

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

