

Exhibit C to Settlement Agreement

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**John Demsheck, individually and
on behalf of all others similarly situated,**)

Plaintiffs,)

v.)

Ginn Development Company, LLC,)

Defendant.)

Case No. 3:09-CV-335-HLA-TEM

PRELIMINARY APPROVAL ORDER

The parties to the above-captioned action have entered into a Settlement Agreement (the “Agreement”), submitted to the Court on July 29, 2013, to settle the above-captioned putative class action in its entirety, and Plaintiff has filed a Motion for Preliminary Approval of Class Action Settlement and a supporting memorandum, which Ginn supports.¹ The Court has read and considered the Agreement and all the exhibits thereto, including the proposed Class Notice. The Court finds that there is a sufficient basis for granting preliminary approval of the Agreement and authorizing the steps necessary to determine whether the Agreement should be finally approved (including the dissemination of Class Notice) and the Lawsuit dismissed.

Accordingly, and for good cause shown, IT IS HEREBY ORDERED that:

¹ All capitalized terms used in this Order have the meaning as defined in the Agreement, which is incorporated herein by reference.

1. This Court has jurisdiction over the Parties and this action. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for purposes of effectuating this settlement only, a settlement class (the “Settlement Class”) consisting of:

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.

2. The Court hereby appoints Plaintiff John Demscheck to serve as class representative.

3. The Court hereby appoints Joe R. Whatley, J. Preston Strom, Jr., Mario A. Pacella, Douglass Chunn, and Bryant McCulley to serve as counsel for the Settlement Class Members. Correspondence to counsel for the Settlement Class Members may be made to Mario A. Pacella, Strom Law Firm, LLC, 2110 Beltline Blvd., Columbia, South Carolina 29204.

4. In connection with preliminarily certifying the Settlement Class, the Court finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied. Specifically, the Settlement Class satisfies the numerosity requirement because the number of Settlement Class members here -- likely in the hundreds -- renders joinder impracticable. Commonality is satisfied because the Settlement Class members are pursuing common issues relating to Ginn's alleged failure to provide Plaintiff and the class members with the required property report before they signed a contract relating to their real estate purchases. Typicality is satisfied because Plaintiff's claims arise from the same alleged conduct as the claims of other class members and are based on the same theory, including that Ginn failed to provide Plaintiff and the class members with the required property report

before they signed a contract relating to their real estate purchases. Adequacy of representation is satisfied because Plaintiff's counsel are qualified and because the evidence does not reflect that Plaintiff has any interests antagonistic to those of the Settlement Class. In addition, Rule 23(b)(3)'s predominance requirement is satisfied because the crux of all class members' claims is whether Ginn failed to provide Plaintiff and the class members with the required property report before they signed a contract relating to their real estate purchases, and maintaining this action as a class action is the superior procedural vehicle because it will provide the Settlement Class with prompt, monetary relief in connection with their claims.

5. The preliminary certification of this action as a class action is for settlement purposes only and the appointment of counsel for the Settlement Class Members shall be terminated and without further force or effect and without prejudice to any party in connection with any future proceedings in the Lawsuit, including any future motion with respect to class certification, if: (a) the Court does not give final approval to the Agreement and enter the Final Order and Judgment substantially in the form attached to the Agreement, or (b) this Court's approval of the Agreement and/or entry of the Final Order and Judgment are reversed on appeal.

6. The terms of the Agreement are sufficiently fair, reasonable, and adequate to allow dissemination of the Class Notice to the Settlement Class Members. Specifically, the Court finds that the Agreement is not the product of fraud or collusion, the litigation is complex and would be lengthy and expensive if it is not settled, the proceedings have advanced sufficiently over the past four years to allow the parties to make a reasonable

determination as to the reasonableness of settlement, there are numerous factual and legal obstacles both sides would face in connection with prevailing on the merits, the Settlement Class would face challenges recovering on any judgment that might ultimately be obtained, and the Parties and their counsel unanimously agree that settlement is appropriate under the terms set forth in the Agreement. Moreover, the individual, direct-mail notice proposed by the parties satisfies Rule 23 and is reasonable under the circumstances.

7. This determination permitting notice to the Settlement Class Members is not a final finding that the Agreement is fair, reasonable and adequate, but simply a determination that there is probable cause to disseminate Class Notice to the Settlement Class Members and hold a hearing on final approval of the proposed settlement.

8. The Court approves and finds fair and reasonable the administrative mechanism to which the Parties have agreed in connection with receiving requests from Settlement Class Members to exclude themselves from the Settlement Class. Specifically, any Settlement Class Member who wishes to be excluded from the settlement class must submit a request for exclusion (“Request for Exclusion”) via first-class U.S. mail post-marked by _____ [30 days before the Fairness Hearing] to Plaintiff’s counsel, which includes (a) 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 for the Ginn Property and the development (including 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) a clear statement that the Settlement Class Member desires to be excluded from the Settlement Class; and (d) 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).

9. 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 the Parties' Agreement and every Order or Judgment entered pursuant to the Agreement.

10. Any purported Request for Exclusion 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.

11. 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 receipt of 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.

12. In conjunction with moving for final approval, Plaintiff's counsel may apply to the Court for an award of attorneys' fees and expense reimbursement covering all legal services provided to Plaintiff and the Settlement Class Members in connection with the

Lawsuit and settlement of the Lawsuit (the “Fee and Expense Application”). The Fee and Expense Application and Plaintiff’s Motion for Final Approval shall be filed by _____ [14 days before the deadline for objections and requests for exclusion]. The Fee and Expense Application shall seek a maximum of \$200,000 in attorneys’ fees, \$75,000 in expenses and a class representative incentive award of \$15,000.

13. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1715(d), a hearing (the “Fairness Hearing”) shall be held on _____ at _____ a.m./p.m. before Judge Henry Lee Adams, Jr. of the U.S. District Court for the Middle District of Florida, Bryan Simpson United States Courthouse, 300 North Hogan Street Suite 9-150, Courtroom 10-A, Jacksonville, Florida 32202 for the purpose of finally determining whether the proposed Agreement is fair, reasonable, and adequate and should be approved by the Court via entry of the Final Judgment and Order attached to the Agreement and, if so, what amount of reasonable attorneys’ fees and expenses should be awarded to counsel for the Settlement Class Members.

14. Any Settlement Class Member who intends to appear at the Fairness Hearing must provide written notice no later than _____ [the deadline for submitting objections and requests for exclusion] to the Court and the Parties, 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 paragraph shall be foreclosed from seeking any adjudication or review of this settlement by appeal or otherwise.

15. Approval is hereby given to the form of the Class Notice (and attendant claim form), attached to the Agreement as **Exhibit D**, to Settlement Class Members. The Court finds that the Class Notice reasonably informs the Settlement Class Members of the material terms of the Agreement and their rights and responsibilities in connection with the Agreement, and, once distributed pursuant to the plan of distribution detailed below, 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 and Rule 23 of the Federal Rules of Civil Procedure. The reasonable fees and expenses of the claims administrator associated with administering the settlement notice to the Settlement Class Members shall be paid from the Settlement Fund caused to be established by Ginn. In addition, Ginn shall cause to be paid the reasonable postage, printing, and mailing expenses associated with the notice provided by the claims administrator to the Settlement Class Members, and these expenses shall not be paid from the Settlement Fund (or the Class Distribution), but shall be paid separate and apart from those sources.

16. On or before _____ [30 days after entry of the Preliminary Approval Order], Plaintiff's counsel shall cause the claims administrator to deliver by United States Postal Service first-class mailing, postage prepaid, copies of the Class Notice (and attendant claim form) containing the language in **Exhibit D** to the Agreement to the current address of each Settlement Class Member for whom the Parties and the claims administrator can

reasonably obtain an address. Plaintiff's counsel shall also cause the claims administrator to deliver this same information via email to each Settlement Class Member for whom the Parties and the claims administrator can reasonably obtain an email address. The Court finds that such individual notice is the best notice practicable under the facts and circumstances of this case.

17. If they have not done so already, Plaintiff's counsel shall provide to the Attorney General of the United States and the attorneys general of all of the U.S. states the information specified in 28 U.S.C. § 1715 by the deadline established in that statute. Ginn shall be responsible for the reasonable postage, printing, and mailing expenses associated with providing this notice to the attorneys general, which amounts shall be paid from a source other than the Settlement Fund.

18. On or before _____ [7 days after the deadline for sending class notice], Plaintiff's counsel shall provide a declaration attesting to their compliance with their notice obligations, which shall include: (a) their best estimate of the total number of Settlement Class Members, (b) a sample copy of the as-mailed Class Notice, (c) the process by which the claims administrator obtained a mailing list (and emailing list) for the Class Notice, (d) the number of Class Notices mailed and emailed and the range of dates within which such Notices were mailed and emailed, and (e) the number of Class Notices returned.

19. Any member of the Settlement Class who intends to object to the fairness of the Agreement (including Plaintiff's counsel's Fee and Expense Application) must, by _____ [30 days before Fairness Hearing], (1) file such objection with the Clerk of the U.S. District Court for the Middle District of Florida, and (2) serve such objection upon

Mario Pacella of The Strom Law Firm, 2110 Beltline Blvd., Columbia, South Carolina 29204 (Plaintiff's Counsel) and Robert P. Alpert, Morris, Manning & Martin, LLP, 1600 Atlanta Financial Center, 3343 Peachtree Road, NE, Atlanta, GA 30326 (Ginn's counsel). Any objection to the Agreement must be individually and personally signed by the Settlement Class Member (if the Settlement Class Member is represented by counsel, the objection additionally must be signed by such counsel), and must include: (a) the Settlement Class Member's full name, address, and telephone number; (b) the tax identification number for each piece of Ginn Property to which the Settlement Class Member took title, the lot or unit number for the Ginn Property and the development (including 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 reasons for the Settlement Class Member's objection accompanied by any legal support; (d) copies of any papers, briefs, or other documents on which the objection is based; (e) a list of other cases in which the Settlement Class Member (or his/her/its counsel) have filed or in any way participated in financially or otherwise objections to a class settlement in the preceding five years; (f) the name, address, email address, and telephone number of all attorneys representing the Settlement Class Member; and (g) a statement indicating whether the Settlement Class Member (or his/her/its counsel) intends to appear at the Fairness Hearing.

20. Any member of the Settlement Class who does not properly file a timely written objection to the settlement and notice of his, her or its intent to appear at the Fairness

Hearing shall be foreclosed from seeking any adjudication or review of the settlement by appeal or otherwise.

21. On or before [7 days before Fairness Hearing], the Parties shall file any memoranda or other materials in support of final approval of the Agreement, including in response to any timely and properly filed objection to the Agreement. Such materials shall be served on Plaintiff's Counsel, Ginn's counsel, and on any Settlement Class Member (or his/her/its counsel, if represented by counsel) to whose objection to the Agreement the memoranda or other materials respond.

22. Following the Fairness Hearing, and based upon the entire record in this matter, the Court will decide whether the Agreement should be finally approved and, if so, what amount of reasonable fees and expenses should be awarded to Plaintiff's counsel. If the Court determines the Agreement is reasonable, fair, and adequate, the Court will issue a Final Order and Judgment memorializing its decision in the form contemplated by Exhibit A of the Agreement. The Court will also issue an Order awarding reasonable fees and expenses to Plaintiff's Counsel.

23. Pending final determination of the joint application for approval of this Agreement, all proceedings in this Lawsuit other than settlement approval proceedings shall be stayed, and all members of the Settlement Class are hereby enjoined from prosecuting or initiating any claims, counterclaims, lawsuits or actions against Ginn relating to the subject matter of the Agreement pending a final determination by this Court as to whether to approve the proposed Agreement.

24. To the extent any of the Parties exercise their right under the Agreement to withdraw from the Agreement, this Order shall be vacated and rendered null and void immediately upon the withdrawal of any party from the Agreement.

SO ORDERED this ____ day of _____, 2013.

HENRY LEE ADAMS, JR.
United States District Judge