

# **Exhibit 1**

# **Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into this 29th day of July, 2013 by and among John Demsheck (“Plaintiff”), the Settlement Class Members (as defined *infra*), and Ginn Development Company, LLC (“Ginn”), by and through their respective counsel.

Plaintiff, the Settlement Class Members, and Ginn are referred to collectively herein as the “Parties.”

### RECITALS

WHEREAS, on or about April 13, 2009, Plaintiff filed a putative class action titled *John Demsheck, individually and on behalf of all others similarly situated v. Ginn Development Company, LLC; Lubert-Adler Partners, LP*, in the United States District Court for the Middle District of Florida, Jacksonville Division, and given the Case Number 3:09-CV-335-HLA-TEM (the “Litigation”);

WHEREAS, on or about June 4, 2009, Plaintiff filed a “First Amended Class Action Complaint and Demand for Jury Trial” (the “Class Action Complaint”) in the Litigation;

WHEREAS, the Class Action Complaint generally alleged Ginn and Lubert-Adler Partners, LP (“Lubert-Adler”) (Ginn and Lubert-Adler, together as “Defendants”) developed, marketed and sold residential real estate, that Plaintiff and the putative class members had purchased real estate in the Defendants’ purported developments, and that Defendants had engaged in a scheme to artificially manipulate the values of the real estate and had circumvented the requirements for the sale of such real estate, which allegedly resulted in profits to Defendants and losses sustained by Plaintiff and the putative class members;

WHEREAS, based on these allegations, the Class Action Complaint contained causes of action against Defendants for violations of 15 U.S.C. §§ 1703 and 1707 (The Interstate Land Sales Full Disclosure Act (“ILSA”)) and violations of 18 U.S.C. §§ 1962(c) and (d) (Racketeer Influenced and Corrupt Organizations Act (“RICO”));

WHEREAS, Plaintiff and Defendants engaged in extensive motion practice in the Litigation, including both Ginn and Lubert-Adler filing motions to dismiss the Class Action Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), which resulted in the Court dismissing the ILSA claim under 15 U.S.C. § 1707 as to both Defendants with prejudice, denying Ginn’s motion to dismiss the remaining claims as to Ginn, dismissing the ILSA claim under 15 U.S.C. § 1703 as to Lubert-Adler with prejudice, and dismissing the RICO claims pursuant to 18 U.S.C. §§ 1962(c) and (d) against Lubert-Adler without prejudice;

WHEREAS, Ginn subsequently filed a motion to dismiss the Class Action Complaint pursuant to Federal Rule of Civil Procedure 12(c), which motion has been fully briefed by Ginn and Plaintiff and currently is pending before the Court;

WHEREAS, Plaintiff and Defendants have participated in significant discovery in connection with the Litigation, including:

- the filing by Plaintiff and Defendants of their Initial Disclosures;
- the service by Plaintiff of interrogatories and document requests on Ginn;
- the service by Plaintiff of interrogatories and document requests on Lubert-Adler;
- the service of responses by Ginn to Plaintiff's interrogatories and document requests;
- the service of responses by Lubert-Adler to Plaintiff's interrogatories and document requests;
- the service by Ginn of interrogatories and document requests on Plaintiff;
- the service of responses by Plaintiff to Ginn's interrogatories and document requests;
- the service by Plaintiff of amended document requests on Ginn;
- the service by Ginn of responses to Plaintiff's amended document requests;
- the production of documents by Plaintiff in response to Ginn's document requests;
- Ginn organizing and making available to Plaintiff and Plaintiff's counsel for their inspection hundreds of thousands of pages of documents relating to the various real estate properties at issue in the Litigation; and
- Ginn and Plaintiff filing responses to the Court's December 14, 2009 Interrogatories;

WHEREAS, Plaintiff's counsel has conducted a thorough investigation and evaluation of the facts and law relating to the claims asserted in the Class Action Complaint to determine how best to serve the interests of Plaintiff and the putative class members;

WHEREAS, counsel for Plaintiff and Ginn have conducted numerous, extensive arm's-length negotiations over the past three years regarding the validity of the Parties' claims and defenses, as well as the substance and procedure of a possible class settlement prior to entering into this Agreement, including multiple sessions involving Plaintiff and Ginn, their counsel, the Parties' insurers, and mediator Jonathan Marks;

WHEREAS, Plaintiff and Plaintiff's counsel believe that the claims set forth in the Class Action Complaint have merit, but also recognize and acknowledge the expenses and length of continued proceedings that would be necessary to prosecute the claims through trial and appeals, and the importance of providing timely relief to the putative class members, most of whom made their real estate purchases a number of years ago. Plaintiff and Plaintiff's counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this one, as well as the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff's counsel also have considered the fact that the ILSA claims against Lubert-Adler have been dismissed with prejudice and that the RICO claims against Lubert-Adler have been dismissed without prejudice (such that there are no claims against Lubert-Adler currently pending in the Litigation). In addition, Plaintiff and Plaintiff's counsel have considered the fact that Ginn currently is not an operating business entity and has little or no assets available to satisfy any judgment that may ultimately be entered against Ginn, and that any recovery against Ginn would therefore flow from certain limited insurance policies that provide coverage to Ginn. Plaintiff and Plaintiff's counsel understand that these policies currently are eroding as a result of other litigation pending against Ginn and its affiliates, including the defense costs associated with same, and that Ginn's insurers have asserted various defenses to coverage under these policies, including their assertion that RICO claims are excluded under the policies. Plaintiff and Plaintiff's counsel are mindful of the inherent problems of proof under, and possible defenses to, the claims set forth in the Class Action Complaint. Plaintiff and Plaintiff's counsel believe that the proposed settlement as set forth herein confers substantial benefits upon Plaintiff and the putative class members. Based on their evaluation of all of these factors, Plaintiff and Plaintiff's counsel have determined that this settlement is in the best interests of Plaintiff and the putative class members and represents a fair, reasonable, and adequate resolution of the litigation; and

WHEREAS, Ginn denies any liability to Plaintiff or the putative class members. Ginn has thoroughly investigated the claims asserted by Plaintiff and believes that it has meritorious defenses -- both factual and legal -- to all of the claims. Nevertheless, Ginn and its insurers recognize and acknowledge the expense and length of continued proceedings that would be necessary to defend the Litigation through trial, as well as potential appeals in connection with same. In connection with entering into this Agreement, Ginn also has taken into account and considered the uncertain outcome and the risk of any litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation;

NOW THEREFORE, subject to the approval of the Court, and in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## **I. DEFINITIONS**

### **A. “Settlement Class Members”**

“Settlement Class Members” mean:

All entities and natural persons that took title to real estate (e.g., undeveloped land, a condominium, a townhome, etc.) in a development operated or developed by Ginn or any of Ginn’s past or present subsidiaries, divisions, related or sister or affiliated entities (collectively, the “Ginn Developers”) directly from the Ginn Developers in connection with a purchase contract that was fully executed between April 13, 2006 and April 13, 2009. (As used herein, each such parcel of real estate shall be referred to as “Ginn Property.”)

By way of example, if the purchase contract was signed within the class period, that purchaser would be a member of the Settlement Class even if the sale was closed outside the class period. By way of further example, if the contract was signed outside the class period and the sale was closed within the class period, that purchaser would not be a member of the Settlement Class.

The Settlement Class excludes: (a) all entities and natural persons who did not take title directly from the Ginn Developers, including without limitation resale purchases of Ginn Property; (b) all federal court judges or magistrate judges who have presided over this case and their spouses and anyone within three degrees of consanguinity from those judges and their spouses; (c) the Ginn Developers’ past or present employees, officers, directors, agents, attorneys, and representatives and their family members, as well as any entities created or controlled by any of the aforementioned persons; (d) all entities and natural persons who timely and validly elected to exclude themselves from the Settlement Class; (e) all entities and natural persons who have previously executed and delivered to one or more of the Ginn Developers releases of any claims they may have with respect to their purchase of Ginn Property; and (f) all entities and natural persons who have asserted claims against one or more of the Ginn Developers related to their purchase of Ginn Property and whose claims have been (i) dismissed with prejudice and/or (ii) dismissed without prejudice but who have not re-asserted those claims against one or more of the Ginn Developers before the deadline for doing so under applicable law.

### **B. “Effective Date”**

“Effective Date” means the first date after: (1) the Court enters the Final Order and Judgment, in all material respects similar to the form attached hereto as Exhibit A; and (2) all appellate rights and rights to petition for reconsideration or certiorari with respect to said Final Order and Judgment have expired or been exhausted in such a manner as to affirm the Final Order and Judgment, except that an appeal solely from any award of attorneys’ fees to Plaintiff’s counsel shall not extend the Effective Date.

**C. “Fairness Hearing”**

The “Fairness Hearing” is the final hearing, held after the Preliminary Approval Order is issued, in which the Court will hear argument as to whether this Agreement should be approved as fair, reasonable, and adequate, and whether the proposed Final Order and Judgment should be entered, and hear argument on the amount of attorneys’ fees and expenses to be awarded Plaintiff’s counsel.

**II. SETTLEMENT CONSIDERATION**

**A. Establishment of Settlement Fund**

In consideration for the releases provided for herein and the dismissal of the Litigation with prejudice, under the terms of this Agreement, Ginn agrees to provide consideration to the Settlement Class Members as follows:

1. Settlement Fund

Within fourteen (14) days of the Effective Date, Ginn shall cause to be established a settlement fund in the total amount of \$700,000 (the “Settlement Fund”) in connection with (i) resolving the claims of the Settlement Class Members, (ii) compensating the claims administrator for administering the settlement on the terms provided in Section II(A)(3), (iii) compensating Plaintiff’s counsel for its fees and expenses (in an amount not to exceed \$200,000 and \$75,000, respectively), and (iv) paying Plaintiff a class representative incentive award of \$15,000.

After deducting the expenses associated with compensating the claims administrator and Plaintiff’s counsel, as well as paying the class representative incentive award, Plaintiff’s counsel shall distribute the remaining amount in the Settlement Fund (the “Class Distribution”) to the Settlement Class Members according to the procedure set forth in the Class Notice (as that term is defined *infra* in Section IV(A)(3)). Plaintiff’s counsel shall complete the distribution of the Class Distribution within a reasonable period of time after the deadline for the submission of claims (as stated *infra* in Section III(A)) and all disputes regarding any claims have been resolved.

Following Ginn’s payment of the Settlement Fund amounts, Ginn shall not be responsible for any additional charges or taxes (unless otherwise explicitly set forth herein (e.g., postage, printing, and mailing expenses associated with providing notice to the Settlement Class Members and attorneys general)), including without limitation any charges or taxes between the time the Settlement Fund amounts are paid and the time the Class Distribution is made to the Settlement Class Members.

2. Expenses Associated With Providing Notice to Settlement Class Members

In addition to causing to establish the Settlement Fund, Ginn also shall cause to be paid the reasonable postage, printing, and mailing expenses associated with the notice provided to the

Settlement Class Members (on the terms provided in Section IV(C)). These expenses shall not be paid from the Settlement Fund (or the Class Distribution), and shall be paid separate and apart from those sources.

3. Costs

Plaintiff's counsel will retain a claims administrator to administer the program described above, whose reasonable fees and expenses shall be compensated from the Settlement Fund. Promptly after the Effective Date, the claims administrator will establish a claim center to receive and appropriately respond to claims submitted by the Settlement Class Members. The claim center will include (a) sufficient personnel to reasonably manage the settlement implementation process; (b) a mailing address to which Settlement Class Members can submit claims; and (c) a website containing information about the settlement, including claim forms that can be downloaded and submitted by mail.

4. Plaintiff's Attorneys' Fees and Expenses

Ginn has agreed not to oppose Plaintiff's counsel's motion to recover its reasonable attorneys' fees and expenses, not to exceed \$200,000 and \$75,000, respectively. Additionally, Ginn has agreed not to oppose a class representative incentive payment award of \$15,000 to be paid from the Settlement Fund. Plaintiff's counsel will apply to the Court for an award of attorneys' fees, expenses and class representative incentive payment of no more than these amounts, covering all legal services provided by Plaintiff's counsel in the past and future to the Settlement Class Members in connection with the Litigation, the settlement of the Litigation, any appeal in connection with the settlement, and implementation of the Agreement (the "Fee and Expense Application"). Ginn will not dispute or oppose the Fee and Expense Application (provided the Fee and Expense Application is submitted in accordance with the terms of this Agreement), which shall be subject to Court approval. Further, Plaintiff's counsel may not be awarded, and shall not accept, any amount in excess of these sums. The Court will issue an Order confirming the award of the aforementioned fees and expenses. Should any counsel other than Plaintiff's counsel petition the Court for an award of attorneys' fees, costs, or expenses in connection with the Litigation or settlement thereof, the Parties and their counsel shall cooperate in opposing any such petition, and neither Plaintiff's counsel nor Defendants shall be required to pay any amounts of money to such counsel. Given their duty to the Settlement Class Members and their commitment to secure approval and implementation of the class settlement, Plaintiff's counsel acknowledges that, if they seek to recover attorneys' fees as part of this settlement, they are ethically prohibited from having any financial interest in a matter involving a person or entity who opts out of this settlement to pursue an individual lawsuit against Defendants. Plaintiff's counsel further acknowledge that they will advise all Plaintiffs' counsel seeking attorneys' fees of the foregoing ethical prohibition. Within fourteen (14) days after the Effective Date, Ginn shall cause to be paid the amount awarded by the Court for attorneys' fees, expenses, and class representative incentive award to Plaintiff's counsel out of the Settlement Fund (which in no event shall exceed \$200,000, \$75,000 and \$15,000, respectively). Any order or proceedings relating to the Fee and Expense Application, or any appeal solely from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement or affect or delay the finality of the judgment approving this Agreement.

**B. The Settlement Class Members' Release of Defendants**

On the Effective Date, the below releases shall be effective:

Plaintiff and the Settlement Class Members, on behalf of themselves and their respective agents, assigns, attorneys, accountants, principals, members, employees, officers, directors, independent contractors, investors, successors, predecessors, insurers, representatives, parents, subsidiaries, divisions, sister and affiliated entities (collectively hereafter the "Settlement Class Releasers"), hereby release and forever discharge Defendants and each of their respective past or present agents, heirs, executors, administrators, assigns, associates, attorneys, principals, accountants, employees, officers, directors, independent contractors, investors, creditors, successors, predecessors, insurers, representatives, parents, subsidiaries, divisions, related or sister or affiliated entities, partners, joint ventures, members, shareholders and owners, and any others who may have acted or been claimed to have acted in concert with them, or who may be liable or who might be claimed to be liable with them (collectively, the "Released Parties"), from any and all charges, complaints, claims, counterclaims, third-party claims, defenses, liabilities, obligations, promises, agreements, controversies, demands, damages, actions, causes of action or suits of any kind or nature arising out of or related to the Litigation. Further, the Settlement Class Releasers hereby release and forever discharge the Released Parties from any and all claims, complaints, charges, liabilities, obligations, damages, actions, causes of action or suits of any kind or nature arising from or related to any potential claim of abusive litigation or misconduct arising out of the Litigation held by the Settlement Class Releasers or otherwise.

The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law by the Settlement Class Releasers of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

**III. PROCESS FOR SUBMISSION AND APPROVAL OF CLAIMS**

For a Settlement Class Member to obtain reimbursement for a claim in connection with this settlement, a Settlement Class Member must submit a claim pursuant to the procedure set forth below.

**A. Timing of Claims**

Claims must be submitted to the claims administrator and post-marked by ninety (90) days after the Effective Date. The claims administrator shall not be required to process or review any claims post-marked after this deadline, and such claims will not be eligible for reimbursement.

**B. Content of and Support for Claims**

Within ten (10) days of the Effective Date, the Parties shall retain a claims administrator to be compensated from the Settlement Fund. The claims administrator shall have thirty (30) days from the Effective Date to mail out settlement claim forms (a draft of which is attached hereto as Exhibit B) to all Settlement Class Members who were sent the Class Notice (as that term is defined *infra* in Section IV(A)(3)) and who did not timely submit a request for exclusion.

As set forth in the claim form, each claim must include: (1) the tax identification number for the particular piece of Ginn Property purchased by the Settlement Class Member; (2) the lot or unit number for the Ginn Property and the development (including subdivision if applicable) in which the Ginn Property is located; (3) the county and state in which the Ginn Property is located; (4) proof that the Settlement Class Member took title to Ginn Property directly from the Ginn Developers in a development operated or developed by the Ginn Developers in connection with a purchase contract that was fully executed between April 13, 2006 and April 13, 2009; (5) proof that the Settlement Class Member is eligible for reimbursement in connection with this Agreement by providing documents sufficient to show the current status or prior disposition of the Ginn Property, namely, that: (a) the Settlement Class Member owns the Ginn Property as of the Effective Date; (b) the Settlement Class Member sold the Ginn Property prior to the Effective Date for less than the Settlement Class Member originally paid to purchase the Ginn Property; (c) the Settlement Class Member's Ginn Property was foreclosed upon; or (d) the Settlement Class Member sold the Ginn Property prior to the Effective Date for the same amount or more than the Settlement Class Member originally paid to purchase the Ginn Property; and (6) an attestation under penalty of perjury that the Settlement Class Member has not previously settled or released its claims against one or more of the Ginn Developers in connection with the Settlement Class Member's purchase of the parcel of Ginn Property for which the Settlement Class Member is submitting a claim. The Settlement Class Member will aver under penalty of perjury that the information being submitted in connection with the claim form is true and correct to the best of the Settlement Class Member's knowledge.

**C. Rejected Claims**

The claims administrator may reject any claim that does not include the required information specified above. The claims administrator reserves the right to investigate any submitted claims, including by requesting further documentation to determine whether a particular claim is valid. If the claims administrator rejects any claim, it will advise the appropriate Settlement Class Member of the reason for the rejection (e.g., missing information). If the claim is rejected due to missing information, the claims administrator will give the Settlement Class Member thirty (30) days to resubmit the claim with additional information, so long as the original claim was submitted by the deadline noted above.

**D. Disputed Claims**

If a Settlement Class Member disputes either the claims administrator's rejection of a claim or the amount to be paid pursuant to the claim, the Settlement Class Member may appeal that decision by submitting its claim and an explanation of the claims administrator's alleged

error within (30) thirty days after the Settlement Class Member is notified of the rejection of the claim to the Court in which the Litigation is pending, which shall make a final, binding determination following receipt of the claims administrator or Plaintiff's counsel's response to the appeal (which response shall be filed within thirty (30) days of the Settlement Class Member's submission of the appeal to the Court). The Court may appoint a special master or other appropriate designee to consider and make a final determination with respect to such appeals, whose reasonable fees and expenses shall be compensated from the Settlement Fund.

#### **IV. SETTLEMENT APPROVAL PROCESS**

##### **A. Preliminary Approval of Settlement**

Promptly after the execution of this Agreement, counsel for the Parties shall jointly present this Agreement to the Court in which the Litigation is pending, along with a Motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached hereto as Exhibit C, which shall include, among other things, the following:

1. preliminary certification under Federal Rule of Civil Procedure 23, for settlement purposes only, of a settlement class as to the Settlement Class Members;
2. preliminary approval of the settlement memorialized in this Agreement as fair, reasonable and adequate;
3. approval of the class notice (and attendant claim form) containing the language substantially in the form attached hereto as Exhibit D (as discussed in more detail in Section IV(C)) for distribution to Settlement Class Members (the "Class Notice");
4. a direction to the notice administrator to distribute the Class Notice (and attendant claim form) in the form approved by the Court to Settlement Class Members no later than thirty (30) days following entry of the Preliminary Approval Order and report to the Court at least seven (7) days before the date set for the Fairness Hearing defined in sub-paragraph 8 below that it sent such Class Notice, and a direction that each potential Settlement Class Member who wishes to be excluded from the settlement class must respond to the Class Notice in writing in accordance with the instructions set forth in the Class Notice and that their responses must be received by the date set forth in the Preliminary Approval Order;
5. a finding that the Class Notice constitutes the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who can be identified with reasonable effort, and constitutes valid, due, and sufficient notice to Settlement Class Members in compliance with the requirements of applicable law, including the due process clause of the United States Constitution;
6. a direction that, pending final determination of the joint application for approval of this Agreement, all proceedings in this Litigation other than settlement approval proceedings shall be stayed and all Settlement Class Members who do not request exclusion from the settlement class shall be enjoined from commencing or prosecuting any action, suit, proceeding,

claim, or cause of action in any court or before any tribunal based upon the claims at issue in the Litigation;

7. a direction that any Settlement Class Member who has not properly and timely requested exclusion from the Settlement Class will be bound by the Final Order and Judgment;

8. the scheduling of a final hearing to determine whether this Agreement should be approved as fair, reasonable, and adequate and whether the proposed Final Order and Judgment should be entered (the "Fairness Hearing");

9. a direction that Plaintiff's counsel shall file a Fee and Expense Application and Motion for Final Approval approximately fourteen (14) days prior to the date set forth in the Preliminary Approval Order as the deadline for the objections; and that Plaintiff's counsel shall file any supplemental brief in support of final approval of the Agreement no later than seven (7) days prior to the Fairness Hearing; and that the Court shall confirm at the Fairness Hearing the aforementioned amount of attorneys' fees and expenses to be awarded to Plaintiff's counsel;

10. a direction that any Settlement Class Member who wishes to object to the proposed Agreement, the proposed Final Order and Judgment, and/or the Fee and Expense Application, must file and serve such objections no later than the date set forth in the Preliminary Approval Order, which shall be approximately thirty (30) days before the Fairness Hearing, together with copies of all papers in support of his or her position as provided in Section IV(D) of the Agreement. The Class Notice shall state that the Court will not consider the objections of any Settlement Class Member who has not properly served copies of his or her objections on a timely basis or complied with the requirements of the Agreement; and

11. a direction that Plaintiff's counsel receive all communications from prospective and actual Settlement Class Members asking to be excluded from the settlement class or objecting to the settlement, forward same to Ginn's counsel within three (3) days after receiving each such communication, and tabulate and report the names and addresses of all such entities and natural persons to the Court and Ginn's counsel no less than seven (7) days before the Fairness Hearing.

#### **B. Notice to Attorneys General**

In compliance with the attorney general notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after the Motion for Preliminary Approval Order is filed, the Parties shall jointly provide notice of this proposed settlement to the Attorney General of the United States, and the attorneys general of all of the U.S. states. The notice will include (1) a copy of the Class Action Complaint, (2) a copy of this Agreement and its exhibits, and (3) a reasonable estimate of the number of class members in each state/territory and their percentage representation in the settlement class. Ginn shall be responsible for the reasonable postage and mailing expenses associated with providing this notice to the attorneys general.

**C. Notice to Settlement Class Members**

As soon as practicable after the preliminary approval of the settlement, the claims administrator will obtain the name and last known physical address (and email address, if available) of each potential Settlement Class Member. Ginn will provide the last known physical address of potential Settlement Class Members as identified in the records of it or its affiliates. The notice administrator shall check and update those addresses that are located in the United States via the National Change of Address database. Ginn shall make reasonable best efforts to check and update those addresses that are located outside of the United States via the records of the county where the Ginn Property is located. Thereafter, the notice administrator shall send a copy of the Class Notice containing the language in Exhibit D, and substantially in the same form as in Exhibit D, by first-class U.S. mail (and email, if available) to each Settlement Class Member so identified. The claims administrator shall use its best efforts to complete the mailing of the Class Notice to potential Settlement Class Members within thirty (30) days after the preliminary approval of the proposed settlement.

If any Class Notice mailed or emailed to any potential Settlement Class Member is returned to the claims administrator as undeliverable, then the claims administrator shall perform a reasonable search for a more current name and/or physical and/or email address for the potential Settlement Class Member and, provided that a more current name and/or physical and/or email address can be found through such a search, re-send the returned Class Notice to the potential Settlement Class Member by first-class U.S. mail and/or email (if available). In the event that any Class Notice mailed or emailed to a potential Settlement Class Member is returned as undeliverable a second time, then no further mailing or emailing shall be required. The claims administrator will promptly log each Class Notice that is returned as undeliverable and provide copies of the log to counsel for the Parties.

**D. Response to Notice**

1. Objection to Settlement

Any Settlement Class Member who intends to object to the fairness of the Agreement must, by the date specified in the Preliminary Approval Order and recited in the Class Notice, (i) file any such objection with the Court, and (ii) provide copies of the objection to:

As to Plaintiff:

Mario A. Pacella, Esq.  
Strom Law Firm, LLC  
2110 Beltline Blvd.  
Columbia, South Carolina 29204

As to Ginn:

Robert P. Alpert, Esq.  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, NE  
Atlanta, GA 30326, USA

Any objection to the Agreement must be individually and personally signed by the Settlement Class Member (and, if the Settlement Class Member is represented by counsel, by such counsel for the Settlement Class Member), and must include:

- a. the objector's full name, physical address, and telephone number;
- b. the tax identification number for each piece of Ginn Property to which the objector took title, the lot or unit number of the Ginn Property and name of the development, (including the subdivision if applicable) in which the Ginn Property is located, the county(ies) and state(s) in which the Ginn Property is located, and proof that the purchase contract associated with the Ginn Property was fully executed between April 13, 2006 and April 13, 2009;
- c. a written statement of all grounds for the objection accompanied by any legal support for such objection;
- d. copies of any papers, briefs, or other documents upon which the objection is based;
- e. a list of all cases in which the objector and/or the objector's counsel has filed or in any way participated in—financially or otherwise—objecting to a class action settlement in the preceding five (5) years;
- f. the name, address, email address, and telephone number of any attorneys representing the objector; and
- g. a statement indicating whether the objector and/or their counsel intends to appear at the Fairness Hearing.

Any Settlement Class Member who does not file a timely written objection to the settlement or who fails to otherwise comply with the requirements of this section shall be foreclosed from seeking any adjudication or review of this settlement by appeal or otherwise.

2. Request for Exclusion

Any Settlement Class Member who wishes to be excluded from the settlement class must submit a request for exclusion ("Request for Exclusion") to Plaintiff's counsel via first-class U.S. mail at the address specified in the Class Notice by the date specified in the Preliminary Approval Order and recited in the Class Notice. Settlement Class Members who wish to be

excluded from the Settlement Class must do so with respect to all Ginn Property for which a purchase contract was fully executed between April 13, 2006 and April 13, 2009, and may not exclude themselves from the settlement class with respect to some Ginn Property during this time period and include themselves in the settlement class with respect to other Ginn Property during this time period. To be effective, the Request for Exclusion must also:

- a. include the Settlement Class Member's full name, address, and telephone number;
- b. the tax identification number for each piece of Ginn Property purchased by the objector, the lot or unit number of the Ginn Property and name of the development (including the subdivision if applicable) in which the Ginn Property is located, and the county(ies) and state(s) in which the Ginn Property is located;
- c. specifically and unambiguously state his or her desire to be excluded from the settlement class in the Litigation; and
- d. be individually and personally signed by the Settlement Class Member.

Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper address, shall be subject to and bound by this Agreement and every order or judgment entered pursuant to this Agreement. Any purported Request for Exclusion sent to such address that is ambiguous or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the settlement class will be deemed invalid unless determined otherwise by the Court.

Plaintiff's counsel will receive purported Requests for Exclusion and review each request to ensure that it contains the aforementioned information. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent to Plaintiff's counsel whether the Settlement Class Member meant to exclude himself or herself from the settlement class will be resolved by the Court. Plaintiff's counsel shall maintain a list of all Requests for Exclusion it receives, forward each such request to Ginn's counsel within three (3) days of receiving same, and report the names and addresses of all such entities and natural persons requesting exclusion to the Court seven (7) days prior to the Final Hearing. The list of entities and natural persons deemed by the Court to have excluded themselves from the settlement class will be attached as an exhibit to the Final Order and Judgment.

#### **E. Fairness Hearing**

On the date set forth in the Preliminary Approval Order, which shall be approximately one (1) month after the deadline for submitting objections and Requests for Exclusion, a Fairness Hearing will be held at which the Court will: (a) decide whether to finally certify the settlement class, (b) decide whether to approve the Agreement as fair, reasonable, and adequate, and (c) decide whether to approve Plaintiff's counsel's Fee and Expense Application, and issue an Order memorializing that decision.

Any Settlement Class Member who intends to appear at the Fairness Hearing must provide written notice to the Court no later than the deadline for submitting objections and Requests for Exclusion, Plaintiff, and Ginn, identifying his or her full name, address, and telephone number, a summary of the issues he, she or it intends to raise at the Fairness Hearing, and the name, address, and telephone number of any witnesses he or she intends to call. If represented by counsel, the Settlement Class Member must also provide the name, address, and telephone number of counsel.

Any Settlement Class Member who does not submit timely notice of his or her intent to appear at the Fairness Hearing or who fails to otherwise comply with the requirements of this section shall be foreclosed from seeking any adjudication or review of this settlement by appeal or otherwise.

**F. Final Order and Judgment**

If this Agreement is finally approved by the Court, a Final Order and Judgment directing the entry of Judgment pursuant to Fed. R. Civ. P. 54(b) shall be entered substantially in the form attached hereto as Exhibit A, as follows:

1. certifying the settlement class solely for purposes of this Agreement;
2. approving the Agreement as fair, reasonable, and adequate as it applies to the Settlement Class Members;
3. declaring the Agreement to be binding on the Parties;
4. dismissing on the merits and with prejudice the Class Action Complaint in the Litigation, and all claims released in Section II(B);
5. forever discharging the Released Parties from all claims released in Section II(B);
6. indicating the amount of attorneys' fees and expenses to be awarded to Plaintiff's counsel;
7. providing that all Settlement Class Members who did not request exclusion from the settlement class shall be permanently enjoined from commencing or prosecuting any action, suit, proceeding, claim, third-party claim, counterclaim, or cause of action asserting any claims, counterclaims, defenses, etc., released in Section II(B) against the Released Parties in any court or before any tribunal; and
8. attaching a list of putative Settlement Class Members that requested, and have been granted, exclusion from the Settlement Class.

### **G. Withdrawal from Settlement**

Any of the Parties shall have the option to withdraw from this Agreement prior to the Effective Date, and to render it null and void, if any of the following occurs:

1. as a result of any objections to the proposed settlement, the actions of any attorney general, the considerations or directions of the Court, or for any other reason there are changes to the Agreement that the withdrawing party deems in good faith to be material (e.g., because it increases the cost of the settlement, delays approval and/or implementation of the settlement, or deprives the withdrawing party of a material benefit of the settlement); or

2. entry of the Final Order and Judgment described in this Agreement is reversed or substantially modified by an appellate court, except that a reversal or modification of an order awarding reasonable attorneys' fees and expenses shall not be a basis for withdrawal (provided that the total of all attorneys' fees awarded to Plaintiff's counsel does not exceed \$200,000 and \$75,000, respectively, and provided the Order does not require payment of such fees or expenses from any source other than the Settlement Fund).

In addition to the above, Ginn shall have the option to withdraw from this Agreement, and to render it null and void, if the Settlement Class Members submit Requests for Exclusion which exceed the threshold specified in a separate supplemental agreement between the Parties (the "Supplemental Agreement"). The Supplemental Agreement will not be filed with the Court unless required by court rule or unless and until a dispute as between the Parties concerning its interpretation or application arises.

To withdraw from the Agreement under this Section IV(G), the withdrawing party must promptly provide written notice to the other party's lead counsel and to the Court. In the event any of the Parties withdraws from the settlement, this Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Litigation shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. Upon withdrawal, any of the Parties may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Agreement.

### **H. Release of Settlement Class Members' Claims**

Upon the Effective Date, the Settlement Class Members shall be deemed to have, and by operation of the Final Order and Judgment shall have, released, waived, and discharged the Released Parties from all claims released in Section II(B). These releases will run with the Ginn Property if the Settlement Class Member sells or otherwise transfers its interest in the Ginn Property.

**V. MISCELLANEOUS PROVISIONS.**

**A. Class Certification**

The Parties agree that, for the purposes of this settlement only, certification of the aforementioned settlement class is appropriate pursuant to Fed. R. Civ. P. 23(b)(3). Ginn does not agree that certification of the aforementioned settlement class is or would be appropriate for any other purpose or in any other context.

**B. Effect of Exhibits**

The exhibits to this Agreement are an integral part of the Agreement and are expressly incorporated and made a part of this Agreement.

**C. No Admission**

This Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or any admissions by Defendants of any claim or allegation made in any action or proceeding against Defendants. If this Agreement is terminated and becomes null and void, the class action portions of this Agreement and settlement contemplated thereby shall have no further force and effect with respect to any party to the Litigation and shall not be offered in evidence or used in the Litigation or any other proceeding. This Agreement shall not be offered or be admissible in evidence against Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by Ginn to Plaintiff and Plaintiff's counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever.

**D. Entire Agreement**

This Agreement and the Supplemental Agreement represent the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement and the Supplemental Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Agreement is sought.

**E. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

**F. Arm's-Length Negotiations**

The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms, conditions, and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. The Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

**G. Dispute Resolution**

Any dispute, challenge or question relating to this Agreement (other than those which this Agreement provides shall be resolved by otherwise) shall be heard only by this Court.

**H. Continuing Jurisdiction**

The Court shall retain continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, for the purpose of the administration and enforcement of this Agreement.

**I. Binding Effect of Agreement**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

**J. Nullification**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Parties' counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**K. Extensions of Time**

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to Court approval as to Court dates).

**L. Service or Notice**

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Parties or their counsel, such service or notice shall be directed to the individuals and addresses specified below:

As to Plaintiffs:

Mario A. Pacella, Esq.  
Strom Law Firm, LLC  
2110 Beltline Blvd.  
Columbia, South Carolina 29204

As to Ginn:

Robert P. Alpert, Esq.  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, NE  
Atlanta, GA 30326

**M. Reasonable Best Efforts**

The Parties shall use all reasonable best efforts to effectuate this Agreement and obtain preliminary and final approval of the Agreement by the Court in which the Litigation is pending.

**N. Authority to Execute Agreement**

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

[SIGNATURE PAGE TO SUPPLEMENTAL AGREEMENT BETWEEN  
PLAINTIFF, THE SETTLEMENT CLASS MEMBERS, AND GINN]

IN WITNESS HEREOF, the Parties have caused this Supplemental Agreement to be executed.

**John Demsheck:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Settlement Class Members:**

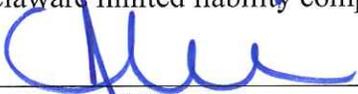
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Ginn Development Company, LLC,  
a Georgia limited liability company:**

By: Legacy Resort Assets, LLC,  
a Delaware limited liability company, its manager

By:  \_\_\_\_\_

Name: Amy Wilde

Title: Vice President

Date: \_\_\_\_\_

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, as of July 29, 2013.

**John Demscheck:**

By: John Demscheck  
Date: 7/29/13

**On behalf of the Settlement Class Members:**

By: Thomas Paul  
Its: Counsel  
Date: 7/29/13

**On behalf of Ginn Development Company, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_