, it may not be possible for him to ascertain whether the property is as represented or was misrepresented at the time of sale, or whether he is satisfied with his property investment, and, therefore not possible for him to make a declaration that the property is as represented or that he is satisfied with his property investment, or to set forth how the property was misrepresented at the time of sale.

XXXI

78. In the further course and conduct of the aforesaid business, and after a purchaser has signed a contract, respondent has made

and is making various statements and representations to such previous purchasers and others, through oral statements, and by written materials, concerning the current value of lots which have previously been purchased from respondent.

79. By and through the statements and representations alleged in Paragraph 78 herein, respondent has represented and is representing, directly or by implication, that the value of lots typically has increased significantly since the time of their purchase from respondent.

80. In truth and in fact, the value of lots typically does not increase significantly after their purchase from respondent. Therefore, the acts and practices alleged in Paragraph 78 herein are deceptive.

XXXII

81. In the further course and conduct of the aforesaid business, respondent as aforesaid has induced and is inducing members of the public through unfair and deceptive acts and practices to pay to it, in advance of passage of title, substantial sums of money toward the purchase of lots located within respondent's properties known as Rio Communities located in the State of New Mexico, Horizon City located in the State of Texas, and Whispering Ranch located in the State of Arizona. Said lots are of little value to purchasers as investments and little use as homesites. Respondent has received and is receiving the said sums and has failed to offer to refund or refused to refund such money to purchasers.

82. The use by respondent of the aforesaid practices and respondent's continued retention of the sums, as aforesaid, is an unfair act or practice.

XXXIII

83. In the course and conduct of the aforesaid business, respondent as aforesaid has utilized and is utilizing in its standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondent under the contract. Respondent has received and is receiving said payments and has failed to offer to refund or refused to refund to defaulting purchasers all payments in excess of respondent's reasonable damages caused by the purchaser's default.

84. The continued retention by respondent of payments in excess of reasonable damages, as aforesaid, is an unfair act or practice.

XXXIV

85. Respondent as aforesaid (i) has induced and is inducing members of the public through unfair and deceptive acts and practices to pay to respondent substantial sums of money toward the purchase of respondent's lots, and (ii) has continued to retain substantial sums in excess of its reasonable damages as a result, as aforesaid, of the unfair forfeiture provision in its contracts.

86. The effect of using the aforesaid acts and practices to secure and retain substantial sums of money is or may be to substantially hinder, lessen, restrain or prevent competition between respondent and the aforesaid competitors.

XXXV

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

XXXVI

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

INITIAL DECISION BY ERNEST G. BARNES,

ADMINISTRATIVE LAW JUDGE

SEPTEMBER 21, 1979

PRELIMINARY STATEMENT

The complaint in this proceeding issued against respondent, Horizon Corporation, on March 11, 1975. The complaint contains thirty-six separate allegations of unfair or deceptive acts and practices and unfair methods of competition in or affecting commerce arising out of the sale or offering for sale of undeveloped land

in the states of Texas, Arizona and New Mexico. These complaint allegations can be summarized as follows:

COUNT I

Respondent's lots offered for sale are 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 are not excellent investments involving little or no risk.

COUNT II

Respondent failed to disclose material characteristics of the lots in that the lots are risky investments because (1) their future value is uncertain, and (2) purchasers will probably be unable to sell the lots at or above the purchase price. [2]

COUNT III

Respondent made representations concerning the past, present, and future development of its properties, used words such as "communities," "community developer," "master plan," "new cities," etc., represented that by the end of the purchaser's scheduled payments, all lots would be located within a self-contained and fully developed community, and that the price of its lots would be all-inclusive. In fact:

(1) lots are not and will not be, by the end of scheduled payments, located within a self-contained and fully developed community;

(2) respondent's only express contractual obligation is to place an unpaved road fronting the purchaser's property which respondent does not have to maintain;

(3) respondent's properties consist primarily of vacant acreage with little development; the only building which has occurred and is likely to occur is in areas reserved by respondent, and development to date is insignificant in relation to the total acreage and length of time the property has been offered for sale;

(4) the purchase price of the lots is not all-inclusive since (a) paved roads, sewer, telephone, electricity and water are not available except at unreasonable prices and most purchasers are required to join and pay to an improvement association, and (b), in the Waterwood property, water and sewer are available only through substantial payments on an annual basis and a one-time connection charge.

COUNT IV

Respondent failed to disclose clearly and conspicuously in conjunction with representations about past, present and future development of properties the material facts about its property set forth above in Count III.

COUNT V

Respondent has numerous and variously named subdivisions, often of similar names and often referred to collectively, which leads the consumer to believe the past, present and planned development of one subdivision is the same as that of another, when such is not a fact. [3]

COUNT VI

Respondent has designated lots "single family," "multi-family," or "commercial," and represented that lots in certain locations and having certain designations have greater value than other lots, and has recommended purchasers exchange lots already purchased for more expensive lots, when there is no significant difference in the value of the lots and it is not advantageous to exchange one lot for a more expensive lot.

COUNT VII

Respondent failed to disclose the material facts about lot designations and values, as set forth in Count VI.

COUNT VIII

Respondent represented that it will buy back or resell for purchasers lots acquired from respondent, when such is not a fact.

COUNT IX

Respondent represented that all or substantially all land within a designated lot is fully usable, when easements and other physical features affect the full use and enjoyment of the lot.

COUNT X

Respondent failed to disclose clearly and conspicuously the material facts set forth in Count IX.

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COUNT XI

Respondent utilized Leif Erickson and Merv Griffin to make representations about land values, marketability and liquidity, and about their purchase of respondent's property because it was a good investment, when such personalities had not purchased land from respondent.

COUNT XII

Respondent failed to disclose clearly and conspicuously the material facts that the personalities in Count XI did not purchase land from respondent but the land was given to them.

COUNT XIII

Respondent represented that improvement associations which purchasers are required to join will increase the value of the land; when such is not a fact.

COUNT XIV

Respondent misrepresented its assets and net worth. [4]

COUNT XV

Respondent represented that property visit credits and other allowances are either actual cash payments to purchasers or immediate deductions from currently scheduled payments, and that such payments or deductions are made upon completion of a property visit as reimbursement for the purchaser's expenses, when such deductions actually are made at the end of a purchaser's scheduled payments, provided a company-guided tour is made within one year and payments under the contract have been current throughout the term of contract.

COUNT XVI

Respondent used endorsements, testimonials and printed articles and represented they were of recent date, when such was not a fact.

COUNT XVII

Respondent failed to disclose in reasonable conjunction with the

articles described in Count XVI, the material fact of when the articles were originally written or published.

COUNT XVIII

Respondent represented that purchasers must act immediately to insure that the price and lot location will be available, when most purchasers do not have to act immediately to get the price and lot.

COUNT XIX

Respondent represented that materials it provided set forth informed, unbiased, prudent and accepted principles of purchasing land, that these materials have been distributed to the public by well-known publishers and are sold at stated prices, when such is not a fact.

COUNT XX

Respondent holds dinner parties and offers goods and services free or at low cost stating its purpose is to conduct a bona fide survey, or to furnish unbiased information on the purchase of land as an investment without any obligation or pressure, or to advise existing purchasers of the status of their property, when respondent's actual purpose in contacting the public, or existing purchasers, is to induce the purchase of land, or to exchange property previously purchased for more expensive property.

COUNT XXI

Respondent failed to disclose the material fact of the real purpose in holding dinner parties and the offers of free or low cost goods and services. [5]

COUNT XXII

Respondent made available property reports and other lengthy and detailed documents at dinner parties and under other circumstances where it was unlikely they would be read by purchasers fully and with comprehension, and the soliciting and obtaining of substantial financial commitments to purchase land under such circumstances.

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COUNT XXIII

Respondent utilized contracts for the purchase of land which cannot be understood and evaluated by purchasers, where the purchaser has not had the opportunity to seek assistance or counsel.

COUNT XXIV

Respondent utilized two lengthy, detailed, and unrelated documents, "Receipt of Deposit" and "Agreement for Deed," which have the capacity and tendency to mislead purchasers as to their significance.

COUNT XXV

Respondent utilized a contract with a statement on the reverse side that there is no understanding or agreement not expressly set forth in the "Agreement for Deed" or "Receipt of Deposit"; at the same time respondent made representations through various advertisements, brochures, movies and other written and oral statements, which differed in material respects from the contracts.

COUNT XXVI

Conditions and provisions on the reverse side of the "Agreement for Deed" were not clear and conspicuous and had the tendency and capacity to cause purchasers to ignore such conditions and provisions, and to mislead purchasers as to their significance.

COUNT XXVII

Respondent's contracts subject a purchaser to pay annual assessments to an improvement association which purportedly is to provide improvements, amenities and services which respondent represented it would provide. The association has the authority to use its funds for such purposes but (1) the association has no obligation to spend the funds for the purchaser's lot, and (2) respondent represented that it would provide, at no additional cost, the improvements which the association is authorized but not obligated to provide.

COUNT XXVIII

A declaration in the "Receipt of Deposit" stated that the purchaser has received and read any property reports and offering statements

required to be made available by federal and state law, when respondent frequently failed to give such reports to the purchaser prior to signing the contract, and frequently made the reports available in circumstances where it is unlikely the purchaser will read such documents or not read such documents carefully, with full comprehension of their meaning and import. [6]

COUNT XXIX

Use by respondent in the "Agreement for Deed" of a clause that upon failure of the purchaser to pay any installment due, respondent shall be entitled to retain all sums previously paid, where the sums retained are not calculated to bear any relation to actual damages sustained by respondent by reason of the purchaser's default.

COUNT XXX

Respondent utilized agreements which contain a provision that a purchaser may obtain a refund if the purchaser completes a company-guided tour of the property within one year of the date of purchase and fills out a refund form with the details of how the property was misrepresented, and a further provision that the purchaser will be entitled to a deduction for the property visit at the conclusion of all payments if the aforesaid tour is taken and if the purchaser signs a form stating he has seen his property, it is as represented, and he is satisfied with his property. These provisions are alleged to be unfair because the purchaser is required to incur the expense of traveling to the property to take the tour and (1) it is often not possible for purchaser to see his land, and (2) it may not be possible for the purchaser to ascertain if the property was misrepresented at the time of sale, or whether or not he is satisfied with his property.

COUNT XXXI

Respondent represented to previous purchasers and others that the value of lots purchased from respondent had increased significantly since the time of purchase, when said lots have not increased significantly in value.

COUNT XXXII

Respondent caused purchasers to pay substantial sums of money toward the purchase of property in advance of the passage of title,

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retained the money and failed to offer refunds or refused to refund the money, when the lots were of little value as investments and of little use as homesites.

COUNT XXXIII

Respondent utilized a provision whereby defaulting purchasers forfeited all payments, and after receipt of such payments, respondent failed to offer to refund or refused to refund all payments in excess of respondent's reasonable damages caused by the purchaser's default.

COUNT XXXIV

Respondent (1) induced members of the public through unfair and deceptive acts and practices to pay substantial sums of money toward the purchase of respondent's lots, and (2) continued to retain substantial sums in excess of its reasonable damages as a result of [7] the unfair forfeiture provision in its contracts; this practice restrains competition between respondent and its competitors.

COUNTS XXXV AND XXXVI

The aforementioned unfair acts and practices have the tendency and capacity to mislead and deceive the purchasing public, are to the prejudice and injury of the public and respondent's competitors, and in violation of Section 5.

On May 23, 1975, respondent filed its answer to the complaint admitting generally certain jurisdictional allegations, but denying all allegations of unfair or deceptive acts or practices. Respondent also set forth thirty-two affirmative defenses to the complaint.

Complaint counsel requested and was permitted extensive discovery following issuance of the complaint. Such discovery was limited to the period subsequent to January 1, 1968 (Order Granting In Part Respondent's Motion To Quash Complaint Counsel's Subpoena Duces Tecum, August 18, 1975, pp. 8-9; Order Granting In Part Complaint Counsel's Motion For Reconsideration And Denying Request For Permission To File Application For Review, September 9, 1975, p. 2). By order of August 11, 1976, the undersigned denied respondent's claims of a self-evaluative privilege for certain intracompany documents subpoenaed by complaint counsel and examined by the undersigned *in camera* (Order Ruling on Respondent's Claim of Privilege For Certain Internal Corporate Records), which denial was affirmed by the Commission by order dated October 5, 1976. On

November 18, 1976, the undersigned was permanently enjoined from delivering these documents to complaint counsel, *Horizon Corp. v. FTC*, 10 Court Decisions-FTC 512, CCH Trade Reg. Rep. par. 61,155 (1976-2 Trade Cases). Thereafter, the Commission sought enforcement of the subpoena. The Court of Appeals for the District of Columbia subsequently ordered production of the documents in question, sustaining the Commission's determination that the so-called self-evaluative documents were not privileged from discovery *FTC v. Horizon Corp.*, No. 77-1385, Feb. 28, 1978. These documents were not received by complaint counsel until after the case-in-chief was completed. Complaint counsel was given permission to offer the documents when received, and they were offered and received in evidence during rebuttal hearings (Tr. 16395-415).

During the trial of this matter respondent objected to the receipt of any evidence occurring prior to March 11, 1972, or three years prior to issuance of the complaint herein based on the three-year limitation in Section 19(d) of the Federal Trade Commission Act (15 U.S.C. 57(b)). This objection was overruled; however, proof was limited to acts, practices and transactions occurring subsequent to January 1, 1968 (see Tr. 505, 652-58, 898-99, 6177).

Complaint counsel began the presentation of the case-in-chief on March 10, 1977 in Washington, D.C. (Tr. 442), and continued through August 1977 with hearings in Houston, El Paso, Albuquerque, Phoenix, Tucson, Denver, Chicago and Washington. Complaint counsel presented 91 witnesses, including 36 customers, 20 former sales personnel and several real estate brokers, company employees, utility company [8]employees, city and state planners, experts, and approximately 800 exhibits (Tr. 442-7844).

Respondent began its defense on February 13, 1978 in Houston, Texas (Tr. 7910) and continued through June 16, 1978, when it closed in San Diego, California (Tr. 16088). Respondent presented nearly 1600 exhibits and 129 witnesses, including customers, residents of its properties, sales representatives, real estate and construction experts, county officials, its employees and management personnel, and several experts on numerous subjects. Following the close of respondent's defense, complaint counsel presented nine witnesses in rebuttal in New York City on August 28 and 29, 1978 (Tr. 16094-16702); four witnesses testified for respondent in surrebuttal hearings held in Albuquerque on September 11, 1978 (Tr. 16704-807).

The record closed on October 10, 1978 (Order Closing The Record For Reception of Evidence, October 10, 1978). Pursuant to requests filed by the parties, the administrative law judge requested and the Commission ordered that the parties be given until February 12,

1979 for the submission of Proposed Findings of Fact and Conclusions of Law and until April 12, 1979 for the filing of reply memoranda. The parties have filed their proposed findings, reply findings, proposed order and supporting memoranda. Oral argument was held on May 25, 1979. The date for filing this Initial Decision was subsequently extended by the Commission to September 17, 1979 (Order by the Commission dated August 1, 1979).

This proceeding is now before the administrative law judge for decision based upon the complaint, the answer, pleadings, testimony and other documentary evidence of record, proposed findings of fact and conclusions of law and legal authority submitted by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. All motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this Initial Decision, are hereby denied.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings of fact and conclusions of law submitted by the parties, the administrative law judge makes the following [9]findings of fact and conclusions and issues the Order set out at the end hereof.¹

¹ References to the record and other material are given in parentheses, and the following abbreviations are used:

- F. - Findings of this Initial Decision followed by the finding being referenced.
- Tr. - The transcript of record in this proceeding followed by the page being referenced.
- CX - Commission Exhibit followed by number of exhibit being referenced.
- RX - Respondent Exhibit followed by number of exhibit being referenced.
- CPF - Complaint counsel's Proposed Findings followed by the finding number being referenced.
- CRB - Complaint counsel's Reply Brief followed by the page number being referenced.
- RPF - Respondent's Proposed Findings followed by the finding page being referenced.
- RRB - Respondent's Reply Brief followed by the page number being referenced.

FINDINGS OF FACT

I. Description of Respondent and the Nature of its Business

A. Corporate Background

1. Respondent Horizon Corporation, "Horizon," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4400 East Broadway, Tucson, Arizona (Ans. Par. One). Respondent was organized on May 11, 1959 as Horizon Land Corporation. The name was changed to Horizon Corporation on March 4, 1968 (CX 56L, 67B).

2. Horizon, from its aforementioned principal place of business, operates and controls the acts and practices of its subsidiaries, and derives pecuniary and other benefits from their acts and practices. These subsidiaries are engaged in the sale of undeveloped land in limited areas of the United States. Some of these subsidiaries are, for example, Horizon Corporation of Connecticut, Horizon Corporation of Indiana, Inc., Horizon Corporation of Kansas, Inc. (CX 70E, G, I). There has been no real contention during this proceeding that Horizon was not responsible [10]for the acts and practices of these subsidiaries (Ans., Par. Two; CX 68-74, 110A, D, E, 211A-Z-231, 103A-Z, 168-182, 229-341, 60A, C, N, S).

3. Horizon is now, and for sometime past has been engaged, directly and through its subsidiaries, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public (Ans., Par. Three). Sales of undeveloped lots have been made throughout the United States through sales offices located in most of the states. In 1973 Horizon operated as many as 67 sales offices (CX 61V). Horizon has also offered for sale and sold undeveloped lots to the United States armed forces located abroad (CX 112D; Tr. 10527-535); sales have been made in areas such as Guam (Tr. 6033-34) and Canada (CX 949A-G). In addition, Horizon has been engaged in home building and in the sale of homes and developed lots to builders and to the public (CX 66D, E, 67J). The sale of homes and developed lots has not been directly challenged in this proceeding.

4. Among the properties in which lots have been and are being offered for sale to the public by Horizon are the properties known as Paradise Hills and Rio Communities located in the State of New Mexico; Horizon City and Waterwood located in the State of Texas, and Arizona Sunsites and Whispering Ranch, located in the State of Arizona. The acreage of these properties is substantial. Most of these

properties are divided into numerous and variously named subdivisions (Ans., Par. 4; CX 195, 197M; RX 1541A).

5. Horizon usually sells the lots in its properties to purchasers who have not seen their land at the time of the contract of sale. Horizon utilizes standard form contracts, entitled "Agreement for Deed" and "Receipt of Deposit," whereby the purchaser generally pays monthly installments over a term of approximately eight years. According to the provisions of the contract, title to the lot remains in Horizon until final payment is made, at which time title passes to the purchaser. As to most of its properties, Horizon's only contractual commitment is to stake the lot and to cause a road fronting on the property to be completed within thirty days after the purchaser has completed his payments or approximately eight years from the date of signing the contract, whichever is later. The contract provides that the purchaser pays interest to Horizon during the contract term on the unpaid balance owing under the contract. As to some of the properties, the purchaser is responsible for making a yearly payment of a specified amount to a community improvement association; the purchaser is also responsible for payment of taxes on the property. Both of these latter obligations commence at the time of execution of the purchase contract (Ans., Par. 5; CX 67F [SEC 10-K Report for fiscal year ending May 31, 1976]).

6. In the course and conduct of the aforesaid business, Horizon now causes, and for some time past has caused, its promotional materials, contracts and various business papers to be transmitted through the United States mail and other interstate instrumentalities from its place of business in Tucson, Arizona to its agents, representatives, employees, customers and prospective customers in [11]various other States and territories of the United States, and the District of Columbia. Horizon now maintains and operates, and for some time past has maintained and operated, places of business and has made substantial sales to purchasers in the various States of the United States and the District of Columbia. Horizon also places advertisements in newspapers and other communications media which circulate and/or transmit messages across state lines. Horizon maintains, and at all times mentioned herein has maintained, a substantial course of trade in said land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act (Ans., Par. 6).

7. In the course and conduct of the aforesaid business, and at all times mentioned herein, Horizon has been, and now is, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of land (Ans., Par. 7; Tr. 6676-78; CX 67R).

B. Horizon's Properties

Paradise Hills

8. The first land which Horizon purchased, after its incorporation in 1959, was Paradise Hills (RX 199B). It was a barren stretch of undeveloped land northwest of the Albuquerque, New Mexico city limits (CX 196R; RX 1564). The initial purchase was of 8,500 acres (Tr. 14378-79); subsequent purchases brought it up to its present size (Tr. 14435). As of May 31, 1976, the Paradise Hills project consisted of approximately 13,000 acres of improved, semi-improved and unimproved land located in Bernalillo County, New Mexico. It lies to the west of the Sandia Mountains on the western bank of the Rio Grande River. The direct distance from the heart of Albuquerque to the southeastern corner entrance of the tract on May 31, 1976 was approximately 7 miles and the direct distance from the northwest city limits of Albuquerque was approximately 3 miles. Approximately 9,000 acres of the project had been sold as of May 31, 1976; 185 acres contained a regulation size 18-hole golf course and country club; the balance has been or will become available for sale. Development included 917 homes, 138 apartment units and 3 industrial plants employing approximately 500 people (CX 67Z-2 [SEC 10-K, May 31, 1976]). The present population of Paradise Hills is approximately 4,000 (Tr. 2843, 10041, 10291).

9. Several thousand acres of Paradise Hills were sold in large acreage parcels in the 1960's (Tr. 14392-93, 14431). At the same time, 1,300 acres were sold to an Albuquerque developer who built 600 homes in the core development area (Tr. 14431-32). Sales of acreage parcels have been insignificant since 1970 (RX 1535B; CX 312N). Since 1970 there have been few sales of Paradise Hills land to consumers (RX 1535), either on-site (Tr. 10439, 11015), or off-site (Tr. 8495, 8893, 11480, 11653, 12102). The only sales now consummated are of developed lots to builders by Horizon (Tr. 10291).

10. Approximately 200 homes were built in 1977 (Tr. 9984), and projections for 1978 and 1979 are for about three times that number in each year (Tr. 13963, 9984-85). In March 1978 local [12]builders were already committed to purchase 175 developed lots from Horizon in the next month (Tr. 10345, 13963). There is some industrial development going on at Paradise Hills industrial sites which consists of non-rail served industrial land (Tr. 10814, 19838). There is also a shopping center, an elementary school, several churches, a library, and various community buildings (CX 231B). Horizon has invested over \$20 million in the development of the core area of Paradise Hills, not including the purchase of the land, of which over

\$11 million represents expenditures on housing (RX 1524B). Horizon now owns 1,000 acres of acreage and 3,500 acres in the core development area, none of which is currently being offered to consumers (RX 1535A; Tr. 10357, 10290, 14433, 14437).

Rio Communities

11. As of May 31, 1976, the Rio Communities project consisted of approximately 249,000 acres of improved, semi-improved and unimproved land located on both sides of the Rio Grande River and the town of Belen, New Mexico, which had a population of 5,000. The property ranges from 3 to 18 miles from Belen. Approximately 78 percent of the Rio Communities property lies in Valencia County and 22 percent in Socorro County. Rio Communities, 35 miles south of Albuquerque and the largest Horizon community in terms of acreage, blankets a land area larger than the combined cities of San Diego, Las Vegas and Philadelphia (CX 155C). By May 31, 1976 approximately 159,000 acres of the project had been sold. In addition, 75 acres contained an 18-hole golf course and appurtenant facilities, approximately 25,000 acres had been conveyed to property owners associations. The balance of the land has been or will become available for sale. Development on that date included 635 homes, 31 apartment units, a 139 space mobile home park, one industrial plant employing approximately 35 people, and an office and retail shopping area (CX 67Z-4 [SEC 10-K, May 31, 1976]). Rio Communities is primarily situated between the Rio Grande River on the west and the Monzano Mountains on the east (RX 1546; CX 214A, 225C), though Rancho Rio Grande, which consists of 14,000 acres subdivided into five acre parcels (RX 1539A), and 20,600 acres of unnamed property which has been subdivided into parcels ranging in size from 160 to 640 acres (RX 1539, 1546, 1529A), is located on the western side of the Rio Grande River.

12. The initial purchase of land for Rio Communities was consummated by Horizon in the early 1960's (CX 131). This purchase constituted 106,000 acres, and consisted of Rancho Rio Grande and the unnamed acreage on the west bank of the Rio Grande River, Rio Grande Estates, Rancho Rio Grande East, and the present development area (Tr. 14491; RX 1546). In the late 1960's Horizon purchased approximately 40,000 acres, which became Rio del Oro, which was subdivided into individual lots, a future core area, and several planned town center sites (Tr. 14491; RX 1540, 1541H, 1539A), and 11,000 acres which were subdivided into lots and designated as the Canyon del Rio subdivision (Tr. 14493). The final purchase, in 1972,

was of the 83,000 acre Tierra Grande, which has been subdivided into large tracts ranging in size from five to forty acres (Tr. 14495; RX 1539A, 1546). [13]

13. The population of Rio Communities as of mid-1978 was estimated to be between 2500 and 3000 (Tr. 10303). The developed core area contains approximately 700 homes (Tr. 9978). There are eleven more homes in Tierra Grande (Tr. 10580). The rate of home building has increased somewhat in recent years, and there is construction activity currently in progress (Tr. 9979, 10494, 11035-36, 10924-25). Facilities in Rio Communities include a shopping center (Tr. 10075), a car dealership (Tr. 10056-59), a country club and golf course (Tr. 10076), a fire station (CX 211B), a gas station (CX 211B), a motel (CX 211B), several churches (RX 1529C), a car wash (RX 1529C; Tr. 10060), and a modern industrial facility which is presently vacant (Tr. 10819). In addition, there are currently firm plans to construct a supermarket, liquor store, pharmacy, and restaurant within the core development area (Tr. 10060-61). In addition to the purchase price of the land, Horizon has expended over \$14 million on housing and just under \$14 million on community facilities, improvements, and maintenance in the core areas of Rio Communities (RX 1524C).

Arizona Sunsites

14. As of May 31, 1976, the Arizona Sunsites project consisted of approximately 47,500 acres of improved, semi-improved and unimproved land located in Cochise County, Arizona. The nearest entrance to the tract is approximately 12 miles south of the town of Willcox (population approximately 3,000); the farthest portion of the tract is approximately 31 miles distant from Willcox. The town of Douglas (population approximately 12,000) is approximately 55 miles south of the project, and Tucson is approximately 100 miles northwest. Cochise County is thinly populated and consists primarily of undeveloped land, grazing land and farm land. Approximately 35,000 acres of the Arizona Sunsites project had been sold as of May 31, 1976. In addition, 75 acres contained an 18-hole, par-three golf course and appurtenant facilities, and the balance is or will become available for sale. Development includes 377 homes and 28 apartment units, a community activities building and a number of retail shops. (CX 67Z4-Z5, [SEC 10-K May 31, 1976]).

15. The present population of Sunsites is approximately 1150 (Tr. 13041), living in approximately 400 homes in the development area and 35 homes located outside the development area (RX 1235R). The

residents of Arizona Sunsites are mostly retired (Tr. 13045; RX 79). There are four churches (RX 79), two parks and a recreational center (RX 79), a pool, two tennis courts (RX 79), a 61 unit mobile home park (Tr. 13852), an arts and crafts center and a library (RX 79), a post office (RX 1235Q), a bank, a grocery store, a filling station, a garage, a beauty shop, pub, cafe, auto body shop, and other commercial facilities (Tr. 13052-53). There is also a medical clinic at Sunsites and free ambulance service to the Wilcox Hospital (Tr. 13050-52). Horizon has spent over \$7 million on housing, and over \$4 million on improving and maintaining the Arizona Sunsites core development (RX 1524B). [14]

Whispering Ranch

16. As of May 31, 1976, the Whispering Ranch property consisted of approximately 19,000 acres of totally unimproved land in Maricopa County, Arizona, approximately 10 miles south of Wickenburg, Arizona, and approximately 36 miles northwest of Phoenix, Arizona. The property has been offered in unimproved 5 and 10 acre and larger tracts. An aggregate of 16,000 acres had been sold and 2,400 acres were available for sale on that date (CX 67Z-6 [SEC 10-K, May 31, 1976]). The overall tract consists of range land and varies in elevation because of its rolling, hilly nature which slopes from west to east with the highest portion of the property being approximately 2,200 feet and the lowest portion being approximately 1,800 feet above sea level. The soil in the area is generally of a coarse granular to sandy loam character. The vegetation is primarily southwestern desert type, namely cactus, yuccas and mesquite (CX 63Z-15 [Prospectus, Horizon Corp., February 26, 1969]). Whispering Ranch has no current development, with the exception of unpaved roads constructed by Horizon (Tr. 12717).

Horizon City

17. As of May 31, 1976, Horizon City consisted of approximately 87,000 acres of improved, semi-improved and unimproved land located at its extremes from 5 to 19 miles east of the El Paso City limits, and from 16 to 30 miles from the downtown section. Most of the land lies in El Paso County, with a minor portion in Hudspeth County. Approximately 60,000 acres of the project had been sold as of May 31, 1976; 159 acres contain a regulation size 18-hole golf course and appurtenant facilities; 110 acres were reserved for a lake; approximately 2700 acres had been conveyed to a property owners

association; and the balance has been or will become available for sale (CX 67Z-3 [SEC 10-K, May 31, 1976]).

18. Horizon City is located southeast of El Paso, Texas (RX 1545, 1146, 1145), a city of approximately 400,000 (RX 1557B). The initial 63,000 acres of Horizon City was purchased by Horizon in the early 1960's (Tr. 14443); subsequent purchases in the mid-1960's raised the total acreage to its current size (Tr. 14443). Horizon City currently consists of an existing core development area, nine platted subdivisions, 15,000 acres of acreage parcels, several parcels ranging in size from 24 acres to 4,000 acres which are reserved for potential future core areas, and several large parcels which have been donated to the Horizon Community Improvement Association (RX 1536, 1528, 1545, 1537).

19. Development in Horizon City through the 1960's was limited; at the close of the decade, fewer than 100 houses had been constructed (CX 13B, 218B; Tr. 9836). Currently there are approximately 1800 residents living in Horizon City and more than 650 homes (Tr. 9081; RX 209U). In fiscal 1977, 120 residential lots were developed in Horizon City and approximately 40 to 50 homes were built. As of mid-1978, about 200 lots were in the process of development and 20 homes were under construction (Tr. 9071-73). The core area also contains an 18 hole golf course club, a swimming pool, tennis courts, and the Horizon administrative offices. In the industrial park, which adjoins the core area, there are approximately 11 commercial and industrial establishments with a total employment of about 800 people (Tr. 9081, 14190-91). Approximately 180 of these [15]employees are residents of Horizon City (Tr. 9081). In early 1978, construction began on an 18,000 square foot shopping center, of which all but 600 square feet had been leased prior to the beginning of construction. The leases are for a doctor's office, supermarket, hardware store, ice cream store, ceramic shop, gift shop, florist shop, fabric shop, a ladies' and mens' clothing store, liquor store, barber shop, beauty shop, drug store, savings & loan office, cocktail lounge, restaurant, real estate office, an office of the El Paso County Water Authority, dentist's office, a law office, and an accountant's office (Tr. 9082, 9863-65). Over \$17 million has been spent by Horizon in the construction of housing, and over \$15 million has been spent on public facilities, improvements, and maintenance in the core development area of Horizon City (RX 1524B).

Waterwood

20. As of May 31, 1976, the Waterwood project consisted of 25,000

acres of improved, unimproved and semi-improved land located approximately 19 miles from Huntsville, Texas, which has a population of approximately 15,000, and is 100 highway miles north of Houston. A portion of the property is located in San Jacinto County and a portion in Walker County. The property fronts on the northwest portion of 90,000 acre Lake Livingston and includes approximately 12% of the total lakeshore line. Portions of the property are offered fully improved with paved streets and utilities, and other portions are offered with deferred improvements. By May 31, 1976 approximately 1,200 gross acres of the project had been sold; approximately 1,500 acres had been conveyed to the Waterwood Improvement Association; and the balance has been or will become available for sale.

Initial development was primarily concentrated in a 1,000 acre area which includes central sewer and water service, electricity, telephone service, approximately 17 miles of paved roads, a 48 unit motel, a restaurant, a recreation center, a visitors' pavilion, an equestrian center, a marina, a barbecue and picnic area, a park with a swimming pool, and a country club complex. The country club complex contains an 18-hole championship golf course on 169 acres and a 38,000 square foot clubhouse containing dining, convention and banquet facilities. Adjacent to the clubhouse are 36 hotel units, four tennis courts and three swimming pools. In August 1975, the property contained 11,160 lots of which 2,639 had been sold (CX 373H). As of May 31, 1976 there were 54 homes complete or under construction (CX 67Z-6 [SEC 10-K, May 31, 1976]).

21. Lake Livingston, a fresh water lake constructed by the Trinity River Authority in 1971 (Tr.7934), has a shoreline 450 miles long (RX 1548B; Tr. 7934, 7985). The emphasis in the development of Waterwood has been on resort and second home use (Tr. 14525). There are presently approximately 120 homes in Waterwood (Tr. 8024). Seventy of these homes were constructed within the last two years (Tr. 7990). As of the spring of 1978, approximately 40 or 50 homes were under construction (Tr. 7961-63, 8024). Approximately 60 or 70 of the already constructed homes are full-sized homes, used either as second homes or primary homes (Tr. 7960; RX 1037, 1938, 1051, 1057, [16]1059, 1092, 1904, 1095). The second major classification of homes are the "weekenders," generally smaller homes on smaller lots which are intended to be used as weekend resort homes (Tr. 7960; RX 1548).

22. Of Waterwood's 25,000 acres, 7,000 or 8,000 acres have been subdivided (Tr. 14520). Of the approximately 7,000 acres which have been subdivided, 30 percent has been planned as open space (Tr.

7920, 7957, 7995). One thousand lots have been fully developed with all utilities extended to them, as of September 1976 (Tr. 7958-59). Horizon has spent over \$3 million on housing at Waterwood and over \$27 million on facilities, land improvements and general maintenance (RX 1524C).

C. How Sales Are Made

23. Horizon began sales of undeveloped land in 1960. Its first purchase of land was Paradise Hills in July 1959 (CX 131C; RX 199B); the last purchase of land was March 1972 when the Waterwood property was purchased (CX 131C). Total acres of land purchased by Horizon from 1959 through 1972 amounted to approximately 432,000 acres (CX 131C, D). By August 1975, Horizon's properties totaled 356,312 lots, of which 277,890 had been sold (CX 873J). Sales of undeveloped land for the five years, commencing June 1, 1969 to and including May 31, 1974 totaled \$369,740,000, as follows:

1970	\$ 57,103,000
1971	\$ 84,289,000
1972	\$102,267,000
1973	\$ 82,774,000
1974	\$ 43,307,000

(CX 66H, 61N, 62Q)

As of May 31, 1973, contract receivables on land sales totaled \$192,782,000, representing contracts on which 36 percent of the aggregate sales price had been received (CX 61G, R).

24. By 1973 Horizon had 67 sales offices (CX 61V, 258; see also Tr. 4047). The total number of sales representatives employed by Horizon as of May 31, 1971 was 1,443 (CX 64D); as of May 31, 1972, Horizon employed 1,651 sales representatives (CX 65E). A sales trainer in the Philadelphia office testified that she trained hundreds of sales representatives during her employment as a trainer of about two and one-half years (Tr. 16420-23, 16425). One regional manager testified he supervised 25-35 sales representatives as a district manager and up to 100 sales representatives as a regional manager (Tr. 4498; see also Tr. 6152). One zone manager (Horizon had several sales zones - Tr. 8993-95, 9007) testified that he had 500 sales representatives within his zone at any one time (Tr. 2087). In a motion to quash a subpoena *duces tecum* issued at complaint counsel's request, it was asserted by Horizon that its Payroll

Department had approximately 60,000 terminated sales representatives' records on file (Memorandum In Support Of Motion To Quash Complaint Counsel's Subpoena Duces Tecum, filed July 25, 1975, p. 53; attached Affidavit of George C. Larsen, Director of Sales Administration, Horizon Corporation, dated July 22, 1975). [17]

25. It appears clearly from the record that sales representative turnover at Horizon was substantial (Tr. 2133, 3711, 6152, 16425-26). Sales representatives who remained with Horizon for more than a few months were promoted to a sales trainer's position or a sales manager's position (Tr. 1848-49, 1901-03, 2093, 2130, 2142, 2306-07, 3503-05, 3708-09, 3751, 4351-52, 4362, 4497, 4518, 4531, 4619-20, 4653-54, 16422). The sales representatives were compensated on the basis of a commission on sales, usually 8%, and the sales managers, district managers and zone managers received salaries plus overrides on sales by those sales representatives under their supervision (CX 66C, 157, 180N, O; Tr. 9018, 1850, 1877, 1910, 2142, 3506, 4368, 4500, 4765, 16097). The resulting remuneration of some of the sales representatives and the managers was substantial (Tr. 1910, 4500; CX 950D). The 45 to 60 sales representatives in the Fort Worth office were stated to have average earnings of \$2,160 per month in 1970 or 1971 (CX 180M; Tr. 8764). One zone manager netted \$189,000 in 1971 (Tr. 10376).

26. Horizon's policy and practice was to train its sales representatives before permitting them to sell land. The content and procedures of training evolved through the years. Prior to 1974 the training in most sales offices consisted of three to five days of in-class instruction, followed by one or more days of field training (Tr. 9125, 9493, 9586, 9808, 10177, 11619, 10388, 11654, 11304, 11447, 11230, 8846, 11572, 11619; CX 159J). In other offices training was less formal and less extensive (Tr. 2306, 3500, 3536, 4470, 4501, 6139). Where additional training was necessary to obtain a state license, the training program lasted more than five days (Tr. 16348, 10246-47, 3709). The training generally consisted of the history of the company, the different properties of the company, the TBA maps and the unit maps of the properties, and how to write the contracts (Tr. 2094, 1917, 4532, 4588, 4621-22, 16097). The training included how to use the presentation manual, and the locked-in growth pattern of Horizon properties (Tr. 2095-96, 1918-23, 1929, 3709, 4355, 16299-300, 16,488).

One description of the in-class training during the early 1970's is as follows:

A. We had three days of training and then on Saturday we had a half day test. We got there at 9:00 o'clock and it let out at 12:30.

Q. What was involved in the training?

A. Well, there was a general background on Horizon Corporation, their [P]rinciples, how they wanted you to sell the property, what Horizon was made of. Then we went into contracts, proper application of them, federal property report[s]. We had our TBA maps explained to us. We had our unit maps explained and we had the general background of the areas which we would be selling in.

(Tr. 8672-73) [18]

Following the in-class training, sales representatives accompanied the trainer or one of the managers on several sales presentations for field training. The field training, as described by a sales representative in Denver, was as follows:

We were field trained by the individual salesmanager or his assistant. [The field training consisted of] mostly observation for a couple of days and then actual sales presentation[s], followed by a critique.

(Tr. 11447-48; see also Tr. 4382, 4588)

27. In addition to the training of sales representatives, Horizon instituted training programs for managers and prospective managers. Prior to the institution of formal management training programs there had been quarterly zone meetings at which company officials would enunciate company policies to the managers on the local level (Tr. 13338-41). Beginning in mid-1971 these zone meetings were supplemented by formal training programs which were held in Tucson (Tr. 8980, 12792, 13341-42, 11019, 11245-46), and included a visit to each of the Horizon property sites (Tr. 12792). There were initially two types of management training programs, one for district managers and one for sales managers (Tr. 8980, 8989). The training sessions lasted for approximately two weeks (Tr. 12759, 8987; CX 103Z278-Z279). The district manager and sales manager training programs continued for several years, during which time more than 100 potential managers passed through the programs (Tr. 8990).

A third form of management training began in late 1971, the Sales Office Manager Recruiting and Training program ("SOMRAT") (Tr. 13542-44). This program also included visits to the properties and presentations by company officials (Tr. 13542-44, 4353-54, 4504). The SOMRAT program was in operation for approximately two years, during which time 200 to 250 potential managers were trained (Tr. 11519, 13542-44).

28. Horizon utilized newspapers, magazines, radio, television, outdoor and direct mail advertising services. Expenditures for these services were as follows: For the year ending-

Initial Decision

97 F.T.C.

May 31, 1971	-	\$1,579,807
May 31, 1972	-	\$1,875,996
May 31, 1973	-	\$2,391,636

These expenditures do not include costs for promotional materials and services rendered by outside suppliers, including advertising agencies, for the production of any materials except newspaper inserts used in 1973 (CX 93).

29. The promotional materials used by Horizon were generally conceded to be factually accurate (Tr. 678-79). The Horizon legal department verified all factual statements in promotional materials before permission was given to use such materials (Tr. 12565-66, 12617). There were approximately 14 states that required all advertising and promotional materials to be approved prior to the time such materials were used in these states. (Tr. 12559). The [19] requirements varied from state to state (Tr. 12461-62). Some minimal number of states also required prior clearance of all sales representative's material (Tr. 12618). Horizon took measures to make certain that no advertisement or promotional piece was published or used without having received prior approval from the states in which advertisements or materials appeared in compliance with state requirements (Tr. 12646, 8582, 8597, 4109-13, 13091, 13096-98).

30. Many of the states in which Horizon has conducted business have required that Horizon register its lots with the state. The registration document contains general information about the organization who is selling the property, a copy of the plat of the property, documents showing any encumbrances affecting title, and information about the existence of roads, utilities, and prices of the lots. Some of the states inspect the property being offered for sale. Often, as part of the registration process, Horizon was obligated to submit to the state all advertising and promotional materials, including sales training manuals and the individual promotional materials used by the sales representatives (Tr. 12571, 12616-18).

31. The Office of Interstate Land Sales Registration ("OILSR"), which was created as an office in the Department of Housing and Urban Development pursuant to the Interstate Land Sales Full Disclosure Act of 1968, in December 1973 established requirements for advertising and promotional materials used in the interstate sale of land to assure that the materials are not false and misleading or deceptive (15 U.S.C. 1701-20 (1976)). The evidence of record indicates that Horizon complied with these regulations (Tr. 12553-57, 13272).

32. Through most of the relevant time period, Horizon utilized

three contract documents at the time of sale. These documents consisted of the Agreement for Deed (CX 142), and two related documents, the Receipt of Deposit (CX 139) and the Property Visit Credit Certificate ("PVCC") (CX 134). At the time of purchase the Receipt of Deposit is filled in by the sales representative and signed by the customer. This document recites that the sales representative has received a downpayment, that the customer has received the federal and state property reports, as appropriate, and it identifies the lot or lots being purchased by the customer (RX 4-6). Several provisions from the Agreement for Deed are reprinted verbatim on the Receipt of Deposit (e.g., RX 4-6). At the time of the sales presentation the customer also signs a blank copy of the Agreement for Deed. In Tucson, following the confirmation procedures utilized by the company (Tr. 13395-97), the Agreement for Deed is executed by an authorized Horizon official (RX 1-3), and a completed copy of the Agreement is returned to the customer in his important document package (Tr. 12890, 13405). The third related document, the PVCC, recites the Horizon guarantee and the Horizon property visit credit allowance, and is mailed to the customer in the important document package (RX 23-24; Tr. 12890). Upon visiting the property, a customer may sign the PVCC, have it validated by Horizon and receive a 5% credit against his purchase. [20]

In recent years, two changes were made in the form of the contract documents. After the Office of Interstate Land Sales Registration regulations changed in 1973 and required the receipt for the property report to be included as the front cover of the property report, the Receipt of Deposit was discontinued and the contract was revised into a single document entitled Contract for the Purchase of Land (RX 979-84). Beginning in 1974, the PVCC was replaced by the Property Visit Acknowledgement ("PVA") (RX 61).

The customers received, either from the sales representative at the time of sale or in the important document package which each customer received within a few days or weeks subsequent to the sale, the Receipt of Deposit, the Agreement for Deed, the PVCC, the TBA and unit maps, the federal and state property reports, and other documents.

33. Under the Agreement for Deed between Horizon and the purchaser, Horizon agrees to issue a warranty deed within 30 days after the purchaser has completed all payments, and within 30 days after receiving final payment, or eight years from the date of the agreement, whichever is later, cause a road fronting the property and connecting the property with a county, state or federal road system to be completed. The purchaser agrees to pay taxes on the

property and also all improvement association assessments. Upon failure of the purchaser to make payments according to the agreed-upon schedule, Horizon may take possession of the property and retain all sums paid as liquidated damages. The agreement also provides that there is no agreement or understanding between the parties except as expressly set forth in the contract (CX 142, *for example*).

34. The Receipt of Deposit provides the purchaser with an exchange privilege. Horizon agrees to accept the purchased property in trade, applying the full principal paid, for any other available land, except land within a designated building area, which is, at the time of the exchange, equal to or greater than the original price of the traded property. In addition, upon the agreement to buy or commence construction of a home within 90 days and complete construction within 120 days thereafter, the purchaser may exchange one single family residential lot for a similar size lot in any building exchange area within the same development, so long as one is available, without any increase in the price of the land, the purchaser to pay for the cost of the then current utility costs to the lot line and street improvement costs at the time construction is to commence, or such costs shall be included in the cost of the house if purchased from Horizon (CX 139, *for example*).

35. Sales representatives were allocated specific inventory to sell on each sales call (Tr. 1877-78, 2077, 2084-89, 2167, 16473). Sales representatives were trained to preselect the lots for presentation to a prospect and not to give the prospect choices or alternatives: "We made the decision for him" (Tr. 1878; see also Tr. 2085; CX 180Z-4, Z-19, 157M, 158 O, P, 160Z-1, 161Z-3, 163K, P, 178 O). Sales representatives were trained to "[A]void letting your prospect gain control by moving you to another Unit, Block, or Lot. Simply tell them that the reason you selected this Unit, Block, and Lot over others was because of these features, and repeat them" (CX 161Z-3). Property designated as commercial or multi-family was [21]scarce so most salesmen had to sell lots designated as residential (Tr. 1935). Several different sales methods were used. These sales methods included dinner party or group sales, fly-in sales, in-home sales, and on-site sales.

(1) *Dinner Parties*

36. In the late 60's and early 70's, a substantial portion of Horizon sales were obtained through the medium of group sales, primarily at dinner parties to which company sales representatives

invited prospective and past purchasers selected from lists of names developed by Horizon (CX 63E, 537A-C; Tr. 16448-49). Invitations were usually by mail and prospects replied by return card (Tr. 3499). The dinner parties were held in quality hotels or motels (Tr. 4464, 4469, 4471). A very nice dinner paid for by Horizon was served to the husband-and-wife couples attending the party (Tr. 4469-70, 4471, 3500, 4769; CX 538). Sales representatives sat with the couples at a table during dinner to "warm up to them, be friendly, casually throw out a few words about Horizon during the dinner, build-up a rapport" (Tr. 4471, 3499, 4764). After dinner, a speaker would say a few words, a film would be shown - the Merv Griffin film or the Leif Erickson film, and the speaker would come on with an intensified sales presentation (Tr. 1321-29, 1100, 4471-72, 4486, 4764, 4767-68, 5962, 6450-52, 6472, 6543, 16473-74; CX 538). Thereafter, the sales representatives would try to close a sale (Tr. 4472, 3500-01, 4786, 5962). If the sales representative could not close the sale, there was a technique whereby another sales representative, a "harder closer," would take over, a "T.O." (Tr. 4472-73, 4763, 4765-66, 5980-81). Some Horizon sales offices held dinner parties five to seven nights per week (Tr. 4474, 3499, 4765), and up to 80 couples attended these parties on any given night (Tr. 3500, 1321, 4768).

There were other group sales where a sales office would periodically hold a gathering where sales representatives would invite their customers, or prospects to whom they had made previous presentations, or other prospects referred by them (Tr. 1188-89, 1117-19, 1524, 2322; CX 636Z-4, Z-5, 528).

(2) *Fly-ins*

37. Some of the Horizon sales offices conducted extensive sales programs involving fly-ins. The persons participating in fly-ins were usually customers who had previously purchased property from Horizon and were visiting the property (Tr. 4364-65, 16221, 16534, 16542; CX 636Y, Z). The property visitation credit which Horizon offered its purchasers could theoretically offset some of the travel expenses (Tr. 16214-15). The sales program during the fly-in was to sell additional property to the customers, or to use the customer's existing equity in Horizon property to upgrade the customer's property, or to exchange the property previously purchased for additional property, effecting additional sales in the process (Tr. 16449-50, 16469-72, 4365). While customers were on the fly-in trip, efforts were made to keep the customers busy all the time and to separate from the group those persons who might cause problems in

making sales during the trip (Tr. 16471, 16543-44). Special inventory was assigned for fly-in trips, and follow-ups were made if [22] sales were not finalized during the trip (Tr. 16472-73, 16544). Contracts sometimes were made out in advance of the fly-in trip to cover the specific property that would be offered to a customer during the trip (Tr. 16450, 16479).

During the fly-in, the on-site sales representative took the customer out to see the customer's existing purchase and also to see the new property. On return to the on-site sales office the customer was escorted into a closing room and asked if the new property was satisfactory. The customer was then asked to sign a pre-written contract:

Yes, sign here, press hard. There are four copies, and you hand them the pen. It was very cut and dried and very quick. We landed a lot of people (Tr. 16470).

There were "T.O." sales representatives in the closing rooms, and commissions were split among the on-site sales representative, the fly-in sales representative and the "T.O." sales representative (Tr. 16480). Jing Jo Yu, a Korean American woman who purchased 15 lots in Rio del Oro, gave a vivid description of the sales pressures utilized in the fly-in closing rooms (Tr. 6353-60; see testimony of Elsie Colon, a customer who also participated in a fly-in property visit Tr. 16215-22, 16245).

(3) *On-Site Sales*

38. Horizon maintains sales offices at each of its land projects (CX 69X, 61V). As of May 31, 1974, Horizon stated that approximately 5% of its sales were made on site (CX 66C). Many of the sales on site were made to customers who were visiting their property pursuant to the property visit credit offered by Horizon (Tr. 1539, 1830-33, 5033-34, 6360, 16478-80). Some customers traded lots while visiting the property (Tr. 5161, 16215-22, 1201).

(4) *In-Home Sales*

39. Sales of Horizon land was effectuated primarily through sales representatives' visits to individual homes by appointment through leads obtained from various kinds of advertising and from personal contacts (CX 66C; Tr. 6250, 6258, 6335, 888-93, 1471, 4992, 16262, 4930), through telephone calls (Tr. 816, 4930, 1850-53, 2141), and cold canvassing (Tr. 4670, 4675, 4690-92, 4712-14, 4718, 4722). Horizon has stated that over 50 percent of its sales were to existing customers or to contacts referred to Horizon by existing customers

(CX 66C). Sales to existing customers were referred to as "reloading" a customer; *i.e.*, increasing the amount for which a customer was obligated. Sales representatives were trained at reloading and were very successful at this sales technique (Tr. 2000, 2162, 2314, 3528, 3726, 3745, 3770, 3777, 3942, 4363-64, 4515, 4566).

The sales presentation in the home usually consisted of a presentation from a standard presentation manual (Tr. 1856, 1918, 3709-10, 3716, 3762-63, 4355, 4534, 16461). Additionally, TBA and unit maps of the property, federal and state property reports, and [23]contracts were utilized, and sometimes a movie was shown (Tr. 2139-40, 2312, 4382-83, 4502, 4532, 4555, 4588, 4656, 4659, 16118; CX 101). The presentation generally followed a pattern of selling the company, selling land as an investment, selling the southwest, selling the nearby city, selling the development, selling the unit within the development, and then selling the specific lot or lots, a presentation one zone manager referred to as "funneling" (Tr. 1933, 1923-24, 1960, 4551-52, 4657, 16431-32, CX 180H, Z-28, 778Z-10). The sales presentation varied to suit the occasion and the individual sales representative (Tr. 923-24, 2161-62, 2190, 3554, 4571-72, 4576, 4581, 4593-94, 4608-09, 4432, 4735, 4644, 4793, 1106, 1243, 9019, 9021-22; CX 947H).

Representations by sales representatives follow in a general way the training manuals and presentation manuals. Salesmen, however, often deviated from the standard presentation and added embellishments or adapted the presentation to best suit their own methods and needs. Some sales representatives testified that they were trained to use the standard presentation verbatim (Tr. 3503, 3505, 3709-10, 3716, 4355, 4407, 4534). Others used the standard presentation as a guideline or outline of the sales presentation (Tr. 9019, 9021-22, 4644). As sales representatives became more experienced and comfortable with their sales presentations, they relied less upon the standard presentation (Tr. 2047, 2049, 2161-62, 2190; CX 856A).

40. One witness, Larry Cervenka, gave a rather complete account of a sales presentation in the home:

Q. Mr. Cervenka, to the best of your ability, taking your time, would you kindly tell His Honor what your first personal contact was with Horizon Corporation?

A. Well, I got this phone call from a young lady and she said, invited me to a dinner and—

Q. (Interposing.) Excuse me. Can you establish a time when this took place?

A. This is in early evening, one day during a week day one evening, and said I was invited to a dinner.

Q. What year, sir?

A. This is in '71, 1971.

Q. Go ahead.

A. And anyway, I asked what's involved with the dinner? She said "Well, it would be a sales presentation at the dinner," and, or a movie on land in general, something like this. I said, "Well, I couldn't attend that." She said, "Would you like a free book on how to make money in land," or something like this. So, I said, "Sure." [24]

So, I think, I don't remember whether she called and then a salesman came by the next night, or whether it was that same night, but shortly, within the next day or so, somebody came by and brought me the book and it was just a little bitty book. I don't know how many pages, but it wasn't a real substantial book, and then this salesman, his name was John Cashier, he started talking about different investments, and he had a complete sales presentation there.

He had really professional-looking maps and brochures and had all of this in a file folder and a loose-leaf folder, you know, that opens up.

So, as he was talking to me, he would point out the appropriate page and point out certain charts or pictures, and whatever, and during the course of his talk, he showed in the past record of investments in stocks and investments in real estate and some other items, too. I don't remember, but mainly I remember stocks and real estate, and pointed out that land investment was a secure investment, and in some cases would yield a high rate of return, and then after this he pointed out the Southwest Area of the United States as being one of the fastest-growing areas of the United States and showed me how the population was moving to that area, and then what industries came in parts of that area, and then he started talking specifically about El Paso, and he explained how, because of geography of the city, the city could only expand in only one direction because of Fort Bliss on one side, the Border on the other, and then mountains and New Mexico.

So, he went and had a presentation on just what El Paso was all about, and then he described a particular—let's see, this was Horizon City Estates, and he showed where schools were planned to be built and shopping centers and showed me their—see, they had a land plan where, showed me where everything was going to go and showed me the various sections and then he got down to one section, Section 58; I think Lot 10.

He showed me the relationship to this section to the rest of the city and told me the price of the lots and I think corner lots were one hundred dollars more than interior lots, and he said at the time he was just selling, he just had two lots available, I think, a corner lot and then one middle lot, and if I remember correctly, he said [25] that this was—when he came to talk to me was about September or October of '71.

He said in December the prices were going to go up and that salesmen were given just certain sections to sell, that he couldn't guarantee that these same lots would be available for purchase at a later date because, you know, he just sold what his supervisor gave him, and he said—so, if I didn't buy it then, there was no guarantee I could have the lots at a later date or at the same price.

Before he had started talking, he showed me a property report and I glanced through it. I didn't read it really carefully, but I did notice the one item there about Horizon having a mortgage and if they were to default in their mortgage, this would not affect the purchaser of the lot.

That is about all I remember from the property report, but he gave it to me before he started talking.

Let's see. After he talked about the lot—I could tell from his presentation that he

really wasn't experienced at this, and he told me later he had just been working there for a few weeks and he hadn't made too many sales, so I guess I felt a little sorry for him and he seemed to know his presentation pretty well. He was just as nervous as I was, I guess, but, anyway, he—

I don't remember at what point I decided to buy, but he stressed several things that had appealed to me, like the exchange that Horizon Corporation had a deal where you can exchange any of their lots for any of their other lots that was equal to or greater in price and this was before you completed paying for the lot.

This appealed to me because he had told me about this development, that Waterwood, near Lake Livingston, and I could see the potential for that and I thought that would probably be a real good investment, but at this time Waterwood was not developed.

So, I couldn't buy anything there if I wanted to.

So, what I thought of in my mind, I would buy a lot and the equity I would build up in that lot, I would later trade for one at Waterwood. [26]

So, this is the primary reason I was thinking about all the time.

I would probably go look at it and if I didn't like it, I would at a later date trade for something at Waterwood because this really appealed to me.

Q. Now did he mention any rate of return or appreciation on land investment?

A. All right. In just land in general. O.K. He—I remember a figure of 20 per cent. This is, you know, when he was showing me, flipping through the pages of his presentation, 20 per cent.

I don't remember any figures from stocks and bonds or anything like that, but those I remember didn't really interest me, so I didn't remember what rate of return.

Q. All right, sir.

You mentioned that he said that corner lots were one hundred dollars more?

A. Right.

Q. Did he give any reasons for the lots—

A. (Interposing.) I believe they are a little bit larger than the middle lots.

Q. I see, sir.

All right. Now I take it that you did purchase a piece of property that evening?

A. Right.

Q. It was Horizon City Estates, is that correct?

A. Right.

Q. What was the cost of that lot, sir?

A. Thirteen hundred dollars.

Q. And what did—Were you married at the time?

A. No, I was single.

Q. How old were you?

A. I was twenty-one, almost twenty-two, I believe.

Q. I see. (Tr. 1823-28)

II. Representations made by Horizon in its Sales of Land

A. Basic Investment Theme

41. Both expressly and subliminally, the major theme that permeated Horizon's communications and representations to the public was the investment potential of its land—the promise of profits and financial security. This constant theme, implemented in numerous ways, was expressed in Horizon's advertising, its sales literature, its sales training manuals, its sales presentation manuals, and orally by its sales representatives. An intrinsic element of this basic theme was the representation that Horizon was going to make this investment potential happen.

A former zone manager, Theodore Stone, employed by Horizon from 1968 to 1974 and a zone manager for about four years of this time, was trained by Bill Cook. Bill Cook was first employed by Horizon in 1967 as a salesman; became a sales manager, division manager, zone manager, and from October 1970 was Vice President of Sales for Horizon (Tr. 1898-1904, 13512-23). Mr. Stone testified as to the training received from Bill Cook:

Q. What, if anything, did Mr. Cook say about the nature of the product you were selling?

A. Well, he was very convincing that it was a very good and sound investment and that it was going to make the investors an awful lot of money.

Q. What, if anything, did he say with regard to financial security?

A. That was a large part of the sales presentation that we were taught, how to create the need for the investment. People's need for financial security and retirement fund (Tr. 1918).

* * * * *

Q. What, if anything, did Mr. Cook [mean] when he made the statement that you made reference to earlier that you were selling money, not land?

A. Well, I particularly, from having a housing real estate background, I wondered how they could successfully sell this property unseen. And, that's when it was brought to my attention that there was a correct way to present it if you were going to accomplish that and an incorrect way if you weren't going to accomplish that. [28]

And, as I recall, and I have heard many times since that that everybody had a little green vein in palm of their hand and it ran across their arm to the heart, and he said it was called "greed," and, "if you mash it, you are going to be successful."

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

The following are representative techniques used by Horizon to convey its basic theme that Horizon land has tremendous investment potential:

(1) *National Advertising*

42. Horizon's national advertising program emphasized making money on land, Horizon land (CX 410C, 412A-C, 413A-C, 414A-C, 415D, 425F,G,H,T,U,X,Y, 252, 253, 254, 256, 258, 259, 261, 262, 263, 265, 266, 267, 271, 272). Many of the advertisements carried coupon offers of free books or brochures; for example, "How To Successfully Invest In Real Estate," "Make Money In Land," or "The New Southwest Potential Unlimited." A 1970 advertisement stated:

Small investors are making big money in low-cost growth land directly in the path of the Southwest's fast-growing liveable cities and suburbs.

* * * * *

Buying land is one of the few investments that give you an opportunity for tremendous profits starting with a modest investment. (CX 252, 255)

Another 1970 advertisement stated:

Horizon offers you tomorrow's good futures - today.

We sell planned land investments.

For growth.

For living.

For retirement (Advertisement in *Life Magazine* CX 254).

A January 26, 1971 advertisement in *Look Magazine* stated: [29]

Who put up a \$100,000 community building before there was a community?

Horizon Corporation Community Developers that's who!

We build better communities that offer better investment opportunities.

* * * * *

When you're looking into land investment look to Horizon. (CX 256; see also CX 271, 272)

CX 258, an advertisement for the New York area, stated:

Nassau County land at 1950 prices.

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* * * * *

Horizon Corporation, one of the nation's leading developers, believes that the Nassau Counties of tomorrow are in the making today, now, this very minute.

* * * * *

We guide our new communities through their initial stages. We put in roads, make utilities available in development areas, install recreational facilities, build residential and shopping areas, and create attractive proposals for industry. In short, we nourish the new community and help it to thrive and grow.

* * * * *

All things considered, the potential return from intelligent land investment presents a rare opportunity to the small or modest investor. (See also CX 259 - "For Sale: Wilmette land at 1950 prices;" CX 262 - "For Sale: West Hartford land at 1950 prices." CX 263 - "For Sale: Bergen County land at 1950 prices.")

CX 267, an advertisement depicting children, stated in part:

You want to do the best for their future. To provide an investment they can lean on.
[30]

Something they could use for further education. Start a business. Found the family fortune..

Give them land.

The greatest investment. With the greatest profit potential. For any size pocket. And not only for the kids. You, too, can inherit the earth.

Today money loses value fast. But land's value is as progressive as its history. Traditionally, the best hedge against inflation.

CX 274 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 276, headlining "Money grows in land! Let Horizon prove it to you—show you how!", offered free books, "The New Southwest,

Potential Unlimited" and "How To Successfully Invest In Real Estate;" "They Could Make You Richer!" (See also CX 277, 278, 279.) CX 279 stated:

Ask Horizon to show you how you may grow dollars in land.

The price of land used for urban development has soared 90% over the past ten years compared to only an 18% increase for the Dow Jones stock index. [31]

This advertisement stated, in respect to the book "How To Successfully Invest In Real Estate":

Having it, reading it could well enrich your family's fortunes in the foreseeable future and for generations to come.

CX 282 offered a "New Investment Starter Kit," a free copy of "Make Money In Land." CX 283 offered this same book "Sold at Newsstands for 90¢! Yours Free! If You Mail This Coupon Now!" (See also CX 284)

CX 349A-C, an advertisement which received wide dissemination in 1972, headlined:

1962:	\$400
1972:	\$1,600
1982:	\$(What's your guess)

This advertisement further stated that these prices are not "fictitious." "That's the track record of Horizon land to date."

CX 352A-D, widely disseminated in 1972, noted that "The land you buy is only as good as the company you buy it from":

Horizon isn't just waiting for expansion to catch up with us. On each of its properties Horizon is building planned communities. These aren't just aimless tracts. They're model communities planned for schools, industrial parks, golf courses and country clubs, swimming pools and apartment complexes, tennis courts, utilities, paved streets, churches and pleasant residential areas

The advertisement also noted that Horizon had total assets of over \$150 million, net worth of over \$60 million and an inventory of land value of \$240 million. It also stated that lot prices in ten years have risen from \$395 to \$1100.

Advertisements disseminated in 1973 and 1974 feature the building accomplishments at Horizon's properties, but have no investment claims (CX 351A-B, 354A-C, 355A-B).

The free booklets, offered by Horizon in national advertisements, emphasized the basic message that land is a great investment and it "COULD MAKE YOU RICHER":

How To Successfully Invest In Real Estate (CX 256-57, 279; Tr. 1970-76)

Make Money in Land, A Guide to Successful Investment (CX 454; Tr. 1976-77) [32]

The New Southwest, Potential Unlimited (CX 279, 455; Tr. 1977-79).

These books were also offered to the public through brochures and by other means (CX 340-42, 344-46, 294A-B, 357-58), and wide distribution to the public was apparently accomplished (CX 329-39). CX 295A-B, a mailer brochure offering free a copy of "How To Successfully Invest In Real Estate," stated that Horizon is "one of America's largest land and community developers."

43. Horizon also utilized radio and television spots. One radio advertisement mentioned that "Horizon Corporation is creating beautiful new communities" and "a Horizon land investment is an opportunity you won't want to miss;" it also offered the booklet "Make Money In Land" (CX 360; see also CX 361, 362). Some radio spots emphasized that Horizon is developing new communities in the Southwest for people who want a "solid, high-profit-potential investment . . . an investment you can depend on" (CX 375; see also CX 376, 378-79). An August 1970 radio spot stated that "Money Does Grow In Land . . . Horizon's research shows that a lot of land has increased in value as much as 48 times in the last 22 years. That's an average of about 20% compounded annually." (CX 386; see also CX 387, 392-94). Other radio spots stressed Horizon's \$150 million in assets (CX 390-91).

In March 1971 TV commercials were stating "Invest In Some Land Now. It may be more than just a smart investment. It may become your *best* insurance policy," and offering booklets (CX 366). Another TV commercial stated that "The difference between just buying a little land and successfully investing in land is all a matter of who you do business with." This commercial stressed Horizon's assets and net worth (CX 367). TV commercials stating "Money grows in land" and that people are making money out of land, are also in the record (CX 369-74).

(2) *Training Manuals*

44. The various training manuals used in Horizon's sales offices instruct sales representatives to bring home the basic theme that Horizon is building better communities, that the corporation is financially strong, that money can be made in land, and that investment in Horizon land is a most desirable investment for the public (CX 189J-L, 157E, 258F-G, 259I-K, 160Z-1, 262V,Z-18, 163D, E, 165D,E,J,K, 615Z-11-Z15).

Representations that Horizon is a financially secure and a substantial New York Stock Exchange corporation is shown by the following statements in training manuals:

Starting in 1959, with \$300,000, today, Horizon Corporation has assets totaling \$250 million. It's a publicly owned company listed on the New York Stock Exchange (CX 157F, 1974 training manual, Northwest Zone; see also CX 178G Northwest Zone training manual 1973). [33]

Starting in 1959 with \$300,000, today Horizon Corporation is the largest land developer in the Southwest with assets totaling over \$100 million. It's publicly owned with over 4,000 shareholders (CX 956D, training manual used in early 1970's).

A telephone solicitation call used in a Horizon sales office stated:

Your name has been referred to me as a person that's interested in making money? Is that right? . . . If we can show you how to invest as little as \$15 or \$20 per month and double or triple your money over the next six to eight years, would this be something of interest to you?" (Tr. 2318-19; see also Tr. 2358).

The sales representative, at the beginning of the "Front Talk" designed for use just after entering a prospect's home, was instructed to tell the prospect that a reason for his visit was to find people, such as the prospect, "who stated that if they were reasonably assured of a profit, they would invest in land." (CX 615A,D, 956B, 180Z-1; see also CX 858A). After asking prospects whether they wanted "to make money," a positive response would elicit the comment that they were the type of people Horizon is spending millions of dollars on advertising to locate, "people who actually want to make money." (CX 160A,C). The training manual's front talk includes statements that Horizon made:

surveys and tests and studies to prove the worth of this land as investment potential for the modest investor or for homesites Real estate experts analyzed every facet as far as investment, industrial possibilities, closeness to major cities, population expansion, tax loads. . . . Millions of dollars were spent to develop golf courses, public utilities, as well as lakes and ponds. (CX 180Z-2, 157E, 158F, 163D,E, 165D,E, 905A-B,F, 956D).

One training manual stated that Horizon has "developed four thriving new and complete communities in Arizona, New Mexico and Texas" (CX 956C).

One point the sales representative was trained to establish is "Mr. Jones, are you interested in a sound investment" (C 180Z-3). "Mr. Jones, are you a man who wants to make money. How about you Mrs. Jones, do you want to make money" (CX 160C). The sales representative was trained to establish that land is one of the surest investment vehicles available today, and that Horizon land is much

more desirable than the average investment property because of Horizon's development concepts and technical knowledge (CX 180Z-4, [34]615Z11-Z15). A training manual used in Horizon's Northglenn (Denver) Colorado office advised the sales representative that "We sell our land as a VEHICLE for making money" (CX 856A).

One training manual used in the Philadelphia office during 1970 and 1971 instructed the sales representative to demonstrate to the prospect that a total investment of \$2790, starting with a down payment of \$240, would be worth \$15,000 in ten years (CX 956V-X).

A training presentation used in the Philadelphia office started out by telling prospects about Horizon's success at Paradise Hills:

Your original investors were offered an acre of land, in those days, for as little as \$600. Today, a choice acre at Paradise Hills is worth \$12,000 Well, tonight we're prepared to offer you an opportunity, in the same kind of project, the same rock bottom prices, and, in relation to future development, in the same time cycle. (CX 957B)

An answer for sales representatives to use to a possible prospect's objection of "How Do I Know This Will Ever Develop?" was "This is our business—we make things happen." (CX 959A)

A training manual used by a sales trainer in Horizon's Austin, Texas sales office stated that Horizon properties "must have inherently high investment potential by virtue of its location in a growth area near a growing city or because of a unique combination of climate, natural beauty, road and rail access, etc." (CX 778E). This same manual tells the sales representative to:

Sell *Himself* on land as the *one* investment outranking all others in security and return, *and* on Horizon Corporation as offering the most *rewarding* of all land investments. (CX 778Z-10)

At the time the prospect assents to purchase the lot selected by the Horizon sales representative, the representative is instructed to state: "Mr. and Mrs. Smith, let me be the first to congratulate you on your decision. I know it will help assure your financial security." (CX 905K)

One closing technique - the "Lost Sale Close" - has the sales representative apologizing to the prospect for the failure to make clear "that you should make a nice profit on this land." (CX 180Z-11)

(3) *Presentation Manuals*

45. The sales presentation manuals used during in-home sales presentations carry the basic theme—Horizon's corporate history, [35]its substantial financial worth, its national and local recognition,

its development of beautiful communities in the Southwest, the need for financial security in the future, the historic rise in land values in the past, and the excellent investment potential of Horizon land because of its location in the Southwest near fast-growing cities and its predeveloped stage - "that land in the predeveloped stage, in a growth area, is where the greatest potential exists for future appreciation" (CX 194-197, 196Z6, 197Z-39). One message found in the presentation manuals stated:

People buy land from us to build homes for immediate use or to hold their land for potential future appreciation. This potential appreciation is keyed to the success of the master-planned communities Horizon is creating in the growing southwest (CX 196E-F, 197E-F).

Another message in the presentation manual stated:

Horizon Corporation has spent millions developing these communities. They didn't just happen. Horizon made them happen (CX 196Z7, 197Z9).

Earlier versions of the presentation manual carried messages, such as:

Horizon Corporation Offers Better Investment Opportunities by Building Better Communities . . . offering profit potential land in the Growth Southwest.

* * * * *

We guide these communities through their initial development stages—putting in roads; making utilities available in the building areas; installing recreational attractions such as golf courses; building homes and shopping centers; bringing in industry—all the necessary things to launch a community and attract the elements to enable it to thrive and grow (CX 194B, 195C).

These earlier presentation manuals had specific comparisons between land, savings accounts, life insurance and stocks and bonds. The comparisons show that land has the "Greatest Profit Potential" (CX 194K-O, 195P-Z2).

Testimonials in the presentation manuals include newspaper articles under the heading "Horizon Corporation is nationally known and acclaimed" (CX 195D—the Gold Presentation Manual). Some of these newspaper articles are: [36]

The Washington Daily News Assets over \$67 million Horizon Corp. Enters Second Decade as Giant in the Southwest (CX 195D, 197G).

Boston Sunday Globe Horizon Success Story \$300,000 to \$51 million (CX 195D).

Dallas Times Herald New Horizons That Lure Investors (CX 195E, 197I).

Houston Chronicle Horizon City Adds Beauty to El Paso (CX 195E, 197H).

El Paso Tribune Judge Praises Horizon City (CX 195F).

El Paso Times Horizon Developer Wins Award (CX 195F).

Resolutions of praise from the States of Texas and New Mexico are included in the presentation manuals (CX 197K,L, 195F).

The manuals stressed not only the investment potential of Horizon land but also the success and worth of Horizon as a corporate entity. A TBA map used in sales presentations in the home stated the following about Horizon's corporate worth:

Horizon Corporation, founded in 1959, is a publicly owned company and is listed on the New York Stock Exchange with approximately 8,000 stockholders. The company and its subsidiaries are represented by sales offices in major metropolitan areas across the nation and abroad, which serve over 115,000 Horizon customers - January 1973 (CX 213A).

Other efforts by Horizon to assure that sales representatives were trained on Horizon's corporate success include a memorandum from Horizon's sales administration office, to all offices entitled "Horizon Corporation Management Rating" (CX 778 O). Through this [37] memorandum all offices were notified that Dines [A stock market newsletter] showed Horizon as number two on their list of America's Smartest Management on the basis of its rapidly increasing profits from land sales (CX 778P). This material was part of CX 778, a training manual used in Texas in the early 1970's. (See also CX 856A-B)

(4) *Celebrity Films*

46. The Horizon films, narrated by Merv Griffin and Leif Erickson and shown at dinner parties and sometimes during in-home presentations, emphasized the basic theme of the investment potential of Horizon's properties. The Leif Erickson film begins:

Hello, I'm Leif Erickson, I'm here to tell you about land investment, good living, and Horizon Corporation's communities. (CX 526B)

Leif Erickson gave examples of unusually high appreciation of land in various locations (CX 526D); he discussed population growth in the Southwest and in Albuquerque near two of Horizon's properties, the growth of Arizona and of El Paso with its locked-in growth and twin-plant concept. Mr. Erickson discussed Horizon's growth and its net worth. The script also included representations about Horizon's planning of its communities and the assistance Horizon gives the communities by building roads, making utilities available, installing

recreational facilities, building homes, shopping centers and bringing in industry. Leif Erickson concluded the film by stating:

I own some Horizon Land, along with more than 100,000 other people, because I am convinced that to buy land in the right place at the right time is a wise and rewarding thing to do Go ahead and get some land . . . It will probably be the best investment for your future that you ever made (CX 526T-V, [film script, "Investment Southwest"]).

The Merv Griffin film (CX 527) starts out as follows:

Hello. I'm Merv Griffin. I'm here to tell you about land investment, profits and the Horizon Corporation. (CX 527A)

The film script emphasizes the same points as the Leif Erickson film. Merv Griffin concluded his film presentation:

Investors in Horizon Land can be assured that they are investing in the very best type of profit potential land. Land which has been planned to attract tomorrow's residents, business and industries. (CX 527Z-17) [38]

* * * * *

I own Horizon Land, along with 70,000 other investors because there is no other investment as good as land and the Horizon Corporation convinced me that, to buy land in the right place at the right time is a wise and profitable thing to do . . . The Horizon Corporation's developments are in the right place and when buying land, *now* is always the right time . . . (CX 527Z-19).

(5) *Dinner Party Presentations*

47. Dinner party presentations used the congenial atmosphere of a dinner party and the media of speakers, celebrity films and sales representatives to put across the theme that Horizon land had tremendous investment potential. The front talk (after being served dinner but prior to the film) used at dinner parties held in Denver included the following:

THE STORY OF HORIZON IS AN INTERESTING ONE. IT STARTED BACK IN 1957 WHEN A MR. JOSEPH TIMAN, WHO WAS CONSIDERED ONE OF THE MOST SUCCESSFUL REAL ESTATE ATTORNEYS IN THE UNITED STATES RETIRED TO TUCSON, ARIZONA.

INSTEAD OF LYING BACK AND TAKING IT EASY, HE WAS SO EXCITED BY THE GROWTH AND DEVELOPMENT TAKING PLACE IN OUR SOUTHWEST HE JUST HAD TO BECOME A PART OF IT.

THEREFORE IN 1959 HE FOUNDED THE HORIZON CORPORATION.

SINCE THAT TIME THIS PUBLICLY OWNED COMPANY HAS ACQUIRED OVER SEVEN THOUSAND SHAREHOLDERS, OVER 100 THOUSAND CLIENTS, AND HAS CONTROL OVER 460 SQUARE MILES OF LAND NEAR AMERICA'S

TOP GROWTH CITIES. STARTING WITH A NET WORTH OF JUST THREE HUNDRED THOUSAND DOLLARS, THE COMPANY NOW HAS ASSETS IN EXCESS OF 140 MILLION DOLLARS. I MIGHT ADD MR. TIMAN WAS THE CHAIRMAN OF THE COMMITTEE FOR SETTING UP A NATIONAL LAND DEVELOPMENT POLICY . . . A COMMITTEE WORKING VERY CLOSELY WITH THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

WE ARE DEVELOPING COMMUNITIES NEAR ALBUQUERQUE . . . THE BRAIN CENTER OF THE ATOMIC AGE. EL PASO . . . THE FASTEST GROWING CITY IN TEXAS . . . TUCSON . . . THE FABULOUS GROWTH CITY IN ARIZONA. WE HAD RAW LAND FOR INVESTMENT JUST NORTH OF PHOENIX, ARIZONA, BUT IT IS NO LONGER AVAILABLE. [39]

AS YOU WATCH OUR FILM, I WANT YOU TO REMEMBER ONE IMPORTANT THING . . . AS LITTLE AS EIGHT YEARS AGO THERE WERE NO HOMES, ROADS, NO GOLF COURSE, OR INDUSTRIES IN ANY OF THESE PROJECTS . . . JUST RAW RANCH LAND. TODAY YOU WILL SEE HOW HORIZON HAS INVESTED MILLIONS IN THESE PROJECTS, ENGINEERING A MASTER PLAN . . . ROADS, SCHOOLS, COUNTRY CLUBS, ETC.

THE EXCITING PART IS THAT YOU RIGHT HERE CAN INVEST IN LAND THERE.

TO ILLUSTRATE THIS POINT . . . AT PRESENT THERE ARE MORE THAN 100 THOUSAND FAMILIES JUST LIKE YOURSELVES THROUGHOUT THE UNITED STATES, WHO OWN PROPERTY WITH HORIZON IN OUR SOUTH-WEST COMMUNITIES. I MIGHT ADD THAT APPROXIMATELY 2200 OF THESE FAMILIES LIVE RIGHT HERE IN THE DENVER AREA.

SO . . . TONIGHT LADIES AND GENTLEMEN . . . WE WILL TALK TO YOU ABOUT YOUR OPPORTUNITY TO MAKE IMPORTANT MONEY AS A MODEST INVESTOR.

LADIES AND GENTLEMEN WE ARE VERY PLEASED THAT ONE OF OUR INVESTORS THAT YOU KNOW FROM STAGE, RADIO AND TELEVISION HAS CONSENTED TO NARRATE OUR FILM AND IS ALSO A LARGE LAND OWNER OF HORIZON PROPERTIES . . . MERV GRIFFIN.

NOW . . . IF YOU WILL JOIN ME WE WILL SEE HOW FAMILIES ARE MAKING MONEY WITH HORIZON CORPORATION. (CX 857B-C)

After showing the Merv Griffin or Leif Erickson film, a sales presentation is made by a master of ceremonies. A transcript of a speech given at a dinner party in Denver carried the basic theme that land is the best investment that can be made, better than savings in banks, insurance or stocks. Examples of fantastic profits that have been made on real estate in the Denver area were pointed out to the dinner guests. Thereafter, the speaker described the Horizon plan for making money:

. . . Basically this, it's a plan that has been extremely successful for Horizon Corporation and for the families that have invested with us. It's [known] as this, it's a

three-step formula. Location plus population and I think you'll have [to] agree with me, number three is location plus population equals money in land investment today. . . . We don't go out and we don't just select any land and say we're going to build a [40]city here. No sir. We do not do that. We go to the growth communities of the Southwest (CX 601, p. 8).

The speaker then described Horizon's selection of land in the Southwest in locked-in growth corridors where growth can go in one direction only. The sales presentation was directed to Rio Communities near Albuquerque. Albuquerque was described as a growing city with a fence around it with only one gate through which industry and population can move towards Horizon's Rio Communities. The speaker described the Paradise Hills project where land was purchased from Horizon in 1962 for \$99 to \$199 and is now valued at \$3500 to \$5000:

Now this evening, ladies and gentlemen, we're going to talk to you about a savings investment program an opportunity like was offered in Paradise Hills in 1962 where families did make money. . . . This is an opportunity to take part with a multi-million dollar corporation and you too joining many thousands of families and making money (CX 601, p. 14).

The dinner party invitees were advised that an IBM 360 computer in Tucson, Arizona allocates to the 63 sales offices across the nation the investment properties which are available. Each sales representative has "an envelope with this evening's allocation":

Due to the mere fact that Rio Del Oro is just about invested . . . our allocations are limited for this evening. Therefore, representatives, in the event that the two families are interested in regards to the same option of property which is available it will be on a first come first served basis (CX 601, pp. 16-17).

CX 858A-I is a copy of another Denver dinner party sales presentation that was used on numerous occasions. This presentation represents that across this country "there is a twenty per cent return on real estate investments" (CX 858C). Examples of tremendous profits on Denver real estate are mentioned. Horizon's corporate worth is stated along with the fact Horizon selects land in the growth communities of the Southwest where there is locked-in growth corridors and then master-plans the communities. "Money was made and is being made today in our land investments" (CX 858F). The dinner party presentation mentioned El Paso, Texas with a locked-in growth corridor and the Horizon City project. The speaker stated that land in Horizon City sold for \$200 to \$800 in 1964 and at the time of the dinner party speech was selling for \$3500 - \$5000. It was represented that this same profit potential would be available to prospects purchasing at the dinner party (CX 858G, H).

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It was further represented that \$1,000 invested with Horizon in 1962 would be worth \$16,525 in 1970 "and this is fact it is not conjecture" (CX 858I): [41]

Ladies and gentlemen isn't this the type of investment that you would like to have for your family. Now we have every reason to believe that the same type of profit opportunities are available to you and your family . . . and we believe there is an even greater opportunity for you and your family today with Horizon Corp. with its tremendous assets and technical knowledge we now have.

* * * * *

Now ladies and gentlemen if you have a desire to make things happen for your families listen to your representative he'll make you money with Horizon Corp. (CX 858I)

The instructions to the sales representatives at the conclusion of the dinner talk was as follows:

PARTY CLOSE

Immediately upon completion of principal presentation, take envelope and open it. Look at allocation sheet and select option, WITHOUT DISCUSSION which you feel best suited. When speaker asks your option—Mr. Speaker, I want the primary on option no. _____.

Now Mr. and Mrs. Jones what I've selected for you is an investment program of only \$23.00 per month—let me show you what secures your investment—(Take out T.B.A. Map) (At this time go into "Path of Development" story showing locked in growth pattern & tracing route out of city—highlighting developments and industry on the way to the project, then through the project highlighting development of the area and mentioning appraisal value of lots in developed areas, then to particular areas where their investment is located.)— Note: 5 Basic Qualities of that Presentation.

Mr. & Mrs. Jones, your investment is secured by two residential homesites here in unit 30—as I mentioned earlier, a lot in the developed area right now is selling from 3.5 to 5 thousand dollars, and Horizon Corporation has every reason to believe that the parcels I've selected for you will be worth at least that in full development. In other words, we are discussing a return of 7 to 10 thousand dollars over the next 8 to 12 years! Does that sound [42]like a pretty good investment to you, (NAME) (GET COMMITMENT, NO NODS OR GRUNTS-VERBAL COMMITMENT) (CX 859A).

(6) *New Horizons Magazine*

48. Horizon publishes a magazine quarterly, *New Horizons*, that is distributed to Horizon's customers and used in sales offices as sales brochures. These magazines or brochures portray the Southwest as growing and Horizon as rapidly developing its properties. These publications continue the basic theme that Horizon's properties are an excellent investment (CX 505-15). Other brochures distributed by

Horizon reinforce the basic representation that the Southwest is growing and this will impact favorably on Horizon (CX 516-24, 706; Tr. 934-35, 3530). One customer testified about receiving *New Horizons*:

Q. Mr. Carter, did you also receive in that packet of materials any other items?

A. Well, yes. It is a paper printed by Horizon [CX 504] and it made my investment look real good (Tr. 917).

B. Land as an Investment

49. Land is represented by Horizon's sales representatives to be the best investment that can be made by the modest investor. Land is represented to be the best hedge against the persistent inflation which exists. Land as an investment is specifically represented as being superior to savings accounts, insurance and stocks and bonds. Bill Cook, the Vice President for Sales of Horizon, when he was a sales manager and a sales trainer, represented to trainees—"He made it quite evident that the land was the thing to buy and not the other investments" (Tr. 1928). One regional manager testified he trained sales representatives: "Well, of course, we told them land was the basis of all the wealth in the United States, that it was the best investment that you could make" (Tr. 4509). A district office sales bulletin, included as part of a training manual, instructed trainees to sell "*LAND* as an Investment, proven to be superior to all others" (CX 778Z-10).

Sales representatives testified they used comparisons of land with savings accounts, insurance and stocks, and represented land as the best investment (Tr. 2308-10, 3719, 3721, 4567, 1643). One sales representative testified:

Q. Did you ever in any of the sales presentations you made while you were at Horizon compare land to other investments?

A. Yes.

Q. How did you do that? [43]

A. Just listed off four major types of investments, stocks and bonds, savings accounts, insurance accounts and the growth in land nationally, and the land was far superior to any of the others (Tr. 4567).

Another sales representative testified:

Well, we compared the different investments. We compared stocks and bonds, savings accounts, life insurance and annuities, and land and different ways that people could

invest their money and what was the greatest growth potential, which was land. The whole presentation was geared around that (Tr. 16431).

Customers testified about the representations that were made to them:

Basically, the program that he presented, or the investment he presented to me was that this was indeed a good investment of your money compared to other investments in a Savings and Loan, in the Stock Market, things of this nature. The fact that land does not lose its value, that it will only appreciate. There's not going to be any more of it (Tr. 819; see also Tr. 1239, 1159-60, 1472, 6544).

* * * * *

Well, one of his favorite phrases was, "They are not making any more land," and now is the time to get in on the profit making (Tr. 893).

* * * * *

Well, he said the way land, the cost of land was rising that there was no better investment than land itself. That it was better than bonds or stocks (Tr. 910).

Testimony of other customers about land as an investment, and land being superior to other forms of investment are at Tr. 910, 1189-90, 1238-39, 1159, 1325, 1613-14, 1563, 1688, 1824, 5921, 6257-58, 6326, 6337, 6451, 6472-73, 6544, 16153, 16208.

C. Use of Examples of Appreciation In Land Values

50. Sales representatives were trained to use well-known examples of substantial profits that have been made on land in the [44] past. A training manual used in the Southwestern Zone instructed sales representatives that a well-chosen story about local people who made fortunes in buying cheap land and reselling it ". . . can be a powerful incentive to buy for a prospect. But be careful—these stories infer" (CX 180Z-11). The training manuals include examples of land value increases in Horizon property, in cities bordering Horizon property, and in the locality of the sale for use by sales representatives (CX 160S, 180Z20, 615 O,Y, 856C, 956P, 957, 961D).

A training manual used subsequent to January 1971 gives as an example Horizon's Paradise Hills land that sold for \$600 an acre in 1962 and in 1966 was selling for \$2500 an acre (CX 6150, 6150 Z24). A training manual used in the Philadelphia office cites an example of four acres of land in that city that increased in value from \$12,000 an acre to \$200,000 an acre in only eight years, and another example where land increased from "practically nothing" to \$24,000 per acre in 13 years (CX 956P). Other examples in training manuals, films and presentation manuals include a 10-year increase from \$100,000

to \$600,000 of a half-acre lot in the business district in Washington, D.C.; a 20-year increase from \$150 to \$5000-\$6000 per acre for subdivision land in Springfield, Illinois, and a sharp rise from \$250 to \$5,000 for building lots in Squaw Valley, California (CX 527D,L, 195Z, 615Y).

Presentation manuals, films and training manuals also pointed out increases in the value of land located near the areas of Horizon's properties. The Merv Griffin film and the Gold Presentation Manual note that land in Albuquerque which sold for \$100 an acre in 1947 was selling for \$15,000 only 22 years later (CX 615Y, 195Z, 527E). Other examples, such as a 20-year rise in a lot from \$75 to \$50,000 and a 6-year jump from \$1,000 to \$4,000 per acre, are mentioned (CX 195Z, 615Y). The Gold Presentation Manual and training manuals used with it point to a 10-year rise in 10 acres of apartment land in El Paso from \$35,000 to \$250,000 (CX 195Z; see also 615Y). Horizon City TBA maps used in sales presentations also refer to that specific price increase and cite other examples of land valued at amounts as high as \$125,000 per acre (CX 220A, 221A).

In a "Similar Situation or Story Close," which sales representatives were trained to use, the sales representatives sought to capitalize on a prospect's indecision by pointing out how costly such indecision had been for someone else. The sales representatives did this by discussing another prospect who could not make up his mind whether to buy a parcel for \$695 with only \$10 down and \$10 per month, which in just 3 years "had appreciated to \$2795." In describing a recent meeting with the earlier prospect who did not buy, the sales representative points out "the really sad part of the story" to his current prospect: "By not making a decision that night [three years ago, that prospect] did not have \$2100.00 profit the land would have brought him" (CX 961D-E).

Sales representatives testified that they used examples in their sales presentations of property that had increased in value (Tr. 1866-67, 2125, 2184, 2163, 2341-42, 3740, 4356-59, 4390, 4525, 4549, 4643, 4668, 4689, 16131-32, 16499). Horizon's internal surveys of its sales offices revealed instances where price increases of [45] other properties were used in sales presentations (CX 930F, 941C). One sales representative used as an example Northglenn, Colorado, where land purchased for \$35 per acre in 1959 was worth in excess of \$36,000 per acre in the 1970's (Tr. 4549). Customers confirmed that these land value examples were used (Tr. 6484, 4936). One customer was told of a purchaser who paid \$9-10,000 for Horizon property and sold it three years later for \$90,000, over ten times what had been paid for the property (Tr. 6484).

The dinner party speakers referred to examples of land values which had increased substantially in the past (CX 858D, 601, p. 7, 12, 15-16). One example in a dinner party speech referred to land in Denver that went from \$800 an acre to \$90,000 an acre in a few years (CX 601, p. 13). Paradise Hills lots were described as appreciating to \$3500 to \$5000 from \$99 to \$199 a few years earlier (CX 601, p. 12).

Sales representatives also used recent price increases by Horizon on its lots to show how land was increasing in value (Tr. 1865-67, 2002, 3526-27, 3771-72, 4657). One sales representative told prospects that people had previously bought land from Horizon for \$199 and that the land was "worth" at the time of his presentation various amounts from \$1500 to as much as \$3000: "It was always—it was up to the discretion of the representative at that time. He used his own figures. There were no figures" (Tr. 5970). Sales representatives also were trained to tell prospects that Paradise Hills land, which supposedly cost \$80 for a "home site" when Horizon started, was selling at the time of the sales presentation in 1970 and 1971 for over \$5,000 and up to \$10,000 to \$14,000 along the golf course. Sales representatives stated that those "original investors" had "reaped the profits" because they "had the faith in Horizon to invest right on the spot" (CX 856C; Tr. 4541-43; see also Tr. 4474-80, 16421-26, 16455-56; CX 957B).

The use of the examples of tremendous increases in land value was to raise the inference that this could logically happen to the Horizon land now being offered for sale (Tr. 16500, 4643).

D. Use of Federal Housing Administration Statistics

51. Training manuals and presentation manuals used FHA charts to depict the increase in value of residential lots over the last three decades (CX 194 O, 195T, U, V, 196Z21, 197Z23, 160, 161Z17, 163V, 615Z12-Z14, 856A-F, 956M, 957F, 856D, 962A-H). One training manual refers to the FHA charts as "the most powerful selling tool ever devised" (CX 962A). A training manual used during the period 1970-1972 trained sales representatives to point out the FHA charts and the price increase of 552% on improved lots from 1946 to 1968 and the 800 percent increase on the land without improvements, or 20 percent per annum compounded which the charts depict.

Horizon's internal survey of its sales offices revealed instances of sales representatives utilizing the 20% price increase as representative of the price appreciation Horizon's property would realize (CX 928B, 941C, 942A-C, 160Q). A training manual used in the North-

west Zone suggests that sales representatives answer any [46] question about the resale value of Horizon land by referring to the FHA charts in the presentation manual (CX 159X).

Sales representatives testified that they used the FHA charts in sales presentations (Tr. 1861-62, 2309, 3510, 3719, 3721, 3766-67, 4355, 4553-55, 4595, 4629, 4632-33, 4646-48, 4657-60, 16465, 16500). One sales representative testified that ". . . the twenty percent FHA averages were something that I used all the time" (Tr. 4657). "FHA, Federal Housing Administration was strong. If the government says it's good, it's good" (Tr. 16465). Customers also testified to the use of the FHA charts by the sales representatives (Tr. 1828, 4895, 4909-10, 6255-56, 6493).

The use of the FHA charts, which show substantial increases in building lot values since 1946, was in the context that the increase could logically happen to Horizon's land being offered for sale (Tr. 1862, 1865-67, 4648, 4595, 16500). Complaint counsel's expert witness, Dr. Howard Stevenson, stated that the use of FHA statistics lacked general relevance to Horizon's properties. Horizon's use of the FHA statistics compares all Horizon land to a center city building lot, which is not appropriate. Secondly, a strict projection of 20 percent compounded annually over a twenty-five year period would make an Albuquerque building lot be valued at \$906,000 (Tr. 6783-84).

E. Representations of Lack of Risks in Purchasing Land

52. Since Horizon's entire sales presentations were geared to showing land, especially Horizon land, as the superior investment, it is not surprising that sales presentations represented Horizon land to be risk free, or were devoid of any mention of risks (Tr. 2061; CX 157-161, 163, 178, 615, 778, 856, 956, 957, 959, 194-197). In fact, the training manuals instructed sales representatives to impart the message that land can only increase in value, that there are no risks in buying land (Tr. 2071-72, 4525, 6350). "No risks in land. All the risks were in the other investments" (Tr. 1928). "The least amount of risk in any investment" (Tr. 16326). Sales representatives were instructed to seek referrals from customers for this "relatively risk-proof opportunity" a "risk-free investment" which Horizon offered (CX 778Z17-Z18).

Sales representatives testified that during sales presentations they did not mention possible risks in purchasing land (Tr. 4525, 6167, 16451). Theodore Stone, an Horizon employee from 1968 until 1974, who was employed as a salesman, district manager, regional

manager, and for four years as a zone manager (Tr. 1898-1904), gave the following testimony on cross-examination:

Q. What about this question of risk? Isn't it true that there was some discussion at one or more of these levels of authority concerning the existence and non-existence of risk as part of the investment. Isn't that true? [47]

A. Never heard of it.

* * * * *

A. 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).

Sales representatives testified they were not trained to affirmatively point out sales risks to prospective customers (Tr. 16496). Customers testified that there was no mention of risks being involved in purchasing Horizon land:

Q. Did he mention anything with regard to the risk of buying land?

A. No, he said there was no risk involved at all; that the land would only grow in value (Tr. 910).

* * * * *

Q. What, if anything, did the salesman say about the possibility that the land could fall in value?

A. No possibility, that land has no way to go but up. It's not like the stock market and it's not like an automobile. Land don't depreciate (Tr. 1618).

Other customer testimony concerning the lack of mention of risks during sales presentations can be found at Tr. 16152-53, 16208-09, 1745-46, 5038-39, 1185, 4899, 4911, 4937, 5927, 6268, 6286, 6455.

The specific representations about lack of risks in the purchase of Horizon's land, made in the context of the general sales presentation about Horizon's corporate stability, the growing Southwest, Horizon's property located in the path of growing cities, the pre-planned communities, the development activity generated by Horizon, and the constant reference to land value appreciation and price increases on Horizon's own property, greatly exaggerated the safety and grossly understated the risk of buying Horizon land.

F. Representations of Profit Potential

53. The record contains substantial evidence that representations were made to customers concerning the length of time before a

purchaser could expect to realize a profit on the land investment, the percentage of profit which would be realized within [48]that time frame, and the ease with which resale could be accomplished. These representations were both general and specific. The general representations included the growth of the United States population, the growth of the Southwest, the growth of Arizona, the shortage of private land in Arizona, the locked-in growth of Albuquerque and El Paso, the excellent location of Horizon's properties directly in the growth pattern of these cities, Horizon's investment in the planning and development of the properties, and the past record of growth of Horizon's properties. Population growth and the other attributes of Horizon's properties would assure its rapid development and profitability. The percentage of profit to be expected was referred to generally by reference to the FHA charts, to examples of property price increases in the locality of the sales presentation and in other areas of the country, to references of land as the best hedge against inflation, and to the price increases on Horizon's property and profits that had been made on Horizon properties in the past.

In addition to these general representations as to profitability, specific representations were made by sales representatives as to the time the property would be developed or could be sold at a profit, and the expected percentage of profit. Bruce Lehmann, who participated in most of Horizon's internal surveys of its sales offices during 1973, 1974 and 1975, (see Findings 89-97) wrote on September 4, 1975, about the sales representations being made by Horizon's sales representatives:

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).

An analysis of the training manuals, presentation manuals, dinner party speeches, other documents of record, and testimony of sales representatives and customers reveal beyond any doubt that representations were made concerning the profit potential of Horizon's property and the time frame within which such potential would be realized.

(1). *Training Manuals*

54. Training manuals in use in the period 1968-1971 reveal generally that although there were detailed instructions in ways to promote sales, there were no instructions or directions to sales representatives concerning any restrictions, limitations or prohibi-

tions regarding representations that could be made respecting the percentage or amount of appreciation to be expected, the time frame within which a profit could be realized, or difficulties in reselling the property after purchase.

In this regard, the following manuals and presentations serve as examples: CX 778, a General Reference Guide for Sales [49] Representatives dated March 1, 1970, has no instructions, limitations or prohibitions concerning representations of time, value or resale difficulties. Yet, the Guide does concern itself with other possible questions or objections which may be raised by prospective purchasers.

CX 856A-F, a standard sales presentation used in the Northglenn (Denver), Colorado office during 1970-71 (Tr. 4541-42), makes no mention of instructions, limitations or prohibitions on representations concerning the percentage of profit to be expected, the time frame for profitability or difficulties of resale. This presentation does provide training on the use of the FHA charts in the presentation manual to show a 552% increase in the value of a developed lot in 22 years.

CX 956, a training manual used in the Philadelphia office during 1970-1971 gives several examples of substantial increases in land values: Philadelphia land increased from \$12,000 an acre to \$200,000 eight years later; land in a Philadelphia suburb went from "practically nothing" in 1957 to \$25,000 an acre in 1970; a Washington, D.C. lot increased in value from \$86,000 an acre in 1960 to \$800,000 in 1970; Albuquerque land selling for \$100 an acre in 1947 was selling for \$15,000 an acre in 1970. The sales representatives were also trained to represent that a \$2400 investment in Horizon land would be worth \$15,000 in ten years. This training manual has no instructions, limitations or prohibitions on representations concerning percentage of profit to be realized, the time frame within which a profit could be realized or resale difficulties.

CX 957, a sales presentation used in the Ardmore, Pennsylvania Office in 1970 and thereafter (Tr. 16302, 16455), cited an example of Horizon's Paradise Hill lots which increased in value from \$600 per lot in 1959 to \$12,000 in 1970. This sales presentation is silent on instructions, limitations or prohibitions on representations concerning percentage of profit, time frame to profitability, or resale problems.

CX 959, a listing of suggested answers to possible questions by prospective purchasers, used in the Philadelphia office during 1970 (Tr. 16319), has no questions or answers on the time of development

of the property offered for sale, the possible resale value of the property, or any resale difficulties that might be encountered.

CX 615, a training manual used in 1971 and thereafter, contains, as does CX 956, several examples of land that has increased substantially in value, and FHA statistics which show increases that amounted to 20% compounded annually. This training manual also instructed sales representatives to represent that the Horizon property being offered for sale at \$900 per lot would be worth \$3,500–\$5,000 “at the time of development” (CX 615Z27). The training manual is silent as to instructions, limitations or prohibitions concerning percentage of profit, a time frame for profitability, and resale difficulties. [50]

CX 160, a training manual used from the Spring of 1970 to at least the Fall of 1972 used the FHA property increases—approximately 20% compounded annually, but is silent on instructions, limitations or prohibitions on percentage of profit, time frame to profitability, and resale problems.

CX 962, used until 1972, is a sales presentation based on the use of the FHA statistics “. . . the most powerful selling tool ever devised.” (CX 962A). The sales representatives were instructed to explain the FHA land appreciation data and then let the prospect select what *he* considered a conservative growth rate. This document also pointed out that land sells many times before development and that it can be held for long periods to realize all the growth or sold along the way at an appreciated value. It is further stated that resale of the land will be no problem—the real estate investment market is enormous. This presentation is silent as to any instructions, limitations or prohibitions on representations concerning profitability, time frame to profitability, and resale problems.

CX 180, a training manual used in the Southeastern Zone subsequent to June 1971 and in 1972 (CX 180K; Tr. 8764), states that Horizon property must be sold as a long-term investment, and that no estimates of when a buyer will make a profit should be made. However, “. . . if we are absolutely unable to avoid it, it must be 12 to 15 to 20 years or more” (CX 180S). Sales representatives were instructed not to guarantee a profit, but to present the facts of the past and anyone can draw a logical conclusion from these facts. It is also pointed out that Horizon does not offer to resell a customer’s property or buy it back. Since Horizon does not have a “crystal ball,” it cannot foretell the performance of a specific piece of property (CX 180S).

CX 180, however, has instructions to the sales representative demonstrating how the prospect can be shown that two single family

lots selling for \$900 each can be controlled for 10 percent down, and sold for \$6,400 at development (CX 180Z-13). This is termed "The Automatic Close" and for best results was to be memorized word for word. CX 180 also instructed the sales representatives to point out that Horizon's Paradise Hills project had lots selling for \$600 an acre in 1962 which were worth (1971-72) \$3,000 an acre and more. Further, sales representatives were instructed to project that Rio del Oro lots selling for \$900 would be worth the same as the developed lots in Enchanted Mesa, [Horizon's developed core area in Rio Communities]—\$3,500 to \$5,000 "at the time of development" (CX180Z-20).

CX 161, a training manual used Spring 1971 to February 1972, has a list of "don'ts": "Don't project or refer to profits or timetables" (CX 161Z5); "Don't forget you are selling a long term investment, and long term means ten years or longer" (CX 161Z5); and "Don't forget that Horizon does not guarantee or predict when or how much money a purchaser will experience—nor does Horizon allow a sales representative to make such predictions" (CX 161Z5). This training manual also posed a series of possible questions with corresponding answers. One answer stated that Horizon cannot [51]guarantee a particular profit on a particular timetable; however, an evaluation of history and facts from the best available sources "can lead to logical and profitable conclusions" (CX 161Z15). It is also stated that property can be resold within ten or fifteen years (CX 161Z16). FHA statistics are used to answer any question concerning possible resale price of the property (CX 161Z17).

CX 163, a training manual used in Horizon's Northwest Zone, has special training on selected questions: "When Can I Sell This Land For A Profit" and "What Will I Be Able To Sell These Lots For" is answered by ". . . that is a very difficult question to answer, specifically" (CX 163V). FHA statistics are used to show how land values have gone up in the past. This training manual also has the following statement: "No one can precisely forecast property values in the future. In fact, Horizon prohibits its people from doing so" (CX 163G). This language follows closely the statements in the "Principles of Land Ownership" (RX 67), issued sometime after May 1, 1973 (see Finding 57), which indicates CX 163 probably antedates that document.

CX 905B,D, a training tape apparently dated September 1, 1973, stated that land lacks liquidity, no one can precisely forecast property values in the future, and Horizon prohibits its people from doing so. The training tape also pointed out that anyone desiring certainty may lose an opportunity to profit.

CX 157, a training manual used in 1974, contains language apparently adopted from the "Principles of Land Ownership," as follows:

No one can precisely forecast property values in the future. In fact, Horizon prohibits its people from doing so. Those individuals not sufficiently informed who insist on guarantees of specific value increases, development time, resale, repurchase or profitability, should not buy our land, or in fact, any land. You see, the world is filled with people who want everything guaranteed, who will not act in the face of uncertainty. Unfortunately, by the time they are certain, everyone else is too and the opportunities are often gone (CX G-H).

CX 157 lists some specific "don'ts":

Don't project or refer to profits or time tables (CX 157T).

Don't forget that Horizon does not guarantee or predict when or how much money a purchaser will experience—nor does Horizon allow a sales representative to make such predictions (CX 157T). [52]

Additionally, CX 157 has questions and answers about when the land can be sold for a profit and when the lots will be developed. Answers include statements such as "that is a very difficult question," and lots will be developed "when the population warrants it" (CX 157U,W). The FHA statistics are also used to answer these questions.

CX 158, used in 1973, and CX 159 are training manuals that raise questions and answers. The answers state that Horizon does not "guarantee" a profit and cannot predict when to sell lots, that these are difficult questions but that land values should continue to rise and the longer the lots are held the greater the increase in value will be.

(2) *Dinner Party Speeches*

55. Dinner party speeches in the record do not have any instructions, limitations or prohibitions concerning percentage of profits, the time within which the property will be developed or can be resold at a profit, or any problems that may be encountered in resale. In fact, CX 858, a copy of a dinner party speech used in Denver, gives examples of profits made on land:

- (1) Northglenn, Colorado land selling at \$2-3-4-800 per acre a few years ago currently worth \$90,000 an acre;
- (2) Cherry Hill Shopping Center which was merely a dump a few years ago;
- (3) Horizon City lots selling for \$2-800 in 1964 currently worth \$3,500-5,000; and

(4) an investment in Horizon of \$1,000 in 1962 worth \$16,525 in 1970.²

CX 601, a transcript of an actual dinner party presentation, made no mention of limitations concerning percentage of profits, the time frame to development or profitability, or difficulties of resale. This dinner party presentation lists examples of land value increases similar to those listed in CX 858.

(3) *Presentation Manuals*

56. The earlier presentation manuals, CX 194, 195 and 196, did not have any statements concerning limitations or prohibitions on percentage of profit, time to profitability, or resale problems. However, beginning in early 1974 (CX 307; Tr. 1986) the presentation manual had substitute pages added which carried the following [53]statements (in type much smaller than other representations on the pages):

The figures used in this chart are the latest available Federal Housing Administration figures showing by year the average selling price of improved sites on which new FHA-insured single family houses were built. Source for this information: Division of Research and Statistics. Market price of sites for new one-family homes, Sec. 203.

Naturally all land does not increase in value at a particular rate. The value of land is based on what a user will pay for it. Land which has no immediate use has a value which can only be estimated by judging when a user market will exist. Many complex factors affect the time which it will take vacant land to be ready for development and the user market. The general, regional and local economies, the area's rate of growth, interest rates and availability of capital are all examples of these factors. (CX 197Z-23).

No one can precisely forecast property values in the future. Horizon prohibits its people from doing so. Those who insist on guarantees of specific value increases, development time, resale, re-purchase or profitability—should not buy our land—or any other land. The world is filled with people who cannot act in the face of uncertainty. Unfortunately, by the time they are certain, everyone else is too, and the opportunities that existed earlier are gone. (CX 197Z-24).

Land owned for the long-term not the short-term. Now, what do we mean by long-term and short-term? Horizon's use of short-term is less than ten years and long-term more than 20 years. This does not mean the land that we offer for sale today will not be used for 20 or more years—portions of it in or near present development areas may be used within the short-term and other portions over longer periods. The main consideration is not to commit funds needed for foreseeable necessities or which are being held in reserve for unknown contingencies. (CX 197Z24).

² This representation of \$1,000 invested in Horizon in 1962 and worth \$16,525 in 1970 is not altogether clear. It could be interpreted to mean investment in land or investment in Horizon corporate stock. However, it most likely would be understood by dinner party guests to mean land, since land was the subject matter of the presentation.

The above statements reflect language contained in the "Principles of Land Ownership"(RX 67); which was first distributed in mid-1973 (Finding 57). [54]

(4) *Other Documents*

57. By memorandum dated May 1, 1973, Sidney Nelson, President, Horizon Corporation, stated to all employees certain principles of land ownership which related to the profit potential of Horizon land (RX 1551). In August 1973, these principles were printed in a brochure entitled "Principles of Land Ownership - A Policy Statement by Sidney Nelson, President, Horizon Corp." ("Principles") (RX 67), and distributed to sales representatives (Tr. 13563). Thereafter, Horizon included a copy of the "Principles" in the "important document package" which was sent to customers after the sales transaction had been completed at Horizon's Tucson headquarters (Tr. 12889-95, 13565). The eleven principles are as follows:

1. Every individual, with discretionary financial resources, should be encouraged to own land. No sounder investment exists, when entered into with informed awareness. Horizon believes its properties to be an ideal subject of purchase for all such people. Sound judgment must be employed, however, to insure that purchases are not made by those for whom land is an unsuitable purchase.

2. Since real estate generally, and vacant land particularly, lacks liquidity (convertibility into cash at a fair price at will), caution should be exercised to commit only funds which are comfortably available from "discretionary" income or from liquid assets which are not necessary to meet foreseeable necessities, to include a reasonable allowance for unknown contingencies. This axiom applies to any initial or subsequent purchase of land.

3. The notion that all land increases in value at some particular rate or another is fallacious. Placing other factors such as area growth aside, real estate may increase in value to offset inflation.

4. The value of land is based on what a user will pay for it, now or in the future. Land which has no immediate user market has a value which can only be estimated by judging when in the future a user market will exist, and what the value of such property will be then. The future value as determined should then be discounted to its present estimated value dependent on the time differential.

5. Many complex factors affect the time it will take a given piece of vacant land to be [55]"ready" for development and the user market. The general, regional and local economies; the area rate of growth; interest rates and availability of capital are all examples. Horizon selects land for its developments in areas which it believes are influenced by factors favorable to long-term growth. We cannot control nor precisely predict (nor can anyone else) when these factors will mature, but Horizon is convinced that dynamic growth is predictable in its developments in the long term.

6. What do we mean by "short-term" and "long-term"? A buyer of land must be conservative in his application of these terms. Horizon's use thereof shall read "short-term" as less than 10 years and "long-term" as more than 20 years. In between is the gray area which cannot be defined more closely.

7. This does not mean that the land we offer for sale today *will not* be used for 20

or more years in that portions in or near present development areas may be used with the near term and other portions may only be used over longer periods. Each individual should carefully consider and then buy only that land he can afford to put aside as a long-term asset.

8. The world is filled with people who will not act in the face of uncertainty; unfortunately, by the time they are certain, everyone else is too, and the opportunities existing earlier are often gone. While this is a truism which each prospective landowner should recognize, it should never be allowed to influence him to buy any land without careful consideration.

9. Horizon cannot make forecasts of property values in the long-term future, and prohibits its personnel from doing so. Those who do not wish to buy land based on the fundamental factors recited in this statement of policy, but insist on an assurance of specific value increases, time to development, guarantee of resale, repurchase or profitability, should be advised plainly that we do not recommend their purchase of our land or any other land.

10. Particular care should be exercised by older people, near or in retirement, to assure that no purchase is made upon which realization of an economic return is essential to the buyer to provide for his retirement needs. Personal or family use of the property, or estate purposes, is the only [56]reasonable basis for purchase by such persons in view of the long-term nature of the investment.

11. When presenting property to prospective owners, Horizon personnel shall clearly explain and be guided by the spirit and intent of this statement of policy.

Horizon's internal surveys of its sales offices during 1974 and 1975 revealed clearly that sales representatives did not use the "Principles" in their sales presentations. Further, it was found that the "Principles," which were sent to customers several days after the sales transaction had been completed, were not read by the customers (CX 938D, G, H, 951E, F, G; CX 945A).

(5) *Representations by Sales Representatives*

58. Training documents recognized the questions which are paramount to a potential customer. "Any investor may want to know three things. How much can he make? When can he make it? How does it come about?" (CX 962E). The training manuals and presentation manuals previously discussed indicate that sales representatives beginning sometime after 1971 were instructed how to answer questions by prospects concerning when and how much profit they could expect from purchasing Horizon land. The suggested answers to these questions were "that is a very difficult question to answer" (CX 163V, 157U, W), or "no one can precisely forecast property values in the future" (CX 163G). These answers are followed by explanations as to what property has done in the past. Testimony by sales representatives demonstrate how these instructions were effectuated.

One very experienced sales representative and sales trainer,

Barbara Kelly, who was employed in Horizon's Philadelphia office from September 1969 to September 1972; testified that she did not affirmatively tell prospective customers about the period for profitability or specific problems in reselling the land; it was only if they asked—"it was not part of the presentation" (Tr. 16494-95):

JUDGE BARNES: As part of your presentation, did you make an effort to tell people all of these things?

THE WITNESS: No.

JUDGE BARNES: If they asked questions, then you did?

THE WITNESS: Yes. (Tr. 16,496)

She testified that sales representatives used a structured approach, that price increases that other properties had experienced in the past were cited to the prospect to indicate what the property being sold could potentially be worth in the future—"using FHA figures and everything else" (Tr. 16,498-500). This presentation answered the questions for the prospects: "That's the way the presentation was geared and that's the way we understood it" (Tr. 16,498). [57]

Another sales representative, employed from August 1970 to December 1971 and who served as a sales manager for over one year, testified that he approached the subject of time period and profitability by using the FHA statistics, and by leading the prospect to answer his own questions:

We are leading to the point that that is a dramatic increase and off of this statement we then asked the client, "what do you think the value of land would be?"

Of course, we have pre-empted that with directional growth, and they would come and indicate, "Yes, yes, that looks like the value ought to go up dramatically!"

They drew the conclusion from what was shown (Tr. 1862-63; see also Tr. 1873-74).

* * * * *

Yes, we would attempt to get them to answer their own question by the appreciation of land value in Austin, Texas [where the sales representative was employed] and the appreciation of land value as shown in the [FHA] charts in the presentation book and just lead them to the conclusion (Tr. 1866-67).

* * * * *

As I explained, we went back to the presentation booklet and pointed out to them the growth pattern and "they" drew conclusions, sir (Tr. 1874; see also Tr. 1866).

Another sales representative testified that he too would let the customer speculate about the time period by using a city the prospect

was familiar with: "He would normally say five or ten years" (Tr. 2185; see also Tr. 2125, 2184). Other sales representatives also testified that they would rely upon the FHA statistics and then place the burden of future price or value back on the shoulders of the prospect and let the prospect answer his own question and do the speculating (Tr. 3510, 3553, 4792).

Another method used by sales representatives was to respond to customer inquiries by stating that no one has a "crystal ball", and then refer to examples of property value increases in the past (Tr. 4704, 4706-08, 4772-73, 4791-92, 16,494; see also Tr. 13,547, 10,241, 13,343, 11,384, and 16,137). Besides the "crystal ball" answer, and the shift of the burden to the prospective customer, the record clearly demonstrates that sales representatives made specific representations concerning profitability and the time period in which such profitability would be realized. [58]

Theodore Stone, employed by Horizon from 1968 to 1974 and who served as a zone manager from 1970 to 1974, testified that he was trained in 1968 by Bill Cook, who later became Horizon's Vice President of Sales, to tell prospective customers they would have to hold their land 6 to 8 years to realize a profit (Tr. 2030). He further testified that in late 1972, as a result of many, many meetings in Tucson among zone managers as to what investment claims should be made: "The decision was to identify it as long-term, long term meaning ten years or longer" (Tr. 2032). Thereafter, in 1973 "there was a great deal of confusion in my last eight or nine or ten months with Horizon as to what investment claims could be made and what couldn't be made. The Principles of Land Ownership came out about that time and there were statements in the Principles about time periods that confused the issue even further.

"The Gray Area was made use of and the salesman, everything he had all of a sudden was in the Gray Area" (Tr. 2034-35).

* * * * *

Well, item 6 [of the "Principles"] says What do we mean by "short-term" and "long-term"? "A buyer of land must be conservative in his application of these terms. Horizon's use thereof shall read short-term as less than ten years, and long-term as more than twenty years. In between is the Gray Area which cannot be defined more closely."

That added a great deal of confusion in the salesman's mind in that there was some properties still that were short-term, some that were long-term, and some were in the Gray Area.

There was a lot of abuse given the short-term and the Gray Area that we as developers who knew where those areas were (Tr. 2037-38).

Mr. Stone considered a misrepresentation about the investment potential time period as a most severe misrepresentation of the property and he terminated sales representatives for such misrepresentations (Tr. 2065). He testified that whatever time period was agreed upon at the meetings in Tucson he passed on to the salesmen— . . . "The consensus was ten years or longer" (Tr. 2066):

JUDGE BARNES: Mr. Stone, can you sell that property if you told people it would be ten years or more before they realized any appreciation?

THE WITNESS: Yes, sir. [59]

JUDGE BARNES: You could?

THE WITNESS: Yes, sir. The argument was with the twenty years. That was the argument, whether you could say twenty years or longer, and there was not a zone manager within the company who felt like that he could go back to the field and put into the presentations and manuals to enforce the 20-year period, that no one would buy, and I agree with that (Tr. 2067).

* * * * *

Then, along about 1972 there was a real serious effort in meetings to see if we could not sell our properties with twenty years or longer, and that met with such resistance by all people who were supervising sales efforts that it was never adopted.

Then, in 1973 this Principles of Land Ownership came out and added a little bit more confusion as to that particular investment claim. When I left, they were still debating it, and I assume they still are (Tr. 2069-70).

Daniel B. Nickeson, employed by Horizon from August 1968 to November 1972 as a sales representative, sales manager, district manager and regional manager (Tr. 4497, 4518), testified that when he first started with Horizon ". . . we would use three to five years, they could expect some appreciation on it" (Tr. 4507; see also Tr. 4513).

Q. Did you tell them how much it would appreciate in that three to five year period?

A. We used different charts that showed what land values had done over the years and that we use 20 percent a year, 15 percent a year, 25 percent a year, and in some cases, you could point out to them what it has done in Denver here, some land has gone up 30 percent a year (Tr. 4507-08).

* * * * *

JUDGE BARNES: Did you say initially during that period of time that this was changed? [60]

THE WITNESS: Yes, it was changed two or three different times as far as the

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number of years before we really felt that there would be a resale market for that property locally through a realtor. It was changed to where the company didn't want to even project any time or give them a time. At the same time they took the word investment out of it. We used to use it, and the Federal Government said you couldn't really say this was really an investment. So, they were very particular about not using that.

JUDGE BARNES: What time was it when this last change occurred?

THE WITNESS: This basically all came about in 1970, '71, this is when it started changing (Tr. 4513).

According to Mr. Nickeson, the word "appreciation" was used to replace the word "investment" (Tr. 4514). One sales representative, who also served as a sales manager and trainer, used words like "rainy-day fund type of thing or down the road or retirement fund" in lieu of using the word "investment" (Tr. 4666). Another sales representative testified:

We were later on instructed absolutely not to use it for investment anymore, and we were debating how we go around the investment. That is a fact (Tr. 16144; see also Tr. 16143, 5983, 6007).

Marc Knasel, an Horizon employee from September 1969 to November 1976, served as a sales representative, sales manager, district manager, a staff member of the Gulf Coast Zone, and from July 1971 until July 1974, the Director of Training at Horizon's headquarters (Tr. 3751-56). Mr. Knasel, at the time he served as a sales representative and district manager until July 1971, would respond to a prospect's question concerning when the prospect could resell his property, as follows:

I believe I used terms at that time in the nature of three to five years. If I was asked that question I would probably answer to the prospect three to five years, six years (Tr. 3769; see also Tr. 3929, 3934).

As for percentage profits to be made, Mr. Knasel testified: [61]

I recall in some of the earlier, in 1969, it sticks in my mind that there were some multiples mentioned, three to five times the investment (Tr. 3933).

Mr. Knasel testified that when he was first in the Tucson headquarters, subsequent to July 1971 he recalled that in management training sessions Richard Lovinger, Horizon's Vice President of Customer Service, spoke in terms of 10 to 15 years in addressing the field management people. This continued through June 1972. The first written instructions concerning time periods which Mr. Knasel

recalled, was Sidney Nelson's "Principles" distributed in the Summer of 1973 (Tr. 3946-3950).

One sales representative, employed from June 1971 to June 1972, was trained that property would develop in two or three years (Tr. 4385, 4389, 4425-26, 4435-37, 4443, 4446-47), and would appreciate at a rate of 25-30 percent per year (Tr. 4387, 4392). He also testified that sales representatives were given some property to sell especially to doctors (Tr. 4437, 4448), and some "hot" property that would develop within six months (Tr. 4416).

A sales representative and trainer, employed by Horizon in Las Vegas from July 1973 to August 1974, would answer prospects' questions about when the prospect could expect to sell the property by referring the prospect to the FHA statistics (Tr. 4632-33, 4646-48). This sales representative was not permitted to "come out and say" that a prospect could make a specific amount of money within a specific time period (Tr. 4646). "We wouldn't come right out and say your property is going to be developed, guaranteed to be developed. We didn't specifically come out and say that, but we kind of tended to lean toward that impression that it would be" (Tr. 4641). On cross-examination he further testified:

Q. When you gave examples of values of commercial and multi-family land in Las Vegas, you did not tell them that this would necessarily hold true in Rio Communities or in Horizon City, did you?

* * * * *

A. We wouldn't come out and specifically say your property is going to do that, but we tended to give them the impression that if they held on to their property and time warranted and it was developed, if they had commercial property and multi-family property, this would be what they would stand to get versus having single-family lots (Tr. 4643).

A dinner party sales representative employed in the Denver office from July 1970 until July 1971, testified that he was trained that single family property would grow anywhere from three to five [62] times, multi-family would grow from five to seven times, and commercial would grow up to ten times the original investment (Tr. 4771-72). This sales representative also used three different methods to show the time period involved; two, three, four, and five years; eight to twelve years; and the "crystal ball" method (Tr. 4772). The "crystal ball" method was used most often (Tr. 4773).

A sales representative who was a party salesman in the Chicago office from 1968 until 1975, testified that:

* We generally use a figure that if the individual bought \$2,700 worth of property and

from five to seven years that property should be worth somewhere between \$9 to \$12,000 (Tr. 5970; see also Tr. 6003-04, 6008-10, 6023, 6026-27).

This sales representative testified that he used this type of a presentation "all the time" (Tr. 5972), and that he used the rate of development as being "one square mile per year" "anytime I needed it" (Tr. 5972).

Another sales representative and sales manager, employed in Horizon's Chicago office from December 1970 to April 1972 (Tr. 6137-38, 6157), testified to representing that Horizon would establish satellite or pilot communities in the Rio Communities property, that the property would develop in four to seven years, and lots costing \$1,400 would be worth \$4,000 to \$7,000 at that time (Tr. 6144, 6146, 6152-53). Horizon City property was represented to increase in value from \$900, \$1100 and \$1400 to \$4500 to \$7000 in four to seven years (Tr. 6144). While this sales representative testified that the existence of pilot communities within a given time period was not a sure thing (Tr. 6166), any doubts or uncertainty was a very, very minor part of the sales presentation and very much downplayed (Tr. 6167-68).

A sales representative and sales manager, employed in Horizon's New York City and Brooklyn offices from February 1970 until July 1975, testified that she was trained that the development period for Horizon's property was seven to ten years "without guarantee" (Tr. 16110, 16142). After visiting Rio Communities in 1974, this sales representative stopped using seven to ten years because "I would be a liar" (Tr. 16111, 16136). This sales representative heard much talk about satellite areas which "infiltrated in the salesman[s] head and you infiltrated it into your client's head," but nothing was ever done about starting satellite areas (Tr. 16113).

Barbara Kelly, a sales representative and sales manager in Horizon's Philadelphia office from September 1969 to September 1972 (Tr. 16420-22), testified that when she started with the company ". . . they were telling us you are selling an eight to ten year investment" (Tr. 16432, 16491). Residential was the quickest-type investment, but you did not make as much money. Multi-family property was worth five times as much as single family property but it took a little longer, and commercial property was worth ten times what a single family lot was worth (Tr. 16432). This sales [63] representative was trained that Horizon would open up additional core areas to facilitate development, and she sold property based on the satellite core area concept (Tr. 16442-44).

Another sales representative employed in Horizon's Philadelphia office from October 1969 until August 1971, was trained to tell

prospective customers that Rio Communities property would develop in five to seven years. This time period was later changed to ten years (Tr. 16325, 16352, 16356, 16377, 16379). She was instructed that single family property would multiply three times, multi-family six times and commercial property ten times (Tr. 16325, 16378; see also Tr. 1935, 1940-41).

One sales representative who worked for Horizon from July 1969 until July 1974 (Tr. 2305, 2332-33), stated that a telephone solicitation used in the Washington, D.C. office to solicit in-home appointments would ask the prospect if he would be interested in an investment where you could "double or triple your money over the next six to eight years" (Tr. 2318-19). Sales representatives in the Washington, D.C. office used this six-to-eight year period until the District Manager visited Tucson in 1969 and came back and said to stop using six years so the period then became eight to ten years (Tr. 2352-53, 2355): "—if the company will allow you eight years to pay for this, somewhere at the end of this eight years, your property should be into the development stage. That's normally how most of us would answer it. It seemed to be a logical explanation which the customer would accept" (Tr. 2358). Sometime thereafter, this sales representative used a range of figures from 8 to 10 up to 18 to 20 years. "When I say 20, the people sort of lost interest, so I back off. I tell them anywhere from 16 to 18 years, something like that" (Tr. 2356):

Q. So the figure at which you began to perceive resistance from a customer would be twenty years; is that correct?

A. No, 18 (Tr. 2356).

A sales representative and later a sales manager, employed by Horizon from September 1973 to April 1975, testified that inferences arose from the Horizon promise to have roads in by the property in eight years that the property would be developed in eight years (Tr. 3732-33).

59. Horizon's "self-evaluative" documents, which report on surveys of sales offices which Horizon undertook beginning in 1973, revealed that representations were routinely made that Horizon's property was a short term investment, and specific time periods and profitability increments were mentioned. These representations are set out in detail in Findings 91-100, see especially CX 927L-M, O, 930C, G, 932E, F, 933, 936C, 942A, B, D, 943B, 944B, 947F, I, M, N, 948E, 949D, E, 950 E, I, K, 951E, G, I, 954. These internal survey reports reveal that older persons in particular were sold property on the representation that they would realize a profit during retire-

ment, or during their lifetime (Findings 91-100; see especially CX 927G, I, 935B, 936C, 944T, 947I, 949E, 950I, J). [64]

The survey documents reveal that it was routine practice to "trade" customers into multi-family property, or to trade customers into "better" locations which, it was represented, would result in a much shorter holding period and thereby enhance their profitability (Findings 91-100; especially CX 927E, F, H, 929D, F, I, J, K, 938D, 944E, T, 946H).

Testimony showing that Horizon officials had knowledge that Horizon's purported policy was not being followed in sales presentations can be found in the record. Mr. Nickeson, a regional manager in the Denver, Colorado area, testified that he realized practices existed in some of the offices under his supervision that were not in accord with his directives (Tr. 4529).

One sales representative who worked in the Chicago office from July 1972 until July 1973, and then transferred to the Phoenix office as a sales manager, testified:

Again, a salesman was trained but once he left the office and went to a customer's house there were many things that happened that were not training. A salesman would say, if he became panicky and he couldn't make a sale, he would use whatever method of means necessary to try and make the sale. It was kind of in stages, he would kind of go into his regular presentation and if that didn't succeed he might get what in the trade we call "hot" and add little phrases of his own. (Tr. 3553-54).

According to this sales representative, the District Manager, Stan Drizen, knew of such activities (Tr. 3554). Another sales representative testified that Mr. Drizen departed from Horizon policy in almost everything he did (Tr. 3744). Another sales representative testified that on occasion Mr. Drizen stated that he did not care how the business was obtained, he wanted X amount of business on the books within a given time frame (Tr. 4674-75). Horizon's internal surveys of its sales offices revealed that the Phoenix Office, under Mr. Drizen's supervision, made numerous serious misrepresentations (Finding 93; see especially CX 939, 940-942).

One sales manager testified that the general practice for zone office's supervision consisted of why aren't you selling more (Tr. 1892).

Horizon received complaints from customers about sales representative's misrepresentations. On April 12, 1972, a customer wrote Horizon requesting a refund of the \$460 which the customer had invested in Horizon property some six months previously. The customer stated:

After careful investigation through numerous qualified sources we find that Horizon

Corporation has misrepresented the appreciation [65]time of eight to twelve years for land we purchased in the Rio Del Oro development. Our sources project a more realistic time of twenty to thirty years for noticeable appreciation to occur. (CX 907B).

Horizon's Operations Manager of Customer Service replied on April 25, 1972 and denied the request for a refund, stating in part:

We do not know what will happen to your property and I'm sure you do not know. The demand for development in your area could occur in many years less than an eight to twelve year projection. Then, it can take many years longer. . . . If I were you I certainly would not take the word of any other person in relation to what will happen to the property you personally own. You have purchased very fine property and I'm sure you will be most enthused about your purchase if you will visit your property. (CX 907A).

(6) *Customer Testimony*

60. Customer testimony confirms that sales representatives made specific representations concerning the profit that would be realized in the purchase of Horizon's land and the time period within which such profit would be realized.

Col. John Yuill, who invested several thousand dollars in Horizon land for his children's college expenses (Tr. 840), was told in November 1971, that he could invest a small amount of money to control the property (leverage), resell the property at a substantial profit in 2-3 years and use the profits to buy additional property (pyramiding) (Tr. 819, 822). Col. Yuill was told Horizon would "assist" him in reselling the property and there would be no problem in reselling (Tr. 822-23). He purchased seven residential lots in Rio del Oro at that time for about \$5800 (Tr. 823). He later purchased a commercial lot in Horizon City because he was told there was a greater potential for appreciation with commercial property (Tr. 831, 845). He also purchased an additional Rio del Oro lot closer in to the developed area, which he was informed would appreciate in a shorter period of time (Tr. 839).

Burnice Carter, an individual who owned a dry cleaning business, purchased four residential lots and one commercial lot in Horizon City during February 1970, for \$6,300 (Tr. 914; CX 691). The sales representative, a customer and a friend of Mr. Carter (Tr. 892, 907, 915, 940, 942), at the time of the initial contact was wearing a big lapel button emblazoned "MONEY" (Tr. 892). Mr. Carter, who was attracted by the lapel button (Tr. 892), was told that he could double his money on his purchase in five years, and could show an immediate profit of \$150 per lot because the price on the lots was going up the next day (Tr. 893-94, 913). The commercial lot was represented to be more profitable than a residential lot (Tr. [66]912).

The sales representative stated that he would help sell the lots in about five years (Tr. 913). The sales representative called about one month later and informed Mr. Carter that he had a 24-hour exclusive on a commercial lot that would be a real good investment. The alleged exclusive was given to the sales representative as a bonus for leading the area in sales. The commercial lot was in a good location and there would be some money made on it, but if it were not purchased that night it would be grabbed up (Tr. 923). The sales representative stated that a thoroughfare would be cut through the property and the commercial lot would be on a corner which would make it tremendously valuable. The time period for profit was stated to be five or six years. Mr. Carter paid \$9600 for this Horizon City commercial lot (Tr. 923-24; CX 699). This same sales representative came up with another 24-hour exclusive on another commercial lot, which he represented to Mr. Carter as a real good investment and there would be no problem at all in doubling the investment in five or six years (Tr. 931-32, 962-65; CX 704). After his sons-in-law visited the property and reported back to him, Mr. Carter wrote to Horizon to get his money back, but he was unable to get a reply. He stopped payments in 1971 after paying to Horizon approximately \$5100 (Tr. 943-44).

J. D. and A. D. Oliver, twin brothers, were told in early 1975 that the lots they purchased in Horizon's Waterwood property would double in value in two years (Tr. 975-76, 977-78, 1052, 1055).

Allen Nesbit purchased three single family lots in Horizon City in July 1970 for \$1,000 each (Tr. 1191). He was told that raw land appreciates at the rate of 20% per year and that the land would have to be held for seven to ten years (Tr. 1191-92). Horizon would notify Mr. Nesbit when there was a buyer available for the land (Tr. 1192). About two years later Mr. Nesbit was contacted by a sales representative who wanted to talk about the progress that had been made on the earlier purchase. The sales representative stated that the land had doubled in value (Tr. 1194-95, 1219-20), and that Mr. Nesbit needed to add to his portfolio and pick up some multi-family property. Multi-family property was represented to be more choice than residential property and that land was appreciating at approximately 20% per year (Tr. 1195-96). He was told that Horizon was opening up various parts of the land and development would occur in seven to ten years (1196). Mr. Nesbit purchased a multi-family lot for \$4,600 (Tr. 1198). He later became concerned about his property and was short of money so with Horizon's consent he traded in his four lots for one paid-up lot (Tr. 1202).

Billy Cook purchased a lot in Horizon City in January 1972 for

\$1300 and was told by the Horizon sales representative that the lot could be sold for \$5,000 in five to seven years, although there was no guarantee that this would happen (Tr. 1159, 1182).

Michael Collum was told in July 1970 he would double his money by the time his purchase contract was paid out - eight years, ". . . or even as early as five years" (Tr. 1527-28). The sales representative also stated that there was to be a price increase right away so now was the time to buy (Tr. 1528-29). Mr. Collum purchased two lots in Horizon City for \$2,000 (CX 751). In 1975, [67]after the Commission's complaint herein issued, Mr. Collum requested release from his contract. The matter was resolved by giving Mr. Collum a paid-up deed to one lot and a refund of \$575 (Tr. 1539-40).

Jose Medina purchased two lots in Horizon City in November 1971 for \$2,000 (RX 113; Tr. 4994), a price represented to be below the normal price of the lots (Tr. 4994, 5006). The sales representative stated that he could double his money in four years and that there would be no problem in reselling the lots at that time (Tr. 4995-96, 5009).

Helen Anderson, jointly with her sister Margaret Hayner, purchased 10 acres in Whispering Ranch in 1968 for \$8,990 (Tr. 6176-77; RX 145-46). At the first meeting the sales representative stated that there was not much private land available in Arizona since the government owned so much of the land. The sales representative said the Whispering Ranch property was raw land but it had been engineered and utilities would be provided; Ms. Anderson assured by Horizon, that there was good water there and, with the demand for the property, it should double in value in 20 years (Tr. 6178, 6185, 6202). Ms. Anderson did not purchase the property on the evening of the sales representative's first visit, but asked for more information about Horizon's financial condition. The sales representative returned two days later with Horizon's financial statement and a contract of purchase was signed (Tr. 6180). According to the sales representative, Whispering Ranch would be comparable to the Sun City development outside Phoenix (Tr. 6179, 6182). The lots which were purchased were represented to be on a section line and would be of greater value because they would have some commercial value (Tr. 6184, 6191). Ms. Anderson would at least double her money in 20 years, but by dividing the 10 acres into one acre lots, she could increase the value much more (Tr. 6216-17).

In 1969 Ms. Anderson visited Whispering Ranch by airplane, courtesy of Horizon (Tr. 6209; RX 149-50). The Horizon representative flew her over Sun City, a good retirement community, enroute to Whispering Ranch, and she only saw the property from the air (Tr.

6186, 6206). The Horizon representative stated that he hoped Whispering Ranch would be like Sun City eventually (Tr. 6186). In 1971 or 1972 Ms. Anderson made an attempt to sell the property through assistance from Horizon and through contact with a real estate agent, but was not successful (Tr. 6183). The Horizon representative advised her to keep the property since it was worth more than she had paid for it (Tr. 6190). In 1975 Ms. Anderson tried to get her money back from Horizon without success (Tr. 6187). After her refund request, a Horizon sales representative visited Ms. Anderson and attempted to trade the Whispering Ranch property for Rio del Oro property. The sales representative denigrated the Whispering Ranch property and stated that the Rio del Oro property would be a better investment (Tr. 6188-89).

Margaret Hayner, Ms. Anderson's sister, testified that in 1969, after the purchase of the Whispering Ranch property, another Horizon sales representative telephoned and asked for an appointment to talk about a "hot" property, a very good property (Tr. 6219-20, 6227). Ms. Hayner expressed a desire to purchase Horizon property [68]only through Mr. Fisher, the sales representative who had sold the Whispering Ranch property (Tr. 6220). The sales representative, Mr. Leibman, stated that Mr. Fisher could not sell this property and that it would not be available very long (Tr. 6220, 6227). The sales representative indicated that the investment could double in three to five years (Tr. 6220-21, 6228). Ms. Hayner and Ms. Anderson purchased two multi-family lots in Horizon City during June 1969 from Mr. Liebman for \$2870 (RX 153). Mr. Fisher later advised Ms. Hayner that he could sell any property that Horizon had, and, since Ms. Hayner was unhappy about the purchase from Mr. Liebman, Mr. Fisher suggested that the property could be traded at a later date when other property became available (Tr. 6222).

Thereafter, in May 1970 Ms. Hayner went with Mr. Fisher on a fly-in trip to Rio del Oro (Tr. 6228), and upon returning to her home in Chicago area she and her sister traded the two Horizon City multi-family lots for six lots in Rio del Oro (Tr. 6222-23). The new contract was in the amount of \$5,000 (Tr. 6224). Mr. Fisher stated that the Rio del Oro property would be a much better investment than the Horizon City property. It would be lived in within 10 years and would triple in value (Tr. 6225-26, 6231). The Whispering Ranch property and the Rio del Oro properties have been paid up and are owned by Ms. Hayner and her sister, Ms. Anderson (Tr. 6224).

In September 1968, Frank Simon requested a booklet from Horizon through a newspaper ad (CX 457 - "How To Successfully Invest In Real Estate"), and thereafter a sales representative called

on him (Tr. 6250-51). Mr. Simon purchased six lots in Horizon City for a total price of \$2,034 (Tr. 6255). The sales representative stated that the property would be worth \$5,000 to \$10,000 in seven to eight years—at the time Mr. Simon's oldest child would be ready for college (Tr. 6256-57). He was further advised that Horizon would assist in the sale of the land (Tr. 6259). In 1972 Mr. Simon called on Horizon for assistance in the resale of his land. He received a kit containing sample advertisements. A second request to Horizon produced the name of an El Paso realtor (Tr. 6261). The realtor listed the six lots for one year (RX 160-62), but no sale was ever consummated (Tr. 6262). In 1975 Mr. Simon contacted another realtor who advised that there was no market for the lots (Tr. 6263).

In December 1971, Robert Pernini visited Horizon's offices in Chicago and purchased a commercial lot in Horizon City for \$8,400 (Tr. 6292; RX 163). He was told that property increased at a rate of ten, eleven, twelve percent per year and it would probably continue in the future (Tr. 6289-90). He was told that the El Paso area would be a good place to start a business because of the cheap labor available from Mexico (Tr. 6291). Mr. Pernini was informed that his lot would be available for development in eight and one-half years; at that time, utilities would be available and he could open a commercial business (Tr. 6293-96):

He just made it sound like it was a very excellent investment, the area was growing, that type of thing (Tr. 6297). [69]

Mr. Pernini was promised assistance in reselling the land (Tr. 6299-6300). Two or three years later when he asked Horizon for such assistance, he was advised that they would send him a sales kit containing sample newspaper advertisements (Tr. 6299). He also requested Horizon to repurchase his property but was advised Horizon could not do this (Tr. 6300). At the time of his testimony he was still making payments on his purchase contract (Tr. 6302).

Jing Jo Yu, a Korean American woman, testified that in January 1973 she saw newspaper advertisements in a Korean language newspaper in Chicago, Illinois. After being visited by a Horizon salesman, who was also Korean American, she purchased 15 lots in Horizon City for \$13,800 (RX168; Tr. 6334-37, 6351). Mrs. Yu had been in the United States about two years at the time she purchased this property (Tr. 6336). She was informed by the Horizon sales representative that land was a better investment than savings accounts in banks or insurance (Tr. 6339-40, 6369), and that the land would increase at a rate of 20 to 30 per cent each year and it could be resold in two to three years (Tr. 6340, 6345, 6370-71, 6375). At the

time of the purchase, Mrs. Yu and her husband could read and understand very little of the English language (Tr. 6350). The sales representative inquired as to how much money Mrs. Yu had, and on being informed the amount was about \$7,000, he selected the lots and the payment arrangements (Tr. 6352, 6353, 6373, 6386-87). Mrs. Yu made a down payment of \$5,800 on the 15 lots (Tr. 6352). She visited her property about two months later on a fly-in trip and was very disappointed and depressed at what she saw—only sand and desert plants (Tr. 6353-56). The on-site sales representative said not to worry—"this place is going to be a shopping center. This place is going to be a school" (Tr. 6356; see also Tr. 6358-59). The sales representatives attempted to sell Mrs. Yu additional land at the completion of the property visitation, but without success (Tr. 6359-60). At the time of her testimony, Mrs. Yu was making payments on her property (Tr. 6363).

Irmtraut Vuletic purchased two single family lots in Horizon City during August 1971 after attending a Horizon dinner party where at least one hundred persons were gathered (Tr. 6448-50). The price of the two lots was \$3,000 (Tr. 6449). She was told that the property could very well double in value in seven to ten years, although this was not guaranteed (Tr. 6451-52). Mrs. Vuletic was visited by Horizon representatives in 1974 or 1975 who wanted to update her on her property. The sales representatives suggested that Mrs. Vuletic trade her two lots for some commercial property which would be more valuable than the residential property she had purchased. Mrs. Vuletic did not purchase any additional property (Tr. 6456-58). At the time she testified she was still paying on the property, but was considering stopping the payments after having paid in more than \$2,000 (Tr. 6455).

James Devlin purchased four single family lots in Rio del Oro during January 1972 (RX 158C). The sales representative stated that the property would yield a guaranteed 10 percent per year return (Tr. 16624, 16654-56, 16659). The property would be developed within six to seven years and Mr. Devlin would have to either build on the property at that time or sell it (Tr. 15624, 166542-53, 16659).
[70]

G. Representations Concerning Resale of Horizon Land

61. Training manuals used during the period 1968-1971 were silent as to specific representations that sales representatives could, or could not make with respect to how the property being purchased from Horizon could be resold, and whether Horizon would be

involved in the resale of the property (CX 160, 856, 956, 778, 957). After 1971, training manuals contained information to the effect that Horizon's policy was that it would not resell or buy back a customer's property, and that sales representatives should not make representations contrary to this policy. Sales representatives were instructed to state that the property was to be resold as any other property would be sold (CX 161, 180, 959B, 178, 158, 157-59, 163). As of 1973 Horizon had each sales representative pledge in a signed document not to represent that Horizon would resell, repurchase or lease any property from a customer (RX 81). Information about Horizon's resale policy was not part of the sales presentation, but was treated as a possible question that a prospect might ask.

CX 157, a training manual used in 1974 and subsequently, handled the resale problem as a possible question from a prospect, as follows:

Q. Will you sell my lots for me? Horizon Corporation's policy at this time is such that we cannot do that. You would sell these lots just like you do any others. You'd place them in the hands of a Real Estate Broker either in that area or here, in your own local area. Or you can run an ad in your local paper. (CX 157V; see also CX 158U, 159Y, 163).

CX 158, a training manual used subsequent to the Spring of 1973, stated that "Mr. Prospect, Horizon will not sell your lots for you, or buy them back from you," as the suggested answer to the question "Will you sell my lots for me" (CX 158V).

CX 180, contained training on selected questions. In respect to resale of a customer's property, it stated:

We may not offer to resell a client's property at any time. We cannot guarantee that he can resell it later. Our company *will* send him a resale package. This contains an approximate valuation of his property and some local real estate companies who may handle his property for him (CX 180S).

CX 161 instructed sales representatives not to promise personal or company participation in resale (CX 161Z5). This training manual answered a question about resale as follows: [71]

Realtors, who just like right now in your own neighborhood, will be competing to list property (CX 161Z16).

CX 178, a training manual for use subsequent to May 1973, stated in answer to possible questions from prospects, that Horizon would not resell the lots or buy them back (CX 178W). The manual further stated that when the property was ready for development there should be no difficulty selling the property through the purchaser's own efforts (CX 178X).

CX 962, used until 1972, is a sales presentation based on the use of

FHA statistics. This presentation stated that resale of the Horizon property will be no problem—"the real estate market is enormous" (CX 962).

CX 783, a document containing rebuttals for certain objections that prospects might have to purchasing Horizon property, was used in several Texas offices during 1970-1971 to train sales representatives (Tr. 2155-58). It has the following statement:

We are real estate brokers, specialists in land investment. I know that if we can be instrumental in getting you started in land investment, we will get the opportunity to resell your property. We live on commissions (CX 783C, D).

Sales representatives were trained to tell prospects that resale was not dependent upon actual development or use of the land bought from Horizon. Sales representatives were trained to make "the point (which is self-evident to [the prospect] once stated) that land usually sells many times in the years *before* its use" and repeated buyers and sellers can all realize a profit (CX 962; see also CX 622A).

Theodore Stone, a former Horizon Zone Manager, testified that sales representatives were initially instructed to inform customers that they should contact local brokers in the Albuquerque-El Paso areas to resell their property. At a later period sales representatives were instructed to tell customers they should write to Horizon headquarters and ask for a kit to give them various instructions on how to proceed with their efforts to resell their property (Tr. 2029-30).

Paul Boman, a sales representative and sales manager employed by Horizon from October 1972 until December 1974 (Tr. 4351-52, 4362), attended Horizon's National Sales Manager Training Program. At the training program the question of a resale program came up; the participants were advised by a high level Horizon official that a resale program was in the mill and would be in operation sometime during the next year - 1974 (Tr. 4361-62). Mr. Boman communicated this information to prospects in his sales presentations (Tr. 4362). Such a resale program did not commence as indicated (Tr. 4362, 4377-78). Another sales representative, Olin Hillman, who also served as a sales manager and district trainer and who attended the training program at Horizon's headquarters, testified that he also was informed by the same Horizon official that Horizon would have a [72]resale program in the future. Four other Horizon representatives from other sections of the country were present at the training session and heard the same statements about the resale program. Mr. Hillman attended a different session of the training program than did Mr. Boman. Mr. Hillman testified that he

used representations about the resale program in his sales presentations and communicated this information to other Horizon sales representatives and to his trainees (Tr. 4679-81, 4722-27).

Anthony Zimmer, an Horizon sales representative in the Chicago office from December 1970 until April 1972, testified that he was trained that Horizon's Customer Service Department would assist the customer in reselling the property:

Q. Mr. Zimmer, I didn't quite understand what you said about resale. Did you state that as part of your presentation you would tell people that Horizon Corporation would try to find a buyer if they wanted to resell?

A. They will assist in finding a buyer, yes.

Q. Did you also state that Mr. Steer made that statement in his presentation?

A. Certainly. Everyone did.

Q. Everyone that you heard give a presentation?

A. In fact, even in that training initially, that came out that we would assist someone in selling that property. (Tr. 6163-64).

Henry Fisher, a sales representative in the Chicago office from 1963 to 1973, testified that he represented to customers that Horizon would have a resale department by the time the customer was ready to sell the property (Tr. 6042, 6065-67).

Conversely, Daniel Nickeson, a former Horizon regional manager, testified that "We indicated that we didn't sell it when the question arose" (Tr. 4527; see also Tr. 16494-99). Other sales representatives testified that they made no statements about whether Horizon would or would not resell a customer's land (Tr. 1879, 4643). Although Chicago Zone Manager Tony Frederico testified that sales representatives in his zone were told not to represent that Horizon would assist in resale (Tr. 11761), one sales representative in the Chicago office testified that Mr. Frederico had a statement he termed "a good side-step" which was that if a customer wanted to sell, he wanted first crack at the resale (Tr. 6042, 6067; see also Tr. 11782-84).

62. Customers testified that Horizon sales representatives stated that Horizon would resell the land, or buy back the land, or would assist in the resale of the land, or that there would be no problem in resale of the land. [73]

Col. John Yuill asked a specific question of the sales representative about resale and was told that he would have no problem reselling the land—"People will be seeking that property. They will be coming to you to purchase it" (Tr. 822). He was also informed that while

Horizon was not in the business of buying back land, Horizon would assist in selling the land if the need arose (Tr. 822-23).

The Horizon sales representative stated that he personally would assist a customer, Bruce Carter, in reselling his Horizon land (Tr. 913, 959, 961). J. D. Oliver and A. R. Oliver were informed by the Horizon sales representative that the Waterwood lots they purchased would be resold by either the sales representative or by Horizon (Tr. 976-78, 1037-38, 1090-91). Allen Nesbit was told that development would be up to his four lots in Horizon City in seven to ten years and that Horizon would contact him when Horizon had a buyer for the property and then he could negotiate with the buyer to sell his land (Tr. 1192, 1219).

Michael Collum was assured by the sales representative that there would be no problem at all in reselling the property—"Just call me. I'm your personal representative. I'm in contact with El Paso daily, and if you decide to liquidate your property, we can handle it for you" (Tr. 1529). It was also indicated that Horizon possibly would be interested in the lots for building purposes (Tr. 1530).

James Madget traded in his three Horizon City lots for a Waterwood lot after Horizon representatives told him he could not resell his Horizon City lots, but that there were several real estate agents who would list the Waterwood lot which could be sold right away (Tr. 1403-04, 1408). Mr. Madget was told that if the real estate agents could not resell the lot, the sales representatives would get his money back for him (Tr. 1408). After several attempts Mr. Madget received names of real estate agents from the sales representatives. When Mr. Madget called, two of the agents just "laughed;" he could not locate the other agents. Thereafter, Mr. Madget contacted the sales representatives again and was advised that Horizon would send him a sales package that would assist him in the resale of his property. Mr. Madget thereafter received a package from Horizon containing sample newspaper advertisements. He tried newspaper advertisements without any success (Tr. 1409-10). The sales representatives finally agreed to get Mr. Madget a refund, but the sales representatives then left Horizon. Mr. Madget ultimately forfeited his property after paying out approximately \$1,352 (Tr. 1411-13).

Carl Troyer testified that the sales representative during a reloading presentation, stated that there would be no problems in reselling the lots, that they were going up in price all the time, and that Horizon at certain periods was buying back some of the lots (Tr. 1339, 1371). Patsy Zecco was told Horizon would help in the resale of the lot Mr. Zecco purchased for his son (Tr. 1620, 1679-80). Mr. Zecco later purchased a Waterwood lot and was told by the sales

representatives that they would do all they could to sell the lot in the event Mr. Zecco wanted to sell it (Tr. 1633). Willard [74]Morgan was told by the Horizon sales representative, in response to Mr. Morgan's question about resale of the property in view of its remoteness from Mr. Morgan's location, that Horizon would provide help in selling his two single family Rio del Oro lots. "They will be developing this community. Perhaps they will even buy them back, but in any event they will assist you with a sale" (Tr. 1565).

David Krausse was told the method of resale of his Horizon property would be for builders to approach Horizon, who would indicate to the builders who the property owners were (Tr. 1721). Larry Cervenka was told that generally what had been done in the past was that when the property was ready for development a developer would contact the individual owner and purchase the lots (Tr. 1834-35). Ronald Nokes was advised that he would be approached by a builder desiring his commercial lot for combining with other lots to build a store of one type or another, or more likely to rent the property for such purposes (Tr. 4902).

The sales representative indicated to John Mossman that there would be no problem whatsoever reselling his Whispering Ranch lot either to Horizon or to future property owners once development began (Tr. 4863). Two or three years later he contacted Horizon about reselling the lot and was advised Horizon did not have a resale program at that time but were hoping to do so in the future. Horizon suggested newspaper advertising might be the best route to follow (Tr. 4865). Ivan Westcoatt was told that Horizon would not resell his property but that there would be no problem in reselling it (Tr. 4659). Jose Medina was told that his lots would be developed and if Horizon started developing that area he would be paid a legal or fair price for his lots (Tr. 4996).

Joan Wild was told that Horizon was going to start a shopping center immediately in the area where her commercial lot was located, and that she would be able to lease her property to a company that wanted to come into the shopping center (Tr. 5027-28). She also purchased two lots together to be located near a "highway loop" which the sales representative said would be ideal commercial property, and undoubtedly within a year or two an oil company would want the property for a service station (Tr. 5029-30). The sales representative also said that Horizon would have a resale office by the time the property was paid for and would handle any resale (Tr. 5030).

Melvin Bradley was told by the Horizon sales representative that he should retain the multi-family lot he had purchased and lease the

land for building purposes (Tr. 5165). Helen Anderson was told there would be no problem reselling her Whispering Ranch lot and that Horizon would help in the resale if she wanted to sell—"It was very vague" (Tr. 6182-83, 6212, 6207-08).

John Gothard attended a Horizon dinner party in November 1972 and purchased a single family lot in Rio del Oro for \$3,000 (Tr. 6077-79). Shortly after purchasing the property he became dissatisfied with the purchase and contacted Horizon (Tr. 6079-80). In March 1973, a Horizon sales representative who identified himself as a "troubleshooter" visited with Mr. Gothard (Tr. 6080-81). [75] During this visit Mr. Gothard upgraded his property into two multi-family lots in Rio del Oro which cost \$10,800 (Tr. 6081-82, 6186, 6101). The sales representative stated that the purchase of land was the way to make money, that land was a very, very fine investment, that Horizon was a land developer interested in promoting growth areas, and that Horizon wanted and welcomed the opportunity to resell the land, or Horizon would buy the land back and at the very least pay him what he had invested in the property (Tr. 6082-85, 6115-18). The sales representative did not mention a specific percentage of profit or specific time period:

But he most emphatically emphasized that the community was a bustling, growing community. The place was just ripe. It was bursting for an influx of people. And this land that I was having—he would be very surprised if it didn't at least double its value in three years. (Tr. 6087).

The sales representative also stated that the price of the property was going to be increased and that alone would insure a certain profit (Tr. 6088). When questioned as to why Horizon was anxious to sell property that was rapidly increasing in value, the sales representative repeated that Horizon was a community developer and there was need for a "cash flow" to finance the communities (Tr. 6089-90). The sales representative also emphasized that the land was scarce and would be gone if Mr. Gothard did not sign that night (Tr. 6117).

Mr. Gothard became disenchanted with his property as time passed and in 1974 he contacted the Horizon sales representatives to sell his property for him, or buy back the property as represented (Tr. 6092-94). He was advised that he had a valuable piece of property and he should keep it and he would make a lot of money on it (Tr. 6094). He was also told that Horizon was no longer a land developer but now was engaged merely in the sale of land (Tr. 6095). Mr. Gothard ultimately discontinued making payments and forfeited his investment of \$4,156 (Tr. 6096-97). Mr. Gothard later was visited

by Bruce Lehmann, a special assistant to a Horizon Vice President, who interviewed Mr. Gothard as to his reasons for forfeiting and promised to help Mr. Gothard get back some money (Tr. 6097-99). Mr. Lehmann later advised Mr. Gothard that Horizon had suffered a loss on the transaction and no refund would be made (Tr. 6100).

Frank Simon, who purchased six lots in Horizon City in 1968, testified:

As far as selling the property, I asked that question specifically and was told that one, Horizon normally would be the contact point for anyone who wanted to buy property in that area and they maintain lists or knowledge anyhow of all the people who own the land or bought the land from them. And they would direct anybody who was interested in buying [76]land—they would let me know so we could make contact with that person. Also they indicated that they could help sell the land if I wanted at the time I wanted to sell it. They also helped their customers to sell the land. And I didn't get into a whole lot of detail (Tr. 6259).

Mr. Simon later wrote Horizon for assistance in resale and received a sales kit and thereafter the name of an El Paso realtor (Tr. 6261). He was unable to sell his property (Tr. 6262).

Robert Pernini was promised assistance in reselling his property. When he later requested assistance he was sent a sales kit on how to write a newspaper advertisement (Tr. 6299). Jing Jo Yu, a Korean American, purchased 15 lots in Horizon City from a Horizon sales representative who was also a Korean American. Mrs. Yu was told she could resell her property in two or three years and she should call the Horizon sales representative when she was ready to sell (Tr. 6345). Carmie Ottaviano was told that within six or seven years a developer would get in touch with him about his multi-family lot for which he paid \$4800 and pay him \$17,000 for it, or Mr. Ottaviano could have a six-flat apartment put on the lot where Mr. Ottaviano could live free. The developer would have a 99-year lease on the property after which Mr. Ottaviano's grandchildren or great grandchildren would own the property (Tr. 6410-12, 6424, 6440; RX 169).

Douglas Thornly was informed by the Horizon sales representative that he had never encountered a situation where anybody had any problems selling Horizon land, and that Mr. Thornly would have no difficulty selling his Whispering Ranch property because land values are always increasing and people are always looking for good investments such as Horizon land (Tr. 6480).

Elsie Colon was informed at the time she purchased two single family lots in Rio del Oro that Horizon might want to buy the land back because Horizon was a land developer and so many people were migrating into the area that Horizon would need land to develop for industry and homes (Tr. 16210-11). Anderson Austin was told that

Horizon would buy back the four single family lots he purchased in Rio del Oro. Mr. Austin readily accepted the premise that Horizon would be willing to buy the land back because it was also represented that the land was increasing in value (Tr. 16265-66, 16274-82).

Howard Gottesman testified that the sales representative made a definite statement to him that Horizon would buy back the Rio del Oro lot he purchased (Tr. 16673, 16691-696). Mr. Gottesman was later contacted by another sales representative in a reloading effort, and this sales representative also emphasized a buy-back by Horizon of the multi-family lot located in Canyon del Rio for which Mr. Gottesman traded (Tr. 16676). When Mr. Gottesman contacted Horizon in 1975 to effectuate a buy-back, the local Horizon office stated that under no circumstances would that be done and a newspaper advertisement in the Albuquerque area was suggested as a means of [77]selling the land (Tr. 16679).

James Devlin was assured that there would be no problem in reselling the four lots he purchased in Rio del Oro, that Horizon had an office in New Mexico that handled resales, and that Horizon would handle the resale in the event Mr. Devlin decided at a later date he did not want the property (Tr. 16625, 16655). Evelyn Tracy was told by the Horizon sales representative that she could resell her \$800 Rio del Oro single family lot within a few months and realize \$2-300 profit (Tr. 5923).

Horizon's internal surveys of its sales offices found several instances where representations were made to customers that there would be no problems in reselling the Horizon land (CX 929K), or Horizon's resale policy was vague (CX 927N), or outright representations were made that Horizon or the sales representative would assist in the resale of the property being purchased (CX 932E, 936C, 947L, 950E, G).

H. The Horizon Property Visit Credit and the Horizon Guarantee

(1) *Property Visit Credit*

63. Count XV of the complaint alleges that Horizon has represented, directly or by implication, that the travel allowances, "Property Visit Credit Certificates," or other allowances promised to purchasers by Horizon are either actual payments to the purchaser in the form of cash or checks or immediate deductions from the purchaser's currently scheduled payments, and that such payments or deductions are made upon completion of a visit to the purchaser's lot as reimbursement for the purchaser's expenses. In truth and in

fact, the complaint alleges, the travel allowances, "Property Visit Credit Certificates," or other allowances are deductions from the remaining account balance at the time the principal balance is equal to the amount of the allowance, provided that a company-guided tour is made within one year of the date of the acceptance of the contract, and that the payments due under the contract have been current throughout the term of the contract.

The contractual provision concerning the 5% property visit credit is found in the Receipt of Deposit and the Agreement for Deed:

Upon confirmation and acceptance by Horizon Corporation or applicable subsidiary, Purchaser will be issued a Property Visit Credit Allowance Certificate in the amount of 5% of the cash price (net additional sales price in superceding sales). *** The Allowance granted herein is deductible from the remaining account balance at the time the principal balance is equal to the amount of the Certificate, providing that the personal inspection and company guided tour is made within one (1) year of the date of this Agreement and providing that the payments [78]due hereunder have been current throughout the term of this Agreement. (CX 139A, 140A, 148A, 149A, 150A, 151A, 152A, 153A).

The Agreement for Deed and Receipt of Deposit are signed by the purchaser as the time of the sale and copies of the documents are delivered to the purchaser.

Testimony by customers and sales representatives has demonstrated that the property visit credit is typically explained accurately to the customers and that there is no misunderstanding by the customers as to the requirements for earning the 5% credit allowance, or the time at which the credit is applied to the contractual payments (Tr. 4371-72, 4642, 6549, 6490, 6393, 4249-50). Likewise, there is insufficient evidence that Horizon failed to allow such credits when customers complied with the terms of the contractual agreement (Tr. 13352-54). Complaint counsel has proposed no findings to the contrary (see CPF 6.1-6.13).

(2) *The Guarantee*

64. As part of the property visit allowance, Horizon included in its Agreement for Deed and Receipt of Deposit a guarantee which provided that the customer was entitled to a refund of all monies paid in if, at the time of the property visit, the customer believed that the property had been misrepresented to him at the time of the initial sale and the customer requested a refund. To obtain a refund, the customer was required to fill out a refund request form at the time of the property visit and state on the form the circumstances of the misrepresentation. The on-site sales representative also filled out a separate report on the customer's visit (CX 908, 920B; Tr. 6211).

The request for refund was thereafter transmitted to Horizon's headquarters where a determination was made as to whether the customer was entitled to a refund pursuant to the guarantee. Richard Lovinger, Horizon's Vice President of Customer Services, testified:

Q. What was the policy of the company with respect to instructing field personnel in assisting customers in filling out that form or otherwise participating?

A. The instructions were that if the person wants a refund and can't satisfy an on-site exchange or anything else and he really wants it and says I want to make a claim, they were to furnish the claim and have the customer fill it out in his own handwriting, not the salesman and let the customer do it and send it into the office. (Tr. 13357).

Pursuant to this guarantee, Horizon officials sometimes granted full refunds, sometimes negotiated partial refunds, sometimes arranged an exchange of property, and sometimes denied a refund (Tr. 13367-63, 2360, 2370): "This is a discretionary thing" (Tr. 12983). [79]

The following are some responses to refund requests. CX 907A-B is correspondence in which Horizon denied a request for a refund based on a claim of misrepresentation made within one year of the sale where the customer had not visited the property. Horizon stated to the customer that he should personally visit his property within the one year period, and that he had purchased "very fine property." CX 908 and CX 920 represent correspondence whereby Horizon denied refunds based in part on the fact the purchasers had visited their property and signed the PVCC stating they were satisfied with their property. CX 921 is correspondence whereby Horizon denied a refund to a purchaser who visited his property within one year and filed a report claiming the property had been misrepresented to him. Horizon did not agree the circumstances stated by the purchaser constituted "misrepresentation."

Patsy Zecco, a customer who testified in this matter, was denied a refund because more than one year had passed before he made a request for a refund (Tr. 1654).

The Horizon guarantee is set out in the Agreement for Deed executed at the time of sale:

HORIZON CORPORATION GUARANTEE

Horizon Corporation or applicable subsidiary guarantees to refund all the money paid on your property if it was MISREPRESENTED to you at the time of sale. Requests for such refunds may be made only at the property upon completion of buyer's initial

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company-guided personal inspection tour within one year of the date of purchase by stating the details on the company's refund request form. (CX 142-51).

This identical guarantee also appears on the Receipt of Deposit, which is executed at the time of the initial sale (CX 139-40).

The Property Visit Credit Certificate ("PVCC"), which is mailed to the customer in the important document package several days after the property sale, has a bold heading "HORIZON CORPORATION GUARANTEE," and the following statement:

Horizon Corporation guarantees to refund all the money paid on your property if it was MISREPRESENTED to you at the time of sale. Requests for such refunds may be made only at the property upon completion of buyer's initial company-guided personal inspection tour within one year of the date of purchase by stating the details on the company's refund request form.

TO BE COMPLETED AT TIME OF PROPERTY VISITATION TOUR.

I have seen my land. It is as represented [80]and I am satisfied with my property investment. Please credit my account in accordance with this certificate.

Landowner(s) signature(s) _____

Authorized Horizon Representative

Date

(CX 134, 136, 137).

In 1973 the PVCC form was changed to provide the following statement:

TO BE COMPLETED AT TIME OF PROPERTY VISITATION TOUR

I have visited the above described subdivision(s) and completed the Company guided tour. It is as represented in the Agreement for Deed, property report and state offering statement, public report or prospectus, if applicable. I acknowledge that I have relied solely upon the representations contained in such materials, that no guarantee of appreciation, resale or repurchase has been given and that the Company provides no resale services.

Landowner(s) signature(s) _____

Authorized Horizon Representative

Date

(CX 133, 135, 138).